CALIFORNIA COASTAL COMMISSION

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

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Items Tu 18 & 19

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Staff Report:	October 17, 2002
Hearing Date:	November 5-8, 2002
Commission Action:	

STAFF REPORT: REVOCATION REQUEST

APPLICATION NOS.: R(2)-A-5-LGB-00-078 and R(2)-A-5-LGB-00-079

APPLICANT: Laguna Beach Resorts, LLC (Formerly Five Start Resort, LLC)

AGENT: The Athens Group

PROJECT LOCATION: 30801 Coast Highway, Laguna Beach (Orange County)

PROJECT DESCRIPTION: 1) Subdivision of a 30-acre coastal blufftop lot (including 17 single-family residential lots), construction of master utilities and backbone infrastructure and 2) Development of a 275-room resort, 14 condominiums and public park areas for the Treasure Island Destination Resort Community Project.

PARTIES REQUESTING REVOCATION: Joseph and Lorretta Corrigan

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **DENY** the request to revoke permits A-5-LGB-00-078 and A-5-LGB-00-079 because the request does not establish the grounds required by Section 13105(a) or 13105(b) of the Commission's Regulations, as the permittee did not intentionally include inaccurate, erroneous, or incomplete information and did not fail to comply with the notice provisions.

LOCAL APPROVALS RECEIVED: City of Laguna Beach Coastal Development Permits Nos. 99-75 and 99-76.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Appeal Nos. A-5-LGB-00-078 and A-5-LGB-00-079; R-5-LGB-00-078 and R-5-LGB-00-079; City of Laguna Beach Local Coastal Program (LCP) for Treasure Island Resort and Destination Community Project; Final Program Environmental Impact Report (FEIR) and Mitigation Monitoring Program for the LCP and Treasure Island Specific Plan adopted June 8, 1998; FEIR Addendum dated September 29, 1999; City of Laguna Beach Administrative Record for Coastal Development Permits Nos. 99-75, 99-76, 99-78 and 99-79; California Coastal Commission Adopted Revised Findings on the City of Laguna Beach Local Coastal Program amendment 1-98 for the Treasure Island Area of Deferred Certification as Approved by the Commission on August 13, 1998 (Revised Findings adopted November 6, 1998).

EXHIBITS:

1. Regional Map
2. Vicinity Map
3. Assessor's Parcel Map
4. Local CDP Site Development Plan
5. LCP Site Plan
6. Revocation Request with Preceding and Subsequent Correspondence (without attachments)
7. Photos Provided by Corrigans
8. Responses from Applicant's Legal Representatives (without attachments)
9. Correspondence from City of Laguna Beach
10. LCP Conceptual Drainage Plan
11. Local CDP Drainage Plan
12. Outline of Water Quality Measures from Applicant's Agent

PROCEDURAL NOTE:

This revocation request was received on September 13, 2002. The regulations require the Executive Director to report a revocation request at the next regularly scheduled Commission meeting. The next regularly scheduled meeting is November 5-8, 2002.[1]

The Commission's regulations identify the grounds for the revocation of a coastal development permit as follows:

> *(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*
>
> *(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.*

Cal Code regs., tit. 14, § 13105.

The Commission's regulations further specify that a permit may be revoked upon a finding that "any of the grounds specified in section 13105 exist" and that:

> *If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.*

Id. at § 13108(d).

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[1] Staff could not thoroughly review the revocation request and prepare a staff report prior to the mail-out date for the October 8-10, 2002 Commission meeting. In addition, the request included a statement that the Corrigans were "willing . . . to delay a hearing on this revocation request to allow Commission staff reasonable time to work with the Developer, City, Corrigans, and other stakeholders in a collective effort to resolve the storm water problem without a formal hearing." (Exhibit 6B, pages 2-3) Commission staff did meet with the parties on October 7, 2002, but they were unable to resolve their differences, and the Corrigans' representatives asked that the revocation request go forward.

STAFF NOTE:

A revocation of a permit removes a previously granted permit. Even if the permit is vested, i.e. the permittee has undertaken construction of the project, if the Commission revokes the permit, the applicant is required to stop work and, if wishing to continue, to reapply for authorization for the project.

Because of the impacts on a permittee, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to revoke a previously issued permit simply on the basis of new information. Similarly, a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of Regulations. The grounds for revocation are confined to information in existence at the time of the Commission's action. In this case, the relevant Commission action occurred on June 14, 2000.

The revocation request is based primarily on subsection (a) of Section 13105 of the Commission's regulations. The three elements of Section 13105(a) that must be proved before a permit can be revoked are:

1) That the applicant provided inaccurate, erroneous or incomplete information,
2) That the inaccurate, erroneous or incomplete information was supplied knowingly and intentionally, **AND**
3) That if the Commission had accurate and complete information at the time it approved the application, it would have required additional or different conditions or denied the application.

The revocation request also cites a noticing deficiency. Pursuant to Section 13054 of the California Code of Regulations, the applicant shall provide the Commission with a list of:

(1) the addresses of all residences, including each residence within an apartment or condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed,
(2) the addresses of all owners of parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll, and
(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s).

I. MOTIONS AND RESOLUTIONS:

A. MOTION AND RESOLUTION FOR REVOCATION OF PERMIT NO. A-5-LGB-00-078

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

MOTION

I move that the Commission grant revocation of Coastal Development Permit No. A-5-LGB-00-078.

STAFF RECOMMENDATION

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the revocation request and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

RESOLUTION TO DENY REVOCATION

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit No. A-5-LGB-00-078 on the grounds that there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; and noticing was carried out in compliance with Section 13054 of the California Code of Regulations.

B. MOTION AND RESOLUTION FOR REVOCATION OF PERMIT NO. A-5-LGB-00-079

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

MOTION

I move that the Commission grant revocation of Coastal Development Permit No. A-5-LGB-00-079.

STAFF RECOMMENDATION

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the revocation request and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

RESOLUTION TO DENY REVOCATION

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit no. A-5-LGB-00-079 on the grounds that there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; and noticing was carried out in compliance with Section 13054 of the California Code of Regulations.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Location, Description and Background

Project Location

The subject site is located in the southern portion of the City of Laguna Beach on the seaward side of Pacific Coast Highway (PCH) just north of Aliso Beach, Orange County (Exhibits 1 and 2). The approximately 30-acre coastal blufftop lot was previously used as a private 268-space mobile home park. The site includes the blufftop, bluff face and sandy beach area.

The area that is the focus of the current revocation request is the southeastern corner of the project boundary. The parties requesting revocation, Joseph and Lorretta Corrigan, own the property immediately downcoast of the subject site. As illustrated in Exhibit 3, the Corrigan property extends from PCH to the Mean High Tide Line (MHTL). Their property includes an approximately 0.5 acre sandy beach area at the base of the bluff.

Project Description

The project approved by the Commission in 2000 through de novo permits A-5-LGB-00-078 and A-5-LGB-00-079 involves the subdivision and development of the subject site as a 30-acre resort and residential project, formerly known as the Treasure Island Destination Resort Community. The property has since been purchased by a different entity (Laguna Beach Resort, LLC) and the project is now referred to as the Laguna Beach Colony. The first segment of the project (approved in permit A-5-LGB-00-078) involves grading, construction of master utilities and backbone infrastructure improvements, and subdivision of the site into large parcels for financing and/or conveyance to the City and/or other public agencies. The second portion of the project (approved in permit A-5-LGB-00-079) involves construction-level detail for the resort and its associated residential and public uses, including a 275-room resort, 14 condominiums, 17 single-family residential lots, and a blufftop park (Exhibit 4).

Construction of the project was initiated in November 2000. To date, the applicant has installed the utilities and infrastructure (including the storm drain system), completed grading activities and is in the process of constructing the resort, condominiums and public amenities. According to the agent for the developer, the resort is approximately 80% complete and the condominiums are approximately 70% complete.

Project Background

On August 13, 1998, the Coastal Commission approved the Treasure Island Local Coastal Program (LCP) as a project specific amendment to the City of Laguna Beach Local Coastal Program. The site was previously an Area of Deferred Certification pending the resolution of public access concerns. The certified LCP allows for development of the site with a resort complex consisting of a resort center on 10.63 acres with 200-275 visitor-serving accommodations provided in a hotel, resort villas, and residence villas (condominiums). The certified LCP also allows for future single-family residential development and provides public benefits, including the dedication of nearly 14 acres to public use (such as the sandy beach, marine reserve, blufftop park and public parking) and the enhancement of public access throughout the site (Exhibit 5).

Pursuant to the certified LCP, the applicants submitted CDP applications for the subject development to the City of Laguna Beach in September 1999. The City held multiple public hearings between September 1999 and February 2000 prior to project approval. By February 16, 2000, the City of Laguna Beach had conditionally approved Coastal Development Permits Nos. 99-75, 99-76, 99-78 and 99-79 pertaining to the Treasure Island Resort Development.

By March 3, 2000, within ten working days of receipt of the notices of final action, five (5) parties appealed two of the four local actions to the Commission on the grounds that the approved project did not conform to the requirements of the certified LCP. Appellants included Village Laguna, South Laguna Civic Association, Orange County CoastKeeper, John Gabriels and Eugene R. Atherton. The two appealed local actions were CDP 99-75 and 99-76.

On April 11, 2000, the Commission determined that a substantial issue existed with respect to the local government's approvals of the proposed development on the grounds that the approvals did not conform to the Treasure Island certified Local Coastal Program (LCP). On June 14, 2000, the Commission approved Coastal Development Permits A-5-LGB-00-078 and A-5-LGB-00-079 for the following development, respectively:

1) Subdivision of a 30-acre coastal blufftop lot (including 17 single-family lots), construction of master utilities and backbone infrastructure (City CDP # 99-75) and
2) Development of a 275-room resort, 14 condominiums and public park areas for the Treasure Island Destination Resort Community Project (City CDP # 99-76).

The permits were issued in September 2000 and construction was initiated in November 2000. In January 2001, a revocation request was filed by South Laguna Civic Association and Village Laguna. That revocation request, which focused on the accuracy of acreage calculations and bluff edge setback, was denied by the Commission on February 13, 2001. In October 2001, the Commission approved an amendment to CDP 5-LGB-00-079 that allowed relocation of the approved ADA accessway from the blufftop to the sandy beach approximately 300 feet upcoast.

B. Summary of Revocation Request's Contentions

The current revocation request was filed by Joseph and Lorretta Corrigan, owners of the property immediately southeast (downcoast) of the project site, on September 13, 2002. Although their contentions are summarized below, the full text of the revocation request and preceding and supplemental correspondence is included in Exhibit 6 (without attachments).

Correspondence from one of the Corrigans attorneys asserts that the developer made modifications to the drainage design *"after the EIR, after the approval of the LCP by the Commission in November 1998, and after the City's hearings on the CDP."* According to the parties requesting revocation, the modifications resulted in a greater volume of water discharging from the southern storm drain outlet adjacent to the Corrigan property than was foreshadowed in the FEIR and LCP. As explained in the revocation request, the increased outflow from this storm drain is contributing to *"significant erosion"* and debris deposition on the Corrigan property. The revocation request describes the creation of a cut channel *"at least 4-5 feet deep and at least 60-70 feet across"* resulting from a rain event in 2001. (Photos submitted by the Corrigans are included as Exhibit 7.) In addition, the request includes information from a geotechnical consultant indicating that the stability of the bluff at the Corrigan property is threatened by continued erosion at the outlet structure. The revocation request asserts that the drainage system changes are inconsistent with the impacts addressed in the Final Environmental Impact Report (FEIR) and go beyond the scope of the

approval granted by the Commission in June 2000. According to the revocation request, *"the Developer and the City apparently never informed the Commission that the Storm Drain Outlet points directly at the Corrigan private property, which is less that 25 feet away from the mouth of the Outlet, that the beach erosion impact of the Storm Drain would be primarily on private property, or that the water flow and drainage area of the Storm Drain were increased dramatically (without any increase in mitigation measures) after the hearings and approval of the EIR and LCP by the City and the Commission and after the CDP hearings."*

In addition, the revocation request cites a noticing deficiency, which focuses on the developer's alleged failure to notify the Corrigans of drainage changes and potential impacts to their property, and does not assert that the Corrigans did not receive written notice of the public hearings for the de novo permits. As such, the assertion is not a valid ground for revocation under Section 13054 of the California Code of Regulations.

Lastly, the Corrigan's revocation request and supplemental correspondence discusses failures on the part of the developer and the City to negotiate a resolution of the problem. The revocation request cites multiple exchanges between the Corrigans, the developer's representatives, and City staff that the Commission was not privy to throughout the permit process and subsequent to permit issuance. Information from these exchanges will not be used in the Commission's evaluation of the revocation request, as it is not relevant to the criteria the Commission evaluates, pursuant to Section 13105, in determining whether to grant revocation.

The parties requesting revocation of the permits conclude *"there are sufficient grounds to require additional mitigating conditions to the CDP and/or revoke all of portions thereof and that the Commission should issue compliance orders relating to EIR Mitigation Measure 2-1 and Special Condition No. 7."* The applicant and the City of Laguna Beach have submitted responses to the revocation request. These responses (without attachments) are included as Exhibits 8 & 9.

C. Discussion of the Revocation Request's Contentions with Respect to Section 13105 of the California Code Of Regulations

As stated above, because of the impacts on a permittee, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to revisit a previously issued permit based on information that came into existence after the Commission acted, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of Regulations. In addition, revocation request proceedings are not the forum for conflict resolution between opposing parties. The grounds for revocation are, of necessity, confined to information in existence at the time of the Commission's action. As stated previously, the three elements that must be proved before a permit can be revoked under Section 13105(a) are:

1) That the applicant provided inaccurate, erroneous or incomplete information,
2) That the inaccurate, erroneous or incomplete information was supplied knowingly and intentionally, **AND**
3) That if the Commission had accurate and complete information at the time it approved the application, it would have required additional or different conditions or denied the application.

In addition, Section 13108(d) requires the Commission to deny a request for revocation if it finds that the request for revocation was not filed with due diligence. These criteria will be discussed below.

1. Due Diligence

The request for revocation was filed on September 13, 2002. To comply with the due diligence requirements, the parties making the revocation request must file their request in a timely manner. Time is of the essence as the applicant has undertaken a substantial amount of development since permit issuance in September 2000, including installation of utilities and infrastructure, completion of grading activities, and a substantial amount of resort and condominium construction. Consequently, it would be difficult to correct any concerns that may prove valid as development progresses.

According to Section 13108 (d) of the California Code of Regulations, *"if the commission finds that the request for revocation was not filed with due diligence, it shall deny the request."* The request was received approximately 2 years after the permit was issued. In the meantime, the permitee has initiated substantial construction activities and incurred significant construction-related expenses. However, the parties requesting revocation assert that the problems with the storm drain system did not present themselves until after the southern storm drain was constructed and operating during the rainy season. The Corrigans state that they initiated negotiations with the developer and the City of Laguna Beach to resolve the issue when the erosion problem became apparent. When the parties failed to reach an agreement, the Corrigans determined it necessary to initiate revocation proceedings and notify the Commission of potential condition compliance deficiencies. As such, due to the unique circumstances surrounding the current drainage issue, the request for revocation was filed with due diligence and in a timely manner.

2. Intentional Inclusion of Incomplete or False Information Provided by Applicant

The main contention raised in the revocation request alleges grounds for revocation relevant to the grounds identified in Section 13105(a) of Title 14 of the California Code of Regulations. The contention alleges that the applicant intentionally provided incorrect and/or incomplete information by (1) revising the drainage system design subsequent to the impact analysis contained in the FEIR adopted in 1998 and (2) failing to inform the Commission of the ownership status of the nearby Corrigan property.[2] Specifically, the storm drain size and drainage area were modified between the time of FEIR adoption / LCP certification and final CDP approval by the Coastal Commission.

To meet the requirement for intentional inclusion of incomplete or false information, the revocation request must pass two tests: First, that the applicants had intent to supply the incomplete of false information. (Common mistakes and/or omissions do not constitute intent). Second, that incomplete or false information was, in fact, provided. These tests are discussed below.

a. Intent

In order to establish the above-referenced grounds for revocation, the parties making the revocation request must demonstrate that the applicants had the intent to supply incomplete or false information.

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[2] Condition compliance issues have also been raised; however, the Commission's Enforcement Division will evaluate those independently of the current revocation request.

The parties requesting revocation describe in their letter of August 19, 2002, *"the apparent failure of either the Developer or the City to inform the Commission of (i) the huge increase in water flow and drainage area, (ii) the lack of increased structural mitigation methods to deal with the increase, or (iii) the certainty that the increased water flow would be discharged across and damage the private property of the Corrigans."*

The City of Laguna Beach submitted the administrative record to the Commission's Long Beach District office on March 6, 2000. The administrative record included all technical reports and maps that the applicant had supplied to the City during the local review process. The Commission used the information contained in the record to make its decision at the de novo stage. The record included all required information relating to the storm drain system, including the updated design of the southern storm drain. As will be discussed in the following section, the updated drainage plan included in the CDP references the larger pipe diameter, the increased drainage area and shows the extent of the project boundary. These changes, as described in the City's CDP staff report, are deemed to be *"intentionally ambiguous and unclear"* by the Corrigans. Nonetheless, the drainage system changes can be found in the record. As such, there is no evidence to suggest that the applicant intended to submit inaccurate, erroneous or incomplete information. Also, there is no evidence to suggest that the applicant intended for the Corrigan's property to the southeast to appear to be in public ownership rather than private. Therefore, the Commission concludes that the parties making the revocation request have not proven that the applicant intended to supply incomplete or false information.

b. Inclusion of Incomplete or False Information

As stated previously, the proposed storm drain system design and supporting documentation was provided to the Commission as part of the City's administrative record.

The design of the drainage system, including pipe sizing and capacity, did indeed change between the time the FEIR was certified and the time the project was granted final local approval. However, the Commission had all of the information used by the City at the time the decisions granting approval were made.

The Final Program Environmental Impact Report (FEIR) and Mitigation Monitoring Program for the LCP and Treasure Island Specific Plan were adopted on June 8, 1998, and the Commission approved the LCP in November of 1998. The FEIR includes a Hydrology/Water Quality Section that addresses potential project effects on surface drainage and runoff, erosion control, and water quality, as well as related effects on the adjacent marine environment. The section states that a project specific Backbone Drainage Plan was prepared for the project and specifies that a Final Drainage Plan must be submitted to the City prior to issuance of grading permits. As described in the report, *"Storm drains may be larger than shown on the figure, up to 42 to 39 inches, if the City determines that those sizes are needed. Surface runoff from the project site will be directed through three primary storm drains, outletting onto the beach with concrete headwall and riprap aprons provided at each of the three receptor locations."*

The FEIR indicates that the southerly storm drain will remain the same size and accommodate no more than a 19.3-acre drainage area. As stated on page 4.2-13,

> *"the southerly storm drain system is designed to capture flows from 18 acres of off-site tributary area. Since the existing storm drain in Coast Highway does not have sufficient capacity to intercept all the flow from this area, this proposed southerly system will provide capacity for all of the existing cumulative runoff in the entire*

drainage area, assuming future improvements to the upstream system by others. Runoff from the Resort Center (hotel) portion of the project site is planned to be routed to the center storm drain (see figure 4.4.2), thereby removing existing on-site flow from the southern storm drain. The latter will receive additional runoff from Coast Highway; however, without the project site runoff, drainage conditions are anticipated to remain at the same level as the existing condition. A proposed catch basin (the second on the west side of Coast Highway proposed with the project) will add 1.35 acres, for a total of 19.3 acres cumulative drainage area catchment. The outlet for this storm drain system is at the southernmost edge of the project site (see Figure 4.2.2). The predicted 25 year return peak flow at the outlet of this system is 51.6 cfs, with an estimated outlet pipe size of 24 inches in diameter.

The outlet structure for the two new primary storm drains will be similar to the outlet of the existing southernmost storm drain, with a concrete headwall and riprap apron measuring approximately 15 by 15 feet."

The FEIR also addresses the impacts of local scour at the storm drain outlets. As stated in the report, *"energy dissipaters are planned to receive runoff from the site on the beach below the extension of the three storm drainpipes shown in Figure 4.2.2."* The report anticipates that local scour of beach sands will result from larger storm events. As a means to mitigate the potential impact of beach scour, the FEIR includes Mitigation Measure 2-1, which states:

"Prior to the City's issuance of construction permits for the central and southern storm drain outlets, a coastal engineering study shall be prepared by a State registered engineer and approved by the City's Community Development Department. This study shall specifically evaluate the potential for significant beach erosion at the storm drain outlets, and the ability of littoral drift and/or other natural coastal processes to replace any otherwise lost material. If there is no practicable method for reducing the projected beach erosion to an insignificant level, as determined by the Coastal Engineer, the project applicant shall enter into a Beach Maintenance Agreement with the City or County of Orange to replace beach sand after significant storm seasons or events."

Changes to the drainage design occurred while the coastal development permits (CDPs) for the Treasure Island project were being processed at the local level. The local review process began in September 1999 and concluded in February 2000. The project received final approval from the City of Laguna Beach on February 16, 2002 after multiple public hearings. The City's CDP binder submitted to the Commission as part of the administrative record includes a Drainage Plan graphic that depicts a 48-inch pipe and rip-rap/energy dissipater at the southerly storm drain outlet structure (Exhibit 10). The Drainage Plan approved by the City's CDP differs from the Conceptual Drainage Plan provided in the LCP (Exhibit 11). The LCP shows the central drain accommodating storm water flows from inland of Pacific Coast Highway, whereas the Drainage Plan approved by the CDP shows the central drain accommodating flows from the resort area only. The CDP-approved Drainage Plan indicates that the southerly storm drain will accommodate all of the flows from inland of Pacific Coast Highway. As described in the CDP text on page 2-11,

The Resort Hotel will be served by existing and proposed storm drains improved as follows:

- *At the southerly end of the Resort Hotel, the existing 24-inch storm drain (public utility easement) which drains Fred Lang Park and approximately 18 acres of*

off-site area will outlet through an upgraded 48-inch pipe and rip-rap/energy dissipater (see Figure 2-5, Rip-Rap and Headwall Detail) at the base of the bluff as mandated by the DAMP.

- *At the upper middle of the Resort Hotel, an upgraded 36-inch storm drain public utility easement, which drains approximately 44 acres of off-site area, will be constructed from Coast Highway south beneath the service drive, then ocean ward of the public parking lot, joining the new southerly 48-inch pipe to a new rip-rap structure at the base of the bluff as mandated by the DAMP.*

Although the text is considered unclear by the parties requesting revocation, the language cited in the CDP and the City staff report does convey accurate information regarding the drainage area that would be accommodated by the southerly storm drain. The Master Drainage Report prepared by The Keith Companies, a technical document submitted to the City during the local approval process and referenced in the City staff report dated September 18, 1999, clearly describes the proposed drainage at the southern storm drain as follows,

> *The southernmost storm drain system will drain an area of approximately 65.6 acres of which 63.1 acres is off-site. This area will include the portion of PCH located east of the project boundaries. This system is proposed to maintain its existing outlet location at the southeast corner of the project site. The estimate 100-year return peak flow at the outlet of this system is 207 cubic feet per second, with an outlet size of approximately 48 inches in diameter."*

The Master Drainage Report was in the administrative record and available for Commission review. The Commission's approval of the de novo permits in 2000 did not address storm water flow as it relates to erosion at the outlet points. The Commission did, however, make revisions to the water quality components of the project, including the imposition of Special Condition No. 7. (Water quality measures associated with the southern storm drain system and outfall are outlined by the developer's agent in Exhibit 12.) The purpose of this condition was to more clearly define the requirements of the proposed nuisance flow diversion measure. The condition requires the applicant to obtain a statement from the South Coast Water District, verifying the District's capacity and commitment to accept nuisance flow runoff (up to a maximum of 10,000 gallons per day (GPD), on a year–round basis from the Treasure Island site, and the 60 acre drainage area above the site, upon project completion, for treatment in the wastewater collection system at the Coastal Wastewater Treatment Plant. Diversion is required to commence upon completion of the project, and prior to the opening of the resort, and shall continue for the life of the development. The Executive Director received the letter from the South Coast Water District in August 2000, prior to issuance of the permits in September 2000.

Pursuant to Special Condition No. 1 of de novo permits 5-LGB-00-078 and 5-LGB-00-079, the Commission allowed the City to maintain responsibility for condition compliance relating to issues that were not in conflict with the Commission's conditions of approval. As stated in the Commission's condition, the local conditions of approval *"that are not in conflict with the Commission's special conditions listed below are incorporated by reference and shall remain in effect."* As stated previously, the Commission did not modify any conditions imposed by the City relating to the design of the storm drain system. Therefore, for any requirements beyond the water quality measures imposed by the Commission, the City is the responsible entity for condition compliance as it relates to the storm drain system.

As stated previously, the FEIR includes information that is outdated with regard to the as-built storm drain system design. The system was subsequently revised through the local permit process in late 1999-early 2000. Although it has been proven that there were modifications made to the drainage system, including those related to outflow quantity and drain pipe size, these changes were documented in the administrative record submitted to the Commission. The Tentative Tract Map and the Drainage Plan (Figure 2.4) in the CDP binder shows a 48" storm drain at the southerly end of the project site. The CDP binder text (page 2-11) describes the 48" pipe and its drainage area. In addition, as quoted previously, the Master Drainage Report describes the southernmost storm drain system on page 6. Lastly, all of the maps submitted to the Commission as part of the administrative record show the location of the applicant's property boundary and clearly depict the southernmost extent of the project area. Ownership information regarding the area beyond the project boundary was not provided. However, the limits of the applicant's property and the location of the storm drain outlet were clearly depicted. As such, the Commission was aware the project was adjacent to a property line and had all of the most current information regarding the drainage system at the time the de novo approvals were granted.

The Commission reiterates that the administrative record is a historical documentation of the City's decision-making process, which logically includes various iterations of the project plans and design components. All of the necessary drainage system information was included within the official City record. The record also included all special conditions imposed by the City, including those relating to water quality and the quantity of storm water runoff. In addition, the analysis of the storm drain system in the FEIR was provided to the Commission as part of the city record and at the time of LCP certification. Therefore, the Commission does not find valid grounds for revocation of the permit on the basis that the permit applicant intentionally included inaccurate, erroneous or incomplete information.

3. Potential Effect on Commission's Decision

The final issue that the Commission must decide is whether, assuming it has been established that there was an intentional inclusion of inaccurate, erroneous, or incomplete information; had it been corrected, would it have resulted in different conditions or even denial of the permit?

In this instance, the Commission has found that the applicant did not intentionally include inaccurate, erroneous or incomplete information. Nonetheless, it is true that neither the staff report prepared by Commission staff nor the Commission itself at the hearing focused on the impacts of the southerly storm drain discharge on the adjacent property. However, even if the offsite impacts of the southerly storm drain outlet were brought to the Commission's attention at the time of the de novo hearing, the Commission would not have denied the permit or required substantially different conditions. The Commission's primary concern regarding beach erosion at the project site was informed by the relevant LCP provisions, as the certified LCP was used as the standard of review. LCP policy 3.2.2-4 states

> *Development above the coastal bluff shall be engineered to ensure that surface/subsurface drainage does not contribute to erosion or adversely affect the stability of the bluff. Any minor residual affects related to storm drainage improvement shall be mitigated by recontouring and revegetating to obtain a natural landform appearance.*

Policy 3.2.2-4 establishes that drainage must not adversely affect bluff stability. The Commission addressed issues of bluff erosion and geologic stability at the de novo hearing stage. The Commission's review focused on the delineation of the bluff edge and the

appropriate blufftop setback. The concerns identified in the current revocation request were not raised at that time. Potential erosion occurring at the storm drain outlets at base of the bluff was not addressed through the de novo permit process. For all intents and purposes, the Commission's concerns related to potential erosion at the outlet structure were addressed through Mitigation Measure 2-1, which requires an evaluation of methods to reduce beach erosion and the preparation of a Beach Maintenance Agreement between the developer and the City or County to replace sand if necessary. The language of the mitigation measure was initially introduced in the 1998 FEIR and was not modified through the local permitting process or at the Commission's de novo hearing stage. During the various permit processes, the language of Mitigation Measure 2-1 (incorporated into the Commission's permit by reference) could have been modified to include private entities as well as the City and County. Generally, the Commission doesn't consider the ownership status of offsite property to be relevant; therefore, the absence of this information in the record does not constitute incomplete information. The Corrigans had the opportunity to bring it to the local government's and the Commission's attention that the language of the mitigation measure did not include private property owners when the FEIR was certified in 1998 and during the subsequent permit processes.

Compliance with Mitigation Measure 2-1 and all other special conditions of the de novo permits is a separate issue that must be handled independently of the revocation request. The revocation request is limited to the information available at the time of the de novo hearing. The Commission was aware that erosion would occur at the southerly outlet point and that steps would be taken to reduce any adverse impacts of such erosion. The Commission was also aware that the amount of runoff flowing though the storm drain system would be reduced once the nuisance flow diversion was implemented. As such, the Commission was aware that the nuisance flow diversion would divert nuisance flow runoff [up to a maximum of 10,000 gallons per day (GPD)], on a year–round basis from the project site and the 60-acre drainage area above the site, upon project completion, for treatment in the wastewater collection system at the Coastal Wastewater Treatment Plant. However, nuisance flows will continue to occur until the resort opens. According to the applicant's agent, the resort is scheduled to open in Spring 2003. Therefore, the severity of the current erosion impacts should only be temporary.

Conclusion

The revocation request does not demonstrate that the applicant intentionally provided incomplete or false information that would have altered the Commission's decision. The revocation request does bring attention to the fact that there is erosion occurring at the southerly storm drain outlet structure and downstream onto private property. However, the administrative record included accurate information regarding 1) the pipe diameter, 2) drainage area; and 3) limits of the applicant's property. Therefore, the permittee did not intentionally include inaccurate, erroneous, or incomplete information that would have affected the Commission's decision. In addition, noticing was out in compliance with Section 13054 of the California Code of Regulations. Lastly, the revocation request process is not the forum for resolving disputes between neighboring property owners.

The Commission finds that the revocation request shall be denied because the contentions raised do not establish the grounds identified in Sections 13105 (a) or 13105 (b) of the California Code of Regulations.

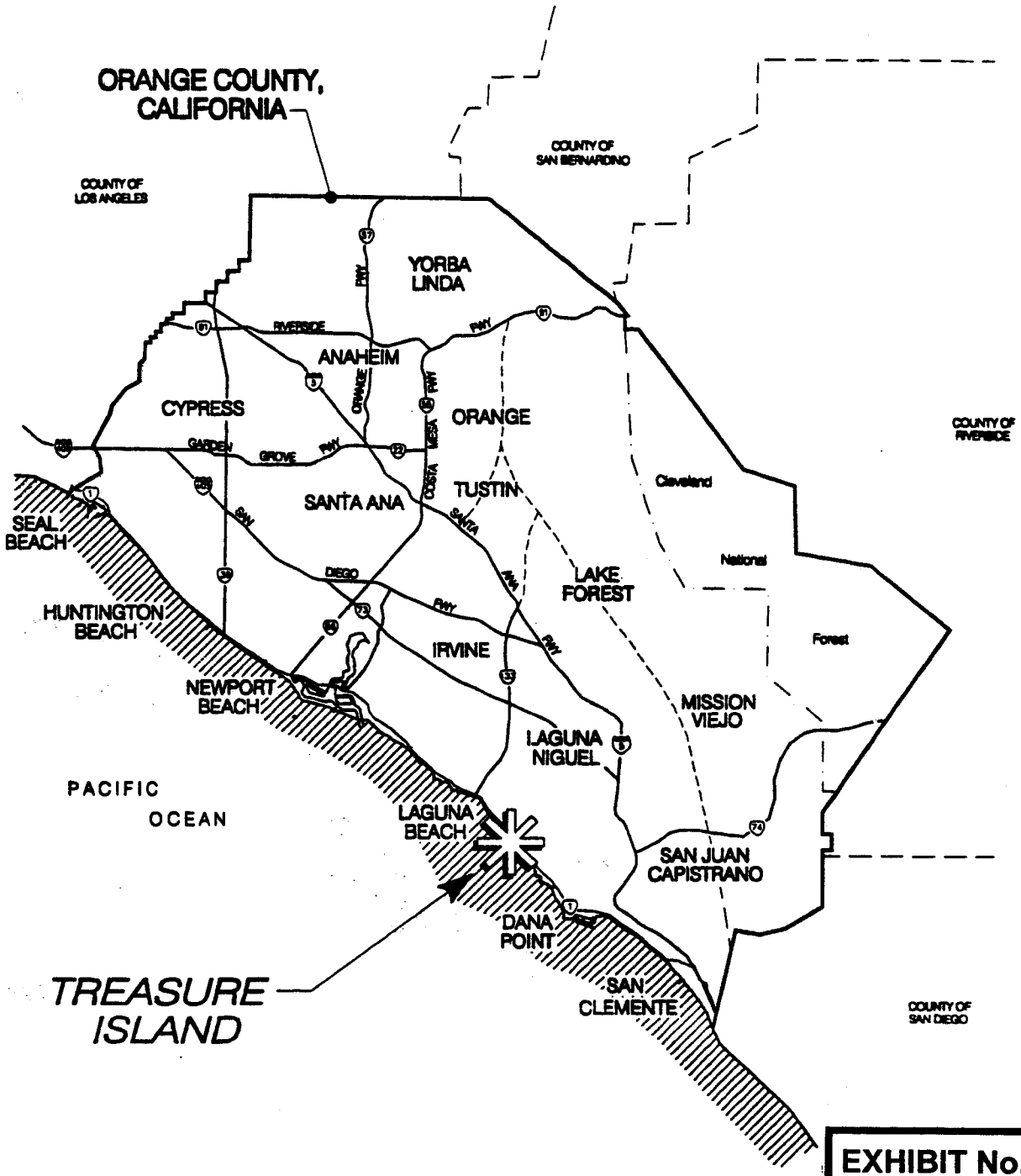

EXHIBIT No. 1

Application Number:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

Regional Map

California Coastal Commission

Treasure Island
LAGUNA BEACH, CALIFORNIA

REGIONAL LOCATION MAP
COASTAL DEVELOPMENT PERMIT

The Athens Group

NTS

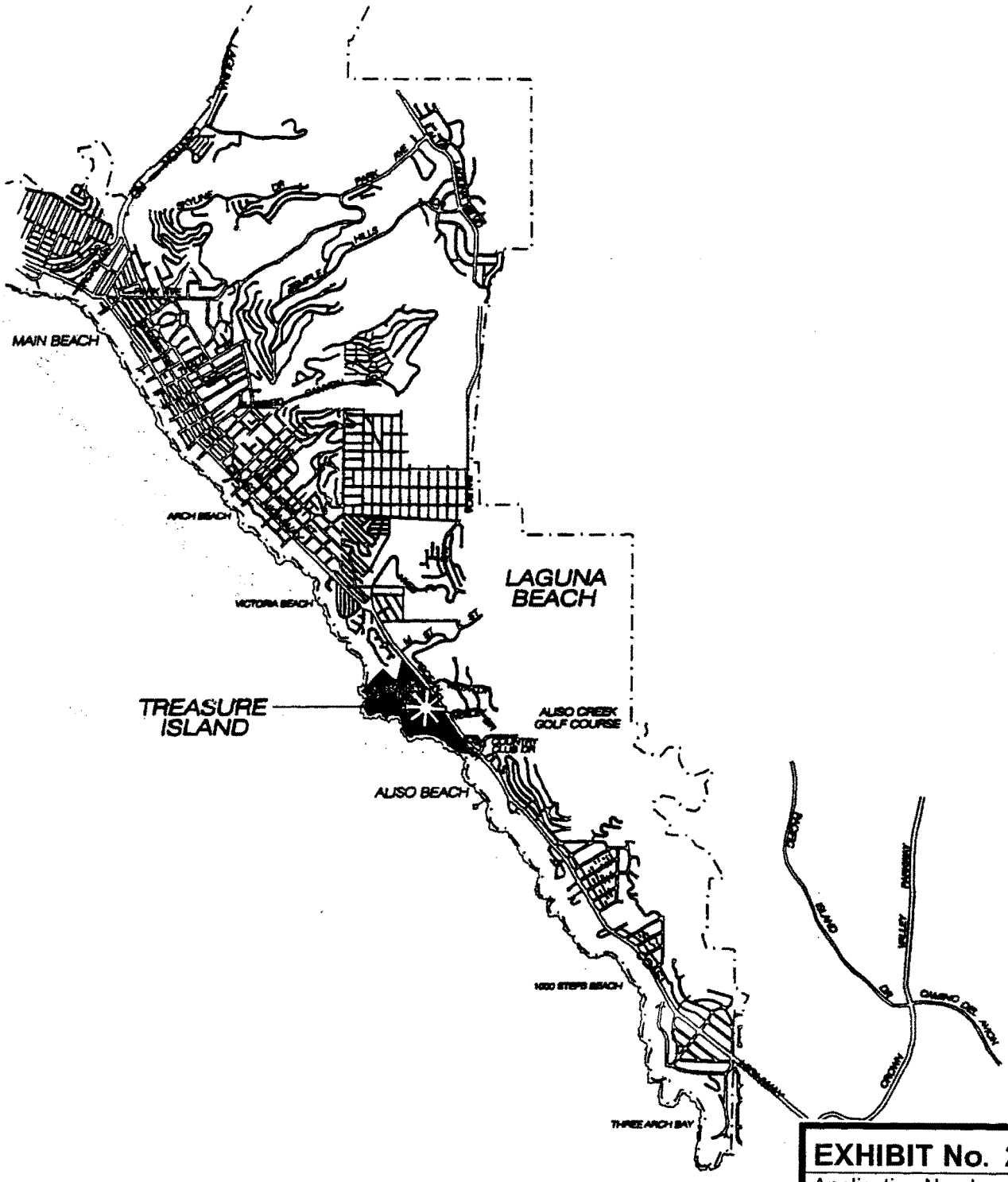

EXHIBIT No. 2

Application Number:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

Vicinity Map

California Coastal Commission

Treasure Island
LAGUNA BEACH, CALIFORNIA

PROJECT LOCATION MAP
COASTAL DEVELOPMENT PERMIT

The Athens Group

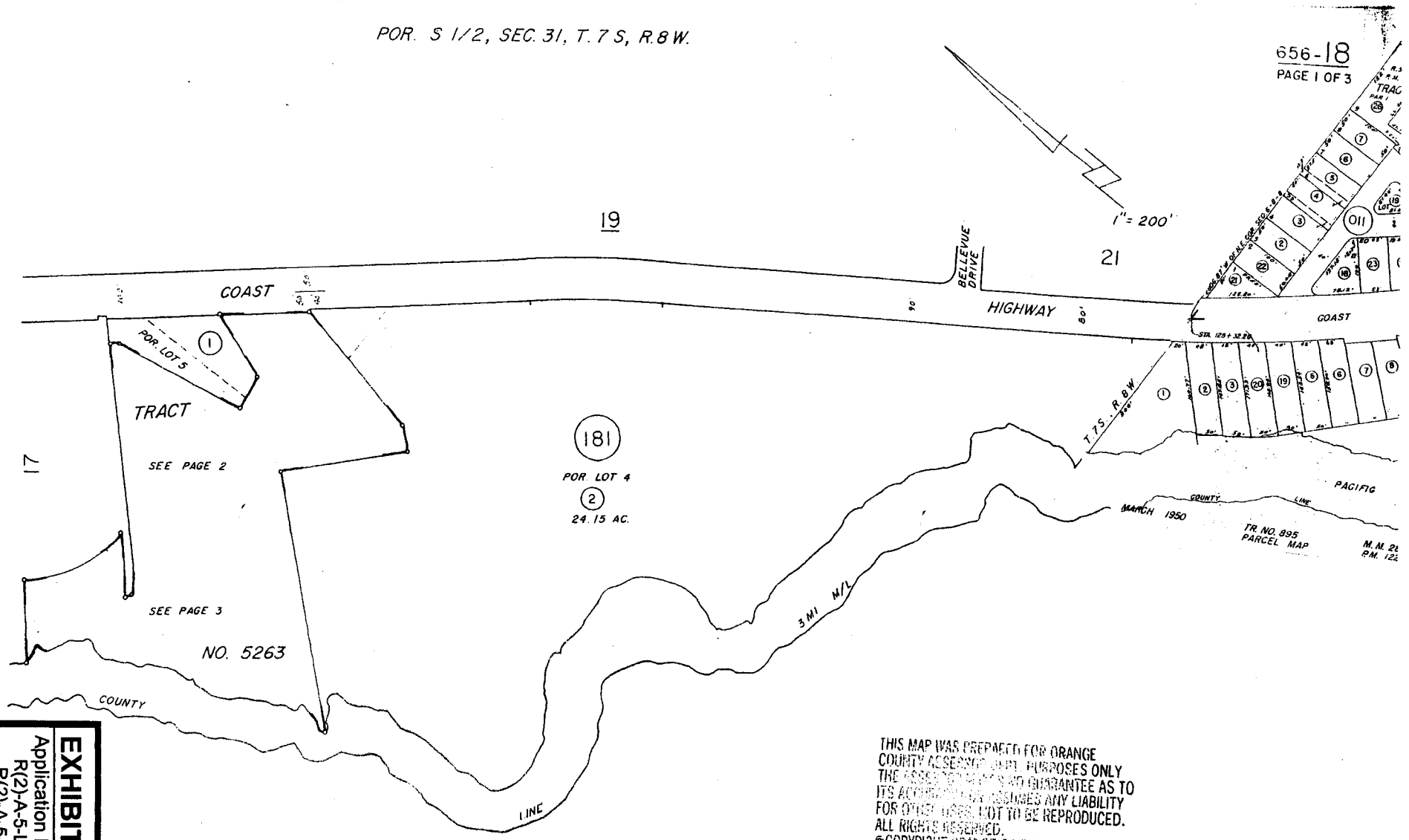

EXHIBIT No. 3

Application Number:
R(2)-A-5-LGB-00-078
R(2)-A-5-LGB-00-079

Parcel Map

California Coastal Commission

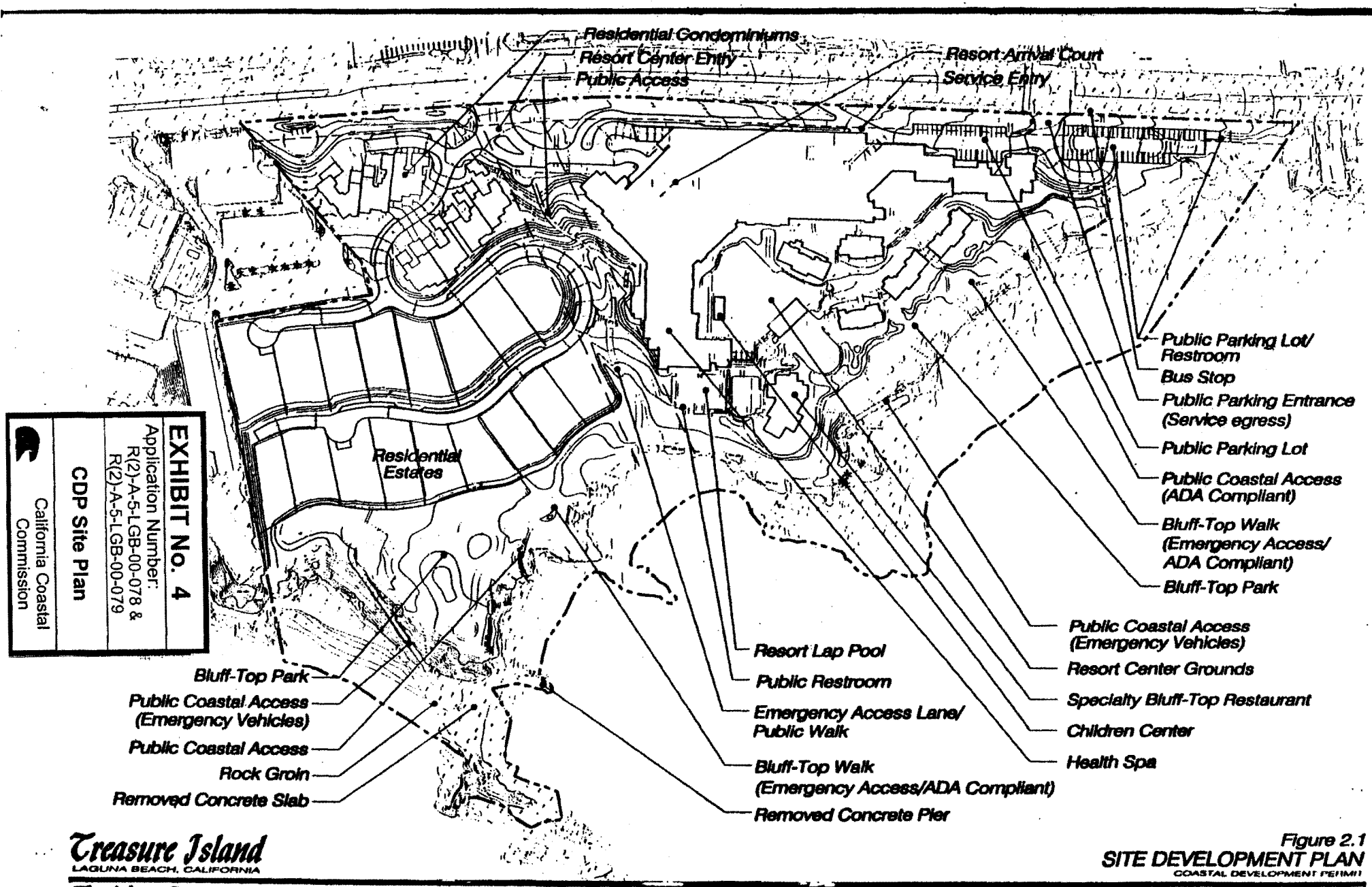

EXHIBIT No. 4

Application Number:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

CDP Site Plan

California Coastal Commission

Treasure Island
LAGUNA BEACH, CALIFORNIA

The Athens Group

Figure 2.1
SITE DEVELOPMENT PLAN
COASTAL DEVELOPMENT PERMIT

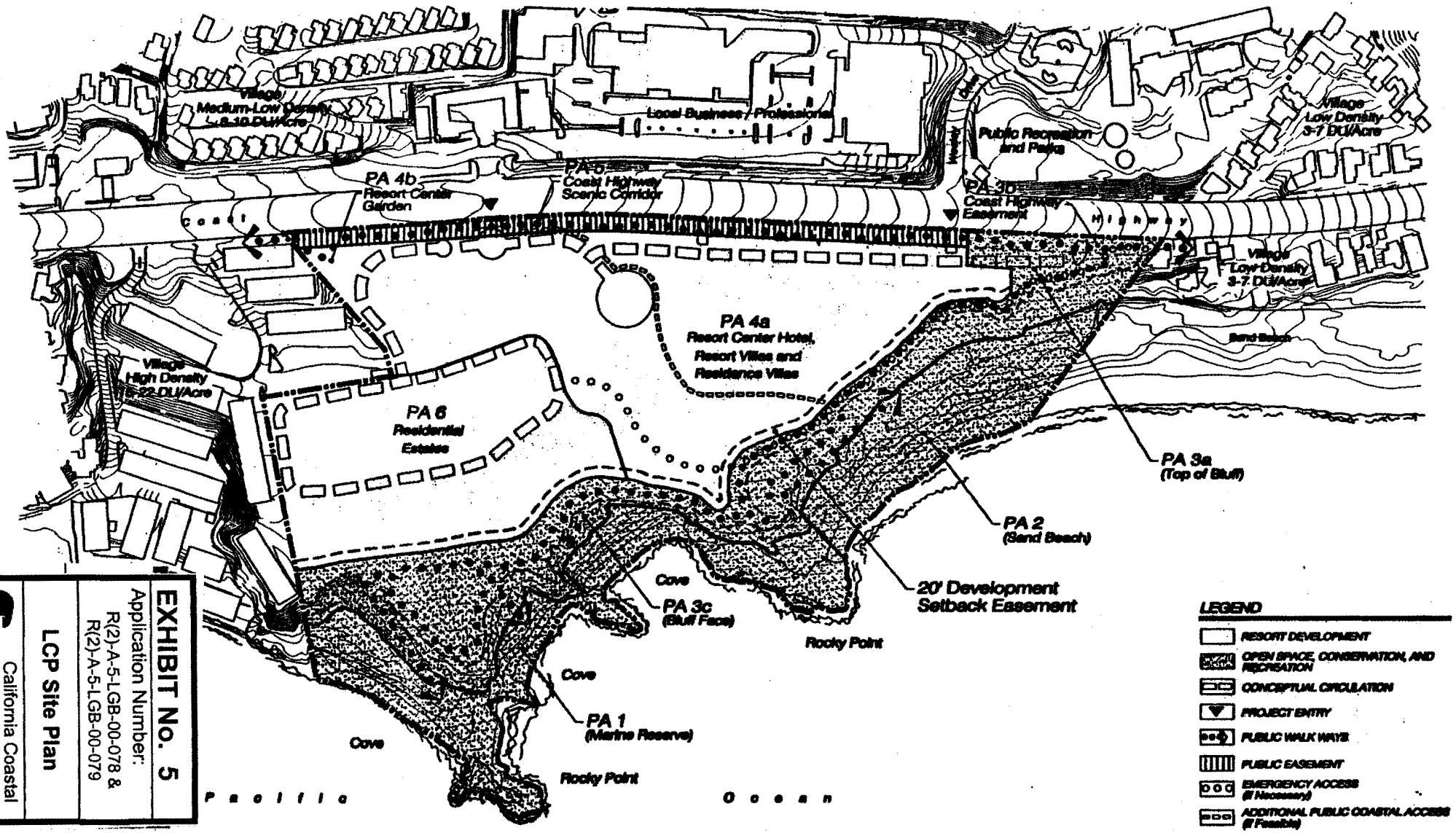

EXHIBIT No. 5

Application Number:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

LCP Site Plan

California Coastal Commission

Figure 8.2-1
SPECIFIC PLAN MAP
for the Treasure Island Specific Plan Area

Treasure Island
LAGUNA BEACH, CALIFORNIA

Revocation Request
(with Preceding and Subsequent Correspondence)

A. Letter of August 19, 2002
B. Letter of September 13, 2002 (Formal Revocation Request)
C. Letter of October 9, 2002

MARTIN A. FLANNES
Attorney At Law
P.O. Box 7000-879
Redondo Beach, CA 90277-0710
Telephone 310-378-6709 Fax 310-378-4301

August 19, 2002

By Federal Express and fax to 562.590.5084

Ms. Anne Blemker
California Coastal Commission
10th Floor
200 Oceangate
Long Beach, CA 90802

Re: Joseph and Lorretta Corrigan Property
31001 S. Pacific Coast Highway, Laguna Beach ("Property")
and
de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A
of Laguna Beach Colony (f/k/a Treasure Island Resort)

Dear Ms. Blemker:

I spoke to you in January 2002 regarding the erosion and debris problem on the Property of my clients, Joseph and Lorretta Corrigan, caused by the storm drain and outlet modifications performed by Laguna Beach Colony (f/k/a Treasure Island Resort) ("Project") under de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A (collectively, the "CDP") of Five Star Resorts, LLC. At your suggestion, I subsequently sent a copy of my letter to the City of Laguna Beach of January 31, 2002 to both you and Alex Helperin, Esq. in the Commission's San Francisco office. I have attached a copy of the January letter for your reference.

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January 31, 2002 Letter and Failed Efforts to Negotiate a Resolution

In the January letter, I described

1. the repeated concerns expressed by the Corrigans relating to the Project's proposed southern storm drain ("Storm Drain") and outlet ("Outlet") during the Environmental Impact Report ("EIR"), Treasure Island Local Coastal Program Project Specific Amendment ("LCP"), and CDP approval process and the assurances that they received from both the City and the Developer in response to their concerns;

2. the huge increase in water flow and drainage area of the Storm Drain proposed, designed, and implemented after the EIR, after the approval of the LCP by the Commission in November 1998, and after the City's hearings on the CDP;

3. the apparent failure of either the Developer or the City to inform the Commission of (i) the huge increase in water flow and drainage area, (ii) the lack of increased structural mitigation methods to deal with the increase, or (iii) the certainty that the increased water flow would be discharged across and damage the private property of the Corrigans;

4. the failure of the Developer to comply with EIR Mitigation Measure 2-1, which implicitly required the Project to adopt any available "practicable method" to reduce "the projected beach erosion to an insignificant level;"

5. the failure of the Developer to keep its promise to the Corrigans to build "an

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'embankment' to make sure the water outflow on the beach follows the property boundary;" and

6. the subsequent significant erosion damage to the Corrigan Property and the danger of hillside subsidence reported by their geological consultant.

In the January letter, I asked the City and the Developer, among other things, to modify the Outlet to divert the increased water flow away from the Corrigan Property or, in the alternative, to enter into an Easement, Beach Maintenance, and Indemnity Agreement in which my clients would consent to the water diversion across their Property in exchange for a covenant by the City and the Developer to repair any beach erosion and remove any debris after storm events and an indemnification of the Corrigans regarding any property damage or third party claims relating to the increased water flow, debris, and erosion.

The City refused to be involved. However, the Developer stated that it would enter into the requested agreement. The Corrigans presented a proposed agreement to the Developer on March 14. The Developer was extremely slow in responding and did not provide a draft with its revisions until May 22. Its revised draft deleted many provisions that were essential to protect the Corrigans. I timely provided comments to the Developer's counsel on May 28. We still have not received a formal response to our comments other than a rejection of our request that the Developer indemnify the Corrigans with respect to any clean-up order issued for hazardous materials deposited on the beach portion of their Property by the increased water flow from the Storm Drain. I have enclosed selected correspondence for your information on the failed attempt of the Corrigans to negotiate a resolution of this problem.

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The Developer and City, while refusing to modify the Outlet to mitigate the water damage and refusing in the alternative to indemnify the Corrigans, merely have offered to meet with the Corrigans. The Corrigans feel that unless the Commission is involved, such a meeting will be no more productive than the December 2001 meeting at which both the Developer and City "blamed" the situation on the Commission.

During this period of "negotiation", as you may be aware, the ownership of the Project and/or the Developer has changed. According to press reports "Laguna Beach Resorts, LLC," apparently a partnership consisting of Montage Hotels & Resorts and The Athens Group, purchased the Project from Marriott International, Inc. I have not been able to ascertain what entity currently holds the rights and obligations under the CDP.

The City claims that the Storm Drain is part of a private project and that we should deal with the Developer. The Developer says "the City made us do it." Both the Developer and the City blame the Commission for the Developer not following through on its promise to construct mitigation measures to keep the increased water flow from eroding the Corrigan Property.

The Corrigans have concluded that the Developer does not, in fact, intend to provide the indemnification that we had requested in January and that, perhaps, the "negotiating process" during the last six months was merely a "delay game." My clients no longer wish to wait.

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Summary of Relevant Facts

It appears that neither the Developer nor the City has fully informed the Commission of the following relevant facts relating to the Storm Drain during the approval process or subsequently.

1. The Corrigans' northern and southern property lines extend from Pacific Coast Highway to the mean high tide line. Therefore, their Property includes an area of sandy beach adjacent to southern property line of the Project. Assuming that the mean high tide line is ± 100 from the toe of the bluff, the beach portion of the Corrigan Property is approximately 0.5 acre. Both the Developer and the City have acknowledged the private property rights of the Corrigans to this area ("Corrigan Beach Area")[1].

2. The property line between the Corrigan Property and the Project angles slightly north relative to PCH. The beach portion of the common property line is more than 100' long. Consequently, a significant portion of the Corrigan Beach Area is "seaward" of portions of the Project and, in particular, the Outlet.

[1] See, Response to Comments JC-1, in which the City confirmed the Corrigans' private property rights to the sandy beach south of the project "**down to the mean high tide line**" and the attached letter from the Developer dated June 29, 2000 ["Since we are upgrading this outlet, we will need permission from any down stream property owners. *(The outlet itself will be constructed completely on our property).* However, since drainage has the potential to flow over **your beach** during a storm event (as is the case today) you are considered a down stream owner. We do not anticipate this matter will bring you any inconvenience."] [emphasis added]

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3. Neither the EIR nor the LCP contemplated any significant changes to the pre-Project condition of the Storm Drain.[2]

4. During the LCP hearing process, the Corrigans and others expressed concern regarding increased drainage from Storm Drain,[3] but the City and Developer repeatedly assured the Corrigans and the public that there would be no significant change to the Storm Drain. During the public comment period, the Project's engineers addressed the concerns regarding Project drainage and stated that "[t]he southern portion would remain generally the same," "the southernmost pipe would remain a 24" corrugated metal concrete pipe with concrete headwall," and "the existing condition [of] the [southernmost] drainage area is not impacted by this project."[4]

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[2] The Preliminary Hydrology Report (dated June 30, 1999) describes the pre-Project condition of the Storm Drain as a 24" metal pipe draining 18.0 acres, the majority of which was from a catch basin on Coast Highway. However, because of the size of the catch basin and the slope of Coast Highway, only 15% of the peak 25-year flow was intercepted by the Storm Drain. The Hydrology Report, consistent with the LCP, described only a slight increase in the proposed drainage area for the Storm Drain, i.e., **from 18.0 acres to 19.3 acres** (due to a new catch basin on Coast Highway). It predicted a peak flow of **51.6 CFS**, including the added drainage from Coast Highway. The CDP (§2, Site Development Components) also confirms the pre-Project drainage and its **prior 24-inch size**.

[3] See, e.g., the Corrigans' written comments JC-7 ["(7) DRAINAGE: Special attention must be given to the existing southernmost drain to ensure against possible heavy damage to the land"] dated October 8, 1997 to John Montgomery, Community Development Department, City of Laguna Beach), regarding the impact of the Storm Drain on their Property.

[4] Planning Commission October 1, 1997 Meeting Minutes. See, also, Response to JC-7 from the City ["Mitigation Measure 2-1 addresses the concern of beach erosion and maintenance responsibility at both the central and southern storm drain outlets."]

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5. In its final action on the CDP in February, 2000, the City imposed Condition of Approval No. 34 which required the diversion of summer nuisance water flow and that "storm drainage outlets on Coast Highway shall be designed to accept 100-year flows, and the on-site drainage system must accept them and convey the 100-year flows from Coast Highway through the site to the Beach."

6. Promptly after the Commission's June 2000 ruling on the de novo CDP, the Developer increased the planned water flow and drainage area of the Storm Drain, by 400% and 240% respectively, relative to the design that was the basis for the EIR and LCP approved by the Commission in November 1998. The Developer euphemistically referred to these huge changes as "improvements" and sought the consent of the Corrigans.[5] The "improved" Storm Drain delivers an estimated 5.6 million gallons of water per hour across the Corrigan Property during peak conditions.

7. The CDP wrongly and misleadingly implies that the pre-Project condition was that two existing catch basins on PCH already collected the 100-year flows. In fact, there was only one

[5] See, July 12, 2000 letter from Athens Group (attached) ["We will need to improve the storm drain that currently exists at the south end of the property in order to accommodate the flows from Pacific Coast Highway and the neighborhoods above."] The drainage area increased **from a proposed 19.3 acres to 65.6 acres**. The system, now designed to capture 100% of the100-year flows from Coast Highway, would now deliver an estimated peak flow of **207 CFS** for the Storm Drain, which had **increased in size from 24 to 48-inches**. Master Drainage Report (9-1-99) ("MDR").

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catch basin connected to the Storm Drain and it collected only 15% of the 25-year flows. The majority of the water previously flowed south on PCH to drain directly into Aliso Creek.[6]

8. The Developer's consultants were aware that additional water flow at the Storm Drain would cause beach erosion[7], but wrongfully assumed or implied in the CDP process that the affected beach area was a City or County beach.[8] In fact, most of the affected beach area is the Corrigan Beach Property.

9. The Storm Drain plans were modified several times after the EIR and LCP approval and after the CDP hearings, including adding more than 48 acres of drainage area, increasing the Storm Drain size from 24 to 48", and moving the Outlet closer to the Corrigan Beach Area. In fact, the corner of the small riprap area in front of the Outlet is at or on the property line. Thus,

[6] The CDP states in §2.2 that "Two existing drainage inlets on the ocean side of Coast Highway will continue to accept these 100-year flows." The Hydrology Report (6-30-99) clearly states that because of the size (7') of the catch basin on Coast Highway for the southern storm drain and the slope (3.2%) of Coast Highway, only 15% of 25-year flow in intercepted by the catch basin pre-Project. It states "most of the flow from this area will bypass this catch basin and continue south toward Aliso Creek."

[7] Erosion at the Storm Drain would be a Project impact "if additional flow is directed into the southerly storm drain." Hydrology Report

[8] Wrongly assuming that the eroded area would be public beach, the MDR merely quotes EIR Mitigation Measure 2-1, which requires "if there is no practicable method of reducing the projected beach erosion to an insignificant level, the project applicant shall enter into a Beach Maintenance Agreement **with the City or County of Orange** to replace beach sand after significant storm seasons or events." (Emphasis Added). No mention is made of the private property of the Corrigans.

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any water flowing from the Outlet almost certainly will flow across the Corrigan Beach Area rather than the Project beach area.[9]

10. After a mild 2001 rainfall event, "A large portion of the beach was eroded away down to bedrock during this mild rain. The dissecting channel was at least 4-5 feet deep and at least 60-70 feet across."[10] Six (6) photographs of this event ("Storm #1") are attached to the enclosed report of the Corrigans' geologist.

11. After another minor 2001 rainfall event, the sand on the Corrigan Beach Area was blackened with apparent petroleum products in the water flowing from the Storm Drain (See, enclosed three (3) photographs of "Storm #2").

12. A third mild 2001 rain event caused the water flow from the Storm Drain to cut a lagoon flowing to the south (toward Aliso Creek) across the entire width of the Corrigan Property (See,

[9] The Mass Grading Plans (unknown date) contain a revision (Delta 1) dated 9-26-00 named "Modified Storm Drain/Added Storm Drain Line D." On Sheet 4 of the revised Plans, the outlet for Storm Drain D was relocated 5 or 6 feet to the north and extended 5 feet or so to the west of the boundary line of Tract 15497. The southwest corner of the new 20 x 20 riprap area is on the Corrigan Property line, whereas the southwest corner of the old 15 x 15 riprap area was 10 feet from the property line.

The Plans include the following other relevant changes: Delta 2 - Added Erosion Control on Pacific Coast Highway (Caltrans) (9-28-00); Delta 6 - Modified Storm Drain "D" profile"(10-25-00); Delta 7 - Added Storm Drain "C" / Modified Storm Drain Line "D" (11-9-00); Delta 11 changed Line "C" pipe size (2-7-01).

[10] Report of Peter E. Borella, Ph.D. dated November 10, 2001 ("Borella Report") [enclosed].

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enclosed seven (7) photographs of "Storm #3").

13. The same mild 2001 rainfall events caused water from Aliso Creek to flow north along the beach to within 100 feet of the Corrigan Property. If this "lagoon" connected with the lagoon created by the Storm Drain "removal of the beach along this stretch is possible with erosion of at the toe of the slope possible. This may jeopardize the stability of the bluffs in the area."[11] (See, the four (4) photographs attached to the enclosed Borella Report).

14. The Corrigans' geologist concluded that "Increased periodic erosion of your beach will continue to occur if the present new storm drain and energy dispersion system is allowed to remain in its present configuration" and "I have concerns about the potential instability of your slope should a severe rain occur and erode more of the beach away, particularly at the toe of the slope, where the slump exists."[12]

15. The City has stated that the Commission reviewed and approved the increased size and flow and the revised Outlet of the Storm Drain and has strongly implied that the Commission has "approved" any resulting damage to the Corrigan Property. [13]

[11] Borella Report.

[12] Borella Report.

[13] See, e.g., letter from Laguna Beach City Attorney Philip D. Kohn dated December 31, 2001 ["; **the design and location of the storm drain were approved by the California Coastal Commission as part of an extensive public process; . . .**" and "The current design was prepared, reviewed and approved by professionals and was determined to comply with all

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16. In several discussions with the Corrigans or their attorneys, the Developer and the City have stated that the Project could not (i) build an embankment or berm, (ii) create a channel in the underlying bedrock, or (iii) change the orientation of the Outlet to redirect the water because the Commission refused to allow it.

17. As you are aware, the Commission imposed Special Condition No. 7 on the de novo CDP in June 2000 requiring, prior to the issuance of the CDP, "a binding statement from the South Coast Water District verifying the District's capacity and commitment to accept nuisance flow runoff [up to a maximum 10,000 gallons per day (GPD)]" and that the Project "commence such diversion upon completion of the project, and prior to the opening of the resort." The Commission defined such nuisance flow as "when rainfall is less than 3/4 inch on the site during a 24-hour period." Despite several requests, neither the City nor the Developer has provided us with a copy of the required binding statement from the SCWD.

18. The Project has not begun diversion of nuisance flows even though pre-sale promotion of the resort has begun and, according to recent newspaper accounts, sales of residential lots and condominiums will begin this Fall, and the resort will open in the first quarter of 2003 (perhaps as early as January).[14] Rather, such nuisance flow is now being diverted onto the Corrigan

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applicable technical standards, **which presumably took into account the effect of the operation of the planned improvements on affected properties.**"] [emphasis added]

[14] See, "New Resort Owner Shares Thoughts on Laguna," *Coastline Pilot,* page A4, July 5, 2002 quoting Alan Fuerstman, the CEO of Montage Hotels and Resorts (enclosed).

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Property.

19. The Developer performed unknown modifications to the Outlet "at the request of the City" in or about April and May 2002.

20. The beach maintenance agreement that the Developer has entered into with the City regarding the Project's beach parcel (which the Developer has subsequently dedicated to the City) does not, in fact, require the Developer to repair any erosion caused by the Storm Drain on that parcel. The Developer only must do so if there is available sand elsewhere on the beach (perhaps washed away from the Corrigan Property).

21. Astoundingly, neither the City (which required the diversion of the 100-year flow from PCH into the Storm Drain and onto the beach) nor the Developer (which is wrongfully redirecting the increased water flow across the Corrigan Property) will agree to protect the Corrigans with respect to any agency clean-up order relating to hazardous materials deposited on their Property by the increased water flow.

Summary

It appears that the failure of the Developer and/or City to inform the Commission of relevant facts and their failure to comply with the CDP provide sufficient grounds for the Commission to take action in the form of compliance orders, new conditions to the CDP, and/or the revocation of some or all of the CDP.

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Failure to Inform the Commission

California Coastal Commission Administrative Regulation §13053.5 requires that an applicant for a Coastal Development Permit provide the Commission

> "(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto. [Emphasis added][15]

[15] California Code of Regulations, Title 14, Natural Resources, Division 5.5, California Coastal Commission , §§ 13001-13666.4 ("Regulations")

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As discussed in detail above, the Developer and the City apparently never informed the Commission that the Storm Drain Outlet points directly at the Corrigan private property, which is located less than 25 feet away from the mouth of the Outlet, that the beach erosion impact of the Storm Drain would be primarily on private property, or that the water flow and drainage area of the Storm Drain were increased dramatically (without any increase in mitigation measures) after the hearings and approval of the EIR and LCP by the City and the Commission and after the CDP hearings. There is no evidence that the Commission ever considered or approved this increased water flow in the Storm Drain despite representations to the contrary by the City. Indeed, there is some evidence that the Commission actually could have been mislead by statements in the CDP implying that there was no increase in drainage. Certainly, the Commission would have imposed additional conditions to the de novo CDP if it had been fully informed.

As you are aware, Regulation §13105 provides that a failure to supply accurate information to the Commission can be grounds for the revocation of a CDP:

"Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;"

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Failure to Comply with CDP

Mitigation Measure 2-1

The CDP adopted Mitigation Measure 2-1, which implicitly required the Project to adopt any available "practicable method" to reduce "the projected beach erosion to an insignificant level."

Practicable methods, in fact, exist to mitigate the significant erosion. A very well-qualified geologist retained by the Corrigans has recommended a system of rock levees or channels in the bedrock to prevent catastrophic erosion of the beach and subsidence of the bluff in a heavy rainfall event.

The Developer promised the Corrigans that it would build such a mitigating structure "to make sure the water outflow on the beach follows the property boundary," but now claims that the Commission prohibited it.

Special Condition No. 7

The drainage system, including the diversion connections, is apparently completed. The increased water flow during such "nuisance flow events" is currently impacting the beach areas, including the Corrigan Property. No additional water flow will be diverted into the Storm Drain by the remaining construction of the Project. The Corrigans submit that it is within the spirit and

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intent of Special Condition No. 7 that the diversion begin now.

Changes to Storm Water System

The Developer has recently made certain undetermined changes to the Outlet "at the request of the City."

Specific Requests

The Corrigans request that Commission staff take the following actions:

1. review whether the Developer and/or the City misled the Commission with respect to the changes to the drainage plans required by the City's Conditions of Approval in the CDP relative to the drainage plans that were the basis for the EIR and LCP and the impact of such changes on the Corrigan Property and, if so, consider any available order to remedy the situation, including a revocation of all or portions of the de novo CDP;

2. review whether the Developer is in compliance with the de novo CDP and, if not, consider any available order to remedy the situation, including a revocation of all or portions of the de novo CDP;

3. direct the Developer and/or City to explain what changes or modifications they have made to the Storm Drain and/or Outlet relative to the designs that were approved by the Commission;

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4. review the adverse impact that the Project has had and will have on the Corrigan Property and existing improvements;

5. direct the City to make the Developer comply with Mitigation Measure 2-1, which implicitly requires that the Developer first attempt any available "practical methods" "to reduce the beach erosion to an insignificant level" before simply agreeing to attempt to fill in the erosion via a beach maintenance agreement;

6. direct the Developer to redesign the Outlet of the Storm Drain to direct the water away from the Corrigan Property and the bluffs and to protect the marine environment and the stability of the bluffs as required by LCP 3.2.2-4 and 3.2.2-16 by constructing rock levees and/or bedrock channels as allowed by LCP 3.1-3 "to protect existing structures or public beaches in danger of erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply"

7. direct the Developer immediately to begin the nuisance water diversion required by CDP Special Condition No. 7; and

8. facilitate a meeting among the relevant stakeholders (Developer, City, Corrigans, Commission, and others) to review and resolve the issues and problems associated with the above-described Developer actions under the CDP.

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Thank you for your attention to this matter. Please call me with any questions and/or to obtain additional information.

Very Truly Yours,

Martin A. Flannes

Martin A. Flannes

Enclosures:

1. June 29, 2000 letter from Athens Group to the Corrigans
2. July 12, 2000 letter from Athens Group to the Corrigans
3. Three (3) photographs of erosion damage from Storm # 2 2001
4. Seven (7) photographs of erosion damage from Storm # 3 2001
5. November 10, 2001 Report of Peter E. Borella, Ph.D.
   (with eight (8) pages of ten (10) color photographs and a 30" x 42" Topographic Survey by Toal Engineering, Inc. (dated 8-21-01)
6. December 31, 2001 letter from Philip D. Kohn, Esq. to the Corrigans
7. January 31, 2002 letter to Philip D. Kohn, Esq.
8. July 5, 2002 article from the *Coastline Pilot*
9. August 2, 2002 email from Martin A. Flannes to Michael Houston, Esq. [and others]
10. August 8, 2002 email from Martin A. Flannes to Michael Houston, Esq. [and others]

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cc (via fax):

(letter only)

Alex Helperin, Esq.	California Coastal Commission	415.904.5235
Brian T. Corrigan, Esq.	(also) Attorney for the Corrigans	213.482.3246
Karen ZoBel, Esq. Michael Houston, Esq.	Attorneys for Athens Group	858-677-1477
Bruce Martin, Esq.	Attorney for Laguna Beach Resorts, LLC	602-253-8129
Philip D. Kohn, Esq.	Attorney for the City of Laguna Beach	714-546-9035

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MARTIN A. FLANNES
Attorney At Law
P.O. Box 7000-879
Redondo Beach, CA 90277-0710
Telephone 310-378-6709 Fax 310-378-4301

September 13, 2002

By fax to 562.590.5084

Ms. Anne Blemker
California Coastal Commission
10th Floor
200 Oceangate
Long Beach, CA 90802

Re: Joseph and Lorretta Corrigan Property
31001 S. Pacific Coast Highway, Laguna Beach ("Property")
and
de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A
of Laguna Beach Colony (f/k/a Treasure Island Resort)

Dear Ms. Blemker:

As you are aware, I represent Joseph and Lorretta Corrigan regarding the erosion and debris problem on their Property caused by the storm drain and outlet modifications performed by Laguna Beach Colony (f/k/a Treasure Island Resort) ("Project") under de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A (collectively, the "CDP") of Five Star Resorts, LLC. In my letter to you dated August 19, 2002, I asked that you review the actions of the Developer and the City of Laguna Beach ("City") to determine, among other things, whether Commission orders relating to revocation, enforcement, or additional conditions were appropriate.

I submit this letter in reply to the September 5, 2002 letter to you from counsel for Laguna Beach Resorts, LLC ("Developer") (apparently the successor in interest to the CDP) in response to my August 19 letter to you ("Response").[1]

The Response repeatedly and vigorously claims that various factual assertions in my August 19 letter are "incorrect," "erroneous", etc. I will not reply to each these claims. My clients and I stand by each of the factual statements in my letter. In this letter, I shall reply only to the new material offered by the Developer in its Response.

[1] The Corrigans are submitting this reply as soon as possible. As you are aware, I was not copied on the letter and only received it five days later (and after I learned of its existence from my discussion with you).

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After revicwing the Developer's Response, it is even more evident that grounds exist for the Commission to impose new conditions on the CDP and/or revoke all or a portion of the CDP and to issue compliance orders.

Even though my August 19 letter did not make a formal revocation request, in its Response the Developer described it as such a request and sought a quick end to the review of its conduct under the CDP by asking the Commission to deny the "request" without further inquiry or hearing. As set forth in my August 19 letter, the Corrigans requested a staff review of the conduct of the Developer to ascertain whether any orders relating to revocation, additional mitigating conditions, and/or enforcement were appropriate. The Corrigans remain committed to participate in a collective effort to resolve the storm water issues at the staff level. However, in light of the harsh "lack of due diligence" attack contained in the Developer's Response, the Corrigans must preserve their right to be heard.

Consequently, based on the omissions, admissions, and tone of the Response, the Corrigans hereby make a formal revocation request under California Coastal Commission Administrative Regulations[2] §§13053.5 and 13104-13108 on the grounds of intentional inclusion of inaccurate, erroneous, or incomplete information (§13105(a)) and inadequate notice (§13105(b)) as specified in this letter, my August 19 letter, and admitted by the Developer in its Response.[3]

Pursuant to Regulation §13107, if the Executive Director determines that grounds exist for revocation, the CDP will be automatically suspended until the Commission votes on this request.[4] The Corrigans are willing to delay such determination by the Executive Director and to

[2] California Code of Regulations, Title 14, Natural Resources, Division 5.5, California Coastal Commission , §§ 13001-13666.4 ("Regulations")

[3] §13105: "Grounds for revocation of a permit shall be: (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application; (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application."

[4] §13107: "Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823."

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delay a hearing on this revocation request to allow Commission staff reasonable time to work with the Developer, City, Corrigans, and other stakeholders in a collective effort to resolve the storm water problem without a formal hearing. However, the Corrigans reserve their right to request such a formal determination and hearing if such efforts are unsuccessful.

Noteworthy Omissions in the Response

What is extremely noteworthy is what is not addressed in the Response. By its silence, the Developer concedes:

1. The Developer's engineer at the October 1, 1997 Planning Commission meeting on the EIR and LCP stated that "[t]he southern portion would remain generally the same," "the southernmost pipe would remain a 24" corrugated metal concrete pipe with concrete headwall," and "the existing condition [of] the [southernmost] drainage area is not impacted by this project."[5]

2. In July 2000, the Developer expressly promised the Corrigans that it would implement design changes to the Outlet to keep the storm water flow off the Corrigans' Property ("July 2000 Promise");

3. The Developer has blamed the Commission for the Developer's failure to keep the July 2000 Promise to the Corrigans;

4. In the minor rain events of 2001, the Corrigans' Property suffered significant erosion from the increased water flowing from the Storm Drain;

5. There is a substantial risk of bluff failure from such erosion as noted by the Corrigans' geologist;

Moreover, by its complete silence, the City appears to concede all of the factual contentions contained in the August 19 letter.

Instead, the Developer characterizes the Corrigans, an elderly retired couple who believed and relied upon the Developer's statements at public hearings and its July 2000 Promise and who have been trying to resolve the erosion and debris problem with the Developer and/or City since **June 2001**, as "Opponents" who lack standing, who have not been diligent, and whose concerns – for the protection of their home and for the safety of members of their family as well

[5] Paul S. Carey, P.E. at the October 1, 1997 Planning Commission Meeting. John Montgomery, the Assistant Director of Community Development for the City, was also in attendance.

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as the public who might be injured in the canyon carved by the storm water – are "frivolous."

Proper Standing and Due Diligence

In its Response, the Developer makes the curious, circular argument that because the Corrigans took part in the hearings relating to the EIR, LCP, and CDP, they had "an opportunity to fully participate" and, therefore lack standing under Regulation §13106.[6] Obviously, §13106 contemplates a situation, such as we have here, in which persons participating in the process allege that they were misled by statements of an applicant.

It is not for the Developer to determine that it made no inaccurate statements and that, therefore, no one who attended any hearing has standing to challenge its statements. Regulation §13106 states that the Executive Director shall review a revocation request and "unless the request is patently frivolous and without merit, shall initiate revocation proceedings."

Specific Assurances to the Corrigans by the Developer and the City

The history of the EIR, LCP, and CDP approval process reflect a pattern of conflicting and misleading statements relating to the Storm Drain and an ongoing effort to delay the Corrigans in the hope that they would simply "go away."

In October 1997, the Developer's engineer stated at a Planning Committee hearing on the EIR and LCP that there would be no significant change to the Storm Drain. In May 1998, the City responded to written comments from the Corrigans by confirming the applicability of Mitigation Measure 2-1 (which implicitly required the Project to adopt any available "practicable method" to reduce "the projected beach erosion to an insignificant level") to both the central and southern storm drain outlets.[7]

In its Response, the Developer attaches the minutes of the February 15, 2000 City

[6] §13106: "Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105."

[7] The response to comments was by John Montgomery, the Assistant Director of Community Development for the City.

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Council Meeting (Response Exhibit B) as an example of "testimony" by the Corrigans that precludes their standing. The meeting was primarily for approval of the Tract Map for the Project and of the "backbone and infrastructure component" of the CDP. In the minutes of the referenced meeting (at which no issue relevant to the Storm Drain was discussed), Mr. Joseph Corrigan, having heard no statements negating the previous assurances of no changes to the Storm Drain, "thanked everyone involved, including the Planning Commission, Council, staff, various homeowners' associations and the Athens Group." The Developer was at the meeting, as was John Montgomery, the Assistant Director of Community Development for the City. The Developer and Mr. Montgomery, who had expressly assured the Corrigans that the Storm Drain would remain generally the same and that available practicable methods would be used to reduce any beach erosion to an insignificant level, sat silently and allowed Mr. Corrigan to thank them for their efforts – even though they knew that somewhere buried in the administrative record there were technical documents that revealed that, unknown to the Corrigans, they had changed the drainage system dramatically after the EIR and LCP approval and that the Corrigans' Property would be eroded by a huge new volume of off-site storm water.

After the Commission's June 2000 ruling on the de novo CDP, in a June 29, 2000 letter, the Athens Group thanked the Corrigans for their support of the Project, and its representatives met with the Corrigans to explain that a minor "upgrade" (e.g., a new pipe a few feet closer to their Property) was necessary because of the "plans." The Developer agreed to take steps to keep the storm water off the Corrigan Property. In a July12, 2000 letter, the Athens Group confirmed its promise to implement design changes to keep the water from the Storm Drain off the Corrigan Property. In none of these communications did the Developer inform the Corrigans of the major design changes that the City and the Developer had made after the EIR and LCP approval and after they had assured the Corrigans that the Project would make no significant changes to the Storm Drain. Indeed, the Developer carefully used the euphemistic term "upgrade" rather than providing the Corrigans with meaningful information such as "we have diverted all of the off-site drainage of the Project, 68% of which previously was planned to discharge through the central storm drain, to this Storm Drain. There will be substantial erosion here." Even worse, the Developer actually again reassured the Corrigans, in writing, that "We do not anticipate this matter will bring you any inconvenience." Such duplicitous conduct speaks for itself.[8]

No Adequate Notice to the Corrigans of Substantial Change in Project Impact

Consequently, in July 2000, the Corrigans were under the impression that the Developer and the City would not change the size of the Storm Drain and that the Developer would implement the necessary design changes to keep the water from the Storm Drain off their

[8] See, June 29, 2000 and July 12, 2000 letters from the Athens Group attached to my August 19 letter.

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Property and away from the bluff. However, as specified in my August 19 letter, the Mass Grading Plans (the construction drawings for the Storm Drain) were modified several times between September 2000 and February 2001 without the knowledge of the Corrigans. The Developer constructed the Storm Drain pursuant to these modified plans and never informed the Corrigans of the drainage changes or its failure to keep the July 2000 Promise to the Corrigans regarding a design change to keep the storm water off the Corrigan Property and away from the bluff. Subsequent minor rain events in 2001 revealed that the Developer had broken its July 2000 Promise and that contrary to the much lesser impact analyzed in the EIR and LCP, an enormous volume of water was severely impacting the beach and endangering the bluff (See, the geologist report attached to my August 19 letter).

One Year of Delay Tactics by the Developer and the City

In June 2001, Brian T. Corrigan, Esq. (the Corrigans' son and my co-counsel) wrote to John Montgomery, the Assistant Director of Community Development for the City regarding the erosion damage. Philip D. Kohn, Esq., City Attorney responded to this initial letter in a letter dated July 18, 2001 (attached). Mr. Kohn attempted to distance the City from the Project but offered to arrange a meeting among the City, Developer, the Corrigans, and the Corrigans' consultants. After considerable foot dragging by the City and/or the Developer, the meeting occurred in December 2001. After the meeting, Mr. Kohn wrote that the City and the Developer would be contacting the Corrigans' consultants. Mr. Corrigan responded that he would like to resolve the matter by mid-January (See, attached email of December 17, 2001).

Rather than contacting the Corrigans' consultants to redesign the Storm Drain, the City rejected any responsibility for the problem and implied that the Commission had approved the damage to the Corrigan Property (See, December 31, 2001 letter from Philip Kohn attached to my August 19 letter).

As you are aware, in a letter dated January 31, 2002, I requested that the City and the Developer take immediate steps to redesign the Storm Drain to prevent any erosion damage to the Corrigan Property or agree to maintain the Corrigan beach area and to indemnify the Corrigans. In February, both the City and the Developer informed me that the Developer would maintain the Corrigan beach area and indemnify the Corrigans. The Corrigans and the Developer entered into negotiations to resolve the matter without "going to the Commission." After many frustrating months of continued delays and excuses from counsel for the Developer regarding why it could not make any progress on an agreement (during which time, not coincidentally, ownership of the Project changed), I sent my August 19 letter to you. Developer's counsel responded by telling me that they had been expecting such a letter.

What could be more clear? The Developer and the City have misled the Corrigans

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throughout the approval process and the subsequent attempt to resolve the erosion problem. The City, as specified in my August 19 letter and as stated in the Developer's response, controlled many details of the Project, including the drainage system, but now denies any involvement. The Developer broke its July 2000 Promise to the Corrigans, blamed it on the Commission, engaged in fourteen months of foot dragging and apparently bad faith negotiations, and now claims that the Corrigans should have figured out long ago that they had been misled and thus should be denied standing to complain.

Having specifically assured the Corrigans that the Storm Drain would remain generally the same and having made the July 2000 Promise, the Developer had a duty to notify the Corrigans just as specifically of the dramatic design changes and of the alleged refusal by the Commission to allow any design change to mitigate the erosion to their Property and the danger to the bluff.

The Corrigans submit that they have standing to request revocation and that they have acted with due diligence.

Failure to Provide Accurate, Correct and Complete Information

"Unambiguously." "Clearly." How many times does the 106-page Response use these terms to describe the manner in which the administrative record ("Record") describes the Storm Drain size, drainage area, and relation to the Corrigan Property?

The Response cites every portion of the Record in which it can find "48-inch pipe," "63 acre drainage area," or a map showing the location of the Storm Drain. But, as summarized below, the Record is not as unambiguous or clear, in its favor, as the Developer wishes the Commission to believe. In fact, the Record shows a series of conflicting, changing, and incomplete descriptions of the Strom Drain and the Corrigan Property and an impact that was never analyzed in the EIR or reviewed by the Commission.

Under Regulation §13053.5, the Developer had the burden to inform the Commission that the affected portion of the beach was owned both by it (to be dedicated to the City) and by the Corrigans (to remain private property) and to describe feasible mitigation alternatives to lessen the erosion impact on this portion of the beach.[9] The Record reveals no disclosure of the

[9] "(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, **(whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private**, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. **The description of the development shall also include** any feasible alternatives or

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Corrigan ownership of a substantial portion of the affected beach area and no discussion of any new mitigation measure to lessen the impact of the huge increase in water flow from the Storm Drain apparently required by the City. This lack on disclosure is inexcusable. Both the Developer and the City were very aware of the Corrigans' beach area and of methods used elsewhere by the City to direct storm water across a beach by cutting a channel in the underlying bedrock. The Corrigans submit that had the Commission been fully informed of these facts, it would have imposed additional mitigating conditions on the CDP.

EIR and LCP (Response Exhibits C and D)

1. As stated above, the Developer does not deny the accuracy of the minutes of the October 1997 Planning Commission meeting relating to the EIR and LCP which reveal statements by the Developer's engineer[10] that "**[t]he southern portion would remain generally the same,**" "**the southernmost pipe would remain a 24" corrugated metal concrete pipe with concrete headwall,**" and "**the existing condition [of] the [southernmost] drainage area is not impacted by this project.**"

2. The EIR (at pp. 4.12-2 to 4.2-13) and the LCP (at pp. 10-35 to 10-36) contemplated three storm drains and three outlets draining the Project site and 59.4 acres off-site: northern drain (4.9 acres of on-site drainage; 23 cfs); central drain (10.9 acres on-site and 40.1 acres off-site {equals 68% of the off-site}; 112.2 cfs); southern drain (24 inch; 19.3 acres off-site {equals 32% of the off-site}; 51.6 cfs). This proposed size and drainage area of the Storm Drain (the southern) is substantially the same as the pre-Project condition. Yet, the Developer has diverted all of the off-site drainage from the central storm drain to the Storm Drain (southern), thereby greatly increasing the adverse impact at the Storm Drain (southern) while greatly reducing the impact at the central storm drain in the heart of its Project: central drain (reduced to only 6.8 acres on-site; 23.5 cfs) and southern drain (increased to 2.5 acres on-site and 63.1 acres off-site; 207 cfs).

3. The EIR (at p. 4.2-6) states that the storm drains may be larger than shown "up to 42 to 39 inches." The Storm Drain, however, is 48 inches.

4. The LCP (at p. 10-35) describes "a new catch basin on the ocean side of Coast

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any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto." [Emphasis added.]

[10] The same engineer produced the March 2002 "Outlet Update Report", which attempts to justify the failure of the Developer to mitigate the **increased flow** from the **48-inch** Storm Drain as required by Mitigation Measure 2-1.

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Highway that will connect to the existing 24-inch storm drain which runs under Coast Highway and outlets at an existing outfall structure at the base of the bluff. (This pipe is identified to be upgraded to 39 inches in the South Laguna Master Plan of Drainage)." What does the reference to the Master Plan mean? Does the Treasure Island Specific LCP have a 24 or a 39-inch pipe as a development component? Either pipe size is inconsistent with the actual Storm Drain size of 48 inches.

5. The LCP (at p. 10-36) describes the central storm drain as a new 36 inch drain connected "to a new rip-rap structure at the base of the bluff, and accept flows from the existing flood control facility on the inland side of Coast Highway." However, in fact, the water from this central drainage area ended up in the Storm Drain (southern).

6. The EIR (in PDF 2-3 at p. 4.2-6) described part of the purpose of the central storm drain as "reducing the total potential flow to the southern storm drain." Quite to the contrary, after the EIR and LCP approval, the Developer dramatically decreased the planned flow to the central storm drain and put all of the diverted water into the Storm Drain (southern).

CDP Report (Response Exhibit E)

7. The CDP Report (March 2000) (at p. 2-11) states "Two existing drainage inlets (to be upgraded) on the ocean side of Coast Highway will continue to accept these 100-year flows as the system enters the project site." However, pre-Project, there was only one existing ocean side inlet for the Storm Drain and it only accepted 15% of the 100-year flows (See, EIR 4.2-1).

8. The CDP Report (at pp.2-11 and 2-12), apparently in an attempt to disguise the huge change to the Storm Drain (southern) and resulting glaring inconsistency with the EIR and LCP, confusingly describes "four" storm drains: "southerly" (still draining only 18 acres off-site, but "upgraded" to a 48-inch pipe); a "new" "upper middle" (draining 44 acres off-site, "discharging to a new rip-rap structure at the base of the bluff"); "lower middle" (draining 6.8 acres of resort on-site); and "northerly" (draining 11.5 acres of residential on-site). In reality, the "upper middle" storm drain was simply the entire off-site portion of the EIR's central storm drain and its "new rip-rap structure" outlet is the Storm Drain (southern) Outlet adjacent to the Corrigan Property. The "lower middle" was simply the remaining drainage of the EIR central drain (the Outlet Update Report, discussed below, candidly reveals the self-serving motivation for this substantial design change). What possible reason existed for suddenly describing the off-site portion of the central storm drain as a new storm drain other than to be able to show the drainage area of the Storm Drain (southern) unchanged at 18 acres as had been described in the EIR? The Corrigans submit that this portion of the CDP Report is intentionally ambiguous and unclear and encourage the Commission to review the convoluted full text for itself.

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City CDD Staff Report (Response Exhibit F)

9. The City CDD Staff Report (9-18-99) (at p. 6) describes three storm drains and three outlets for the Project and compares them to the EIR pipe sizes: Northern (EIR 30") 30 inch; Central (EIR 42") 18 inch; and Southern (EIR 39") 48 inch. In fact, the EIR sizes are incorrect. The actual EIR sizes were Northern (18 inch), Central (36 inch), and Southern (24 inch). This inaccurate statement of the EIR pipe sizes disguised the magnitude of the increased impact of the revised drainage system.

Master Drainage Report (Response Exhibit G)

10. The MDR (9-1-99) on which the Developer relies heavily in its Response to justify its failure to mitigate as required by Mitigation Measure 2-1 is seriously flawed as is evident in the discussion below of the "Outlet Update Report" by the same engineer.

11. The MDR (at p. 6), in a much more direct manner than the subsequent CDP Report, describes the three storm drains and three outlets without resorting to the "technique" of calling the off-site portion of the central storm drain, which the Developer had diverted to the Storm Drain (southern), a "fourth" storm drain. That the City and the Developer would use the convoluted and ambiguous language in the CDP Report (discussed above) to allow them to report the drainage area of the Storm Drain unchanged at 18 acres is even more shocking with the knowledge that the CDP Report was based on the MDR.

Commission Awareness of Drainage Area (Response Exhibit H)

12. The Commission CDP Staff Report (June 2000) does indicate that the Commission was aware of the 63 acre offsite drainage area of the Project. However, the Response could identify no place in the Record which establishes that the Commission was aware that the Developer had diverted all of the 63 acres of off-site drainage area to the Storm Drain (more than a 225% increase in drainage area compared to the proposed 19.3 acres in the EIR and LCP) without any additional mitigation for the increased flow.

Outlet Update Report (Response Exhibit K)

13. The Outlet Update Report (March 2002) (at p. 2) confirms that the EIR contemplated and analyzed the impact of three (3) storm drain outlets on the beach. However, with a straight face, the report attempts to continue the "four storm drain charade" begun in the CDP Report (discussed above). The report simply argues that the drainage system is consistent with the EIR because the Developer combined the "fourth drain" into the Storm Drain (southern)

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"to maintain three outlets."

14. The Outlet Update Report (at p. 3) reveals the central storm drain outlet was eliminated to minimize the impact on the portion of the beach area that was very important to the resort. Simply put, the Developer transferred the adverse impact on the central portion of the beach to the beach area of the Corrigans' Property.

15. The Outlet Update Report (at p. 3) also reveals that eliminating the off-site water from the central storm drain outlet saved the Developer construction expense and saved both the Developer and the City ongoing operational expenses. These savings are on top of the millions of dollars that will flow annually to the Developer (profit) and City (taxes) and are at the expense of the Corrigans and expose the Corrigans to significant property damage and potential claims for harm caused to persons and the environment as a direct result of these substantial changes. The Corrigans' efforts to get the Developer and/or the City to agree to protect them from the harm intentionally caused to them are belatedly dismissed by the heavy hand of this Developer as "unreasonable" and "not consistent with merely maintaining the beach after storm events" (Response at p. 10).

16. The Outlet Update Report (at p. 3) also confirms the concerns of the Corrigans' geologist regarding the off-site storm water causing bluff instability. In describing why the off-site water was not simply re-routed around the new site of the hotel, the report concludes "Introducing a 42" storm drain line, which would be carrying water on a constant basis, in this location **could potentially lead to a failure of the bluff**" (emphasis added). The Developer, consistent with its other conduct, chose to transfer this risk of bluff failure to the Corrigans.

17. Finally, the Outlet Update Report (at p. 4) continues its surprising candor by revealing that the MDR, on which the Developer relies heavily with respect to its mitigation obligations under EIR Mitigation Measure 2-1, analyzed the mitigation required for the impact of the Storm Drain by using the expected peak flow from a **10-year** event even though the same engineer had designed the system for a **100-year event**. As discussed below regarding the Developer's failure to mitigate, the report confirms that the engineer, who had also produced the MDR, concluded the expected erosion of the Corrigan Property "was not considered to be a significant impact" (Report at p.5). The engineer's own lesser 10-year event calculations reveal that the water from the Storm Drain, located only ±15 feet from the Corrigan Property and pointing directly at it, at peak flow in a 10-year event would be at 124 cfs (**3.4 million gallons per hour**) and traveling at a velocity of 44 fps (**30 miles per hour**). The system, designed to handle a 100-year event, has the capacity to, and certainly will, deliver a much more damaging and dangerous torrent of water. This admission shows the complete failure of the Developer to consider or to propose appropriate mitigation measures.

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Location of the Outlet Relative to the Corrigan Property (Response Exhibits A, C, E, and H)

18. The Response cites four maps in the Record that show the location of the Storm Drain Outlet near the southern property line of the Project. The Developer conveniently misses the point. None of the maps in the Record identifies any portion of the affected beach area as private property. Quite to the contrary, the cited maps actually are compelling evidence of the intentional inclusion of inaccurate, erroneous, or incomplete information:

a. The Final Tract Map (Response Exhibit A, p.2)

i. suggests that the sand area is all City beach because the only label on the beach is Lot 1 "City Beach Parcel" {labeled ① on the attached annotated copy};

ii. fails to show the seaward line of the Corrigan Property, which should continue south along the mean high tide line at the point that the Project property line makes a sharp turn east and runs in a straight line to PCH {labeled ② on the attached annotated copy}; and

iii. suggests that a triangular section on overlaying the Corrigan Property is part of the Project {labeled ③ on the attached annotated copy}.

b. EIR - Figure 4.2.2 (Response Exhibit C)

i. suggests that the sand area is all City beach because both the City Beach Parcel and the beach area portion of the Corrigan Property are labeled "sand beach" {labeled ① on the attached annotated copy};

ii. fails to show the seaward line of the Corrigan Property, which should continue south along the mean high tide line at the point that the Project property line makes a sharp turn east and runs in a straight line to PCH {labeled ② on the attached annotated copy}; and

iii. erroneously shows the Corrigan Property line at the toe of the bluff {labeled ③ on the attached annotated copy}.

c. CDP Report – Figure 2.4(Response Exhibit E)

i. fails to show the seaward line of the Corrigan Property, which should continue south along the mean high tide line at the point that the Project property line makes a sharp turn east and runs in a straight line to PCH {labeled ① on the attached annotated copy}; and

ii. erroneously shows the Corrigan Property line at the toe of the bluff {labeled ② on the attached annotated copy}

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d. Commission CDP Staff Report – Exhibit 26 (Response Exhibit H)

i. appears to label the eastern (upper) portion of the Corrigan Property (the location of the home and other improvements) as part of the Project 22.1 acre On-Site Area {area extends well to the south (right) of the "(PROPOSED 48" CULVERT)" and is labeled ① on the attached annotated copy}and

ii. fails to show any property lines for the beach area portion of the Corrigan Property {labeled ② on the attached annotated copy}.

[Note: the hand annotations on the attached maps are approximate and are not intended to convey exact property lines]

The Corrigans submit that the Developer intentionally failed to disclose to the Commission that a substantial portion (if not the majority) of the beach affected by the huge increase in water flow from the Storm Drain was part of the Corrigan Property and that the above referenced drawings are additional evidence of the inaccurate, erroneous, or incomplete information relating to the Storm Drain which the Developer provided to the Commission. The Developer furthered this lack of knowledge of the Commission at the same time it was negotiating with the Corrigans either to obtain title to the beach portion or permission to divert the increased water flow over it.

Lack of Compliance with CDP and Conditions

Mitigation Measure 2-1

The Developer attempts to excuse its failure to install any new mitigating devices at the Outlet to reduce beach erosion "to an insignificant level" in a number of ways.

First, it cites the conclusory statement in the MDR that "Additional measures to further minimize erosion, such as impact dissipaters or large rip-rap aprons, are not practicable in these locations for both safety and aesthetic reasons." The MDR only described an increase in the rip-rap apron from 15 by 15 to 20 by 20.[11]

[11] The same engineer produced the MDR and the subsequent March 2002 "Outlet Update Report" and informed the City, public, and the Corrigans at the October 1997 Planning Commission meeting that there would be no significant changes to the Storm Drain.

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Second, it argues that it has complied with the Mitigation Measure 2-1 by entering into a beach maintenance agreement with the City.[12] The Developer easily agreed to maintain the beach that it planned to dedicate to the City and that serves as an amenity for its resort, knowing that most of the damage would be to the Corrigans' beach area.

Next, the Developer cites its March 2002 "Outlet Update Report" as a retroactive justification for not installing any mitigation as required by Mitigation Measure 2-1. The Report describes four extreme "design alternatives" – none of which has been suggested by the Corrigans or their consultants – and then dismisses each for either "safety or aesthetic reasons," not coincidentally the same reasons cited in the conclusory MDR by the same engineer.

Finally, the Outlet Update Report unbelievably actually states that the erosion (described in detail in my August 19 letter) caused by the additional flow "was not considered a significant impact." The increased water flow traveling at high velocity through the Corrigans' Property, which the Response does not dispute, easily cuts a canyon 4-5 feet deep and 60-70 feet across and a long lagoon extending south along the toe of the bluff and threatens the stability of the bluff. Yet, this "report" describes it as not significant.

Ironically, the engineer of the Outlet Update Report, in his attempt to justify the modifications to the Outlet that apparently were never approved by the Commission (discussed below), undercuts his own prior conclusions that there were no "practical methods." The Response describes the modification recommended in the Outlet Update Report as "an improvement to upgrade the Outlet to reduce erosion." Was this practical method not available two years earlier? Did the Developer ever consider it? What other available measures were never considered? Apparently, the Developer only agreed to the new rip-rap apron after my January 2002 letter to the City and pressure from the City to reduce the erosion.

According to the Developer, "The best indication of adequacy of outlet works is actual performance" (Outlet Update Report, p. 4). The Corrigans agree. The current Storm Drain Outlet design "appears to be a total failure" (See, Borella Report (attached to my August 19 letter), p. 5). The Commission should review all available practical methods to direct the storm water away from the toe of the Corrigan bluff and not rely on the made-to-order reports of the Developer or the City.

The Response attempts to dismiss the suggestion of the Corrigans' consultants that a

[12] It is noteworthy that the agreement (Response Exhibit J) does not require the Developer, in fact, to repair erosion damage to the beach or bluff. It only requires the Developer to replace "sand depletion" by "combing" or "raking" the "surrounding beach material." If the erosion is so great that there is insufficient sand, the Developer has no obligation. Also, any damage to the bluff is not included.

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channel should be cut in the bedrock to direct the water away from the bluff as having been rejected by the MDR and Outlet Update Report. Neither the MDR nor the Outlet Update Report discusses such a mitigation measure.

Special Condition No. 7

Special Condition No. 7 imposed by the Commission in its June 2000 approval of the de novo CDP could not be more clear on the requirement of a "will-serve" letter relating to the nuisance diversion. It requires "prior to the issuance of the Coastal Development Permit, the applicant shall obtain, and submit to the satisfaction of the Executive Director, a binding statement from the South Coast Water District verifying the District's capacity and commitment to accept nuisance flow runoff [up to a maximum 10,000 gallons per day (GPD) on a year-round basis ..." (De Novo CDP Staff Report, p.8). The Commission imposed this requirement with knowledge of the May 25, 2000 letter (Exhibit 26 to the Staff Report), obtained through its own efforts, from the SCWD merely stating what upgrades were required to accept the nuisance flow.

Interestingly, the Developer cites the May 2000 letter as satisfaction of the Developer's obligation to obtain a binding commitment. Apparently, the Developer has no such commitment. Because no such commitment appears to exist, the CDP never should have been issued.

Condition No. 7, however, could be more clear regarding the timing of the obligation to begin diversion. "Upon completion of the project and prior to the opening of the resort" is not as clearly defined as it may sound, particularly with a Developer who in its Response states that it has not yet begun the diversion, which would protect the beach from pollution, even though it claims that "the nuisance flow system is completed and ready for operation" "because it is not required to." Which portion(s) of the "project" must be completed? Resort, park, residential, etc? What is an "opening of the resort"? Pre-sales activity, training of employees, a non-public "soft opening" of the hotel for employees as part of their training, etc.? How much of the resort must be opened? Rooms, villas, other amenities? The spirit of the condition argues for diversion now. The additional drainage from offsite is impacting the beach. The drainage portion of the Project is complete. The developer is beginning sales. The Developer, unconcerned with the damage being caused to the environment and to the Corrigans' Property, clearly intends to delay as long as possible to avoid paying hook-up fees unless the Commission establishes and enforces a definite date.

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Modifications to the Outlet

In their discussions with the Developer and City, the Corrigans and their consultants repeatedly have asked the Developer and/or the City to modify the Outlet to prevent the erosion to the Corrigan Property and to reduce the danger to the bluff. The consistent response from the Developer and the City was that the Outlet could not be modified without Commission approval and that neither of them wanted to "go back to the Commission" for such approval.

Now, the Developer admits in its Response to modifying the Outlet without Commission approval and without any input from the Corrigans or their consultants. The Corrigans have tried for months to obtain details of the modification, which involved construction crews trespassing on their Property. Only after the Corrigans turned to the Commission for help has the Developer selectively revealed the nature of the modifications. Of course, the Developer strains to find ways to describe the changes as anything other than a modification ("improvement", "upgrade," "adjustment," etc.) and blames the City ("the City required and approved the recent improvements").

Obviously, there are ways to modify the Outlet to reduce the erosion problem and to reduce the danger of bluff instability. The Commission should not condone this outrageous conduct of the Developer: hiding behind the Commission when it doesn't want to make a change and hiding from it when it wants to make a change.

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Ms. Anne Blemker
California Coastal Commission
Re: Joseph and Lorretta Corrigan Property
and
dc novo Coastal Development Permits A-5-00-78 and A-5-00-79-A
September 13, 2002

Conclusion

The Corrigans submit that the Commission has sufficient grounds to require additional mitigating conditions to the CDP and/or to revoke all or portions thereof and that the Commission should issue compliance orders relating to EIR Mitigation Measure 2-1 and Special Condition No. 7.

Thank you again for your attention to this matter. Please call me with any questions.

Very Truly Yours,

Martin A. Flannes

Martin A. Flannes

Attachments:
July 18, 2001 letter from Philip Kohn to Brian Corrigan
December 17, 2001 email between Philip Kohn and Brian Corrigan

Special Note to Interested Parties: Brian T. Corrigan, Esq. is my co-counsel on this matter. Please copy him (213.482.3246) on all faxes that you send to me. Thank you.

cc (via fax):

Alex Helperin, Esq.	California Coastal Commission	415.904.5235
Brian T. Corrigan, Esq.	(also) Attorney for the Corrigans	213.482.3246
Charles L. Deem, Esq.	Attorney for Laguna Beach Resorts, LLC	858.677.1477
Karen ZoBel, Esq.		
Michael Houston, Esq.		
Bruce Martin, Esq.	Attorney for Laguna Beach Resorts, LLC	602.253.8129
Philip D. Kohn, Esq.	Attorney for the City of Laguna Beach	714.546.9035

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MARTIN A. FLANNES
Attorney At Law
P.O. Box 7000-879
Redondo Beach, CA 90277-0710
Telephone 310-378-6709 Fax 310-378-4301

October 9, 2002

By fax to 562.590.5084

Ms. Anne L. Blemker
Coastal Program Analyst
California Coastal Commission
10th Floor
200 Oceangate
Long Beach, CA 90802

Re: Joseph and Lorretta Corrigan Property
31001 S. Pacific Coast Highway, Laguna Beach ("Property")
and
de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A
of Laguna Beach Colony (f/k/a Treasure Island Resort)

Dear Ms. Blemker:

As you are aware, I represent Joseph and Lorretta Corrigan regarding the erosion and debris problem on their Property caused by the storm drain and outlet modifications performed by Laguna Beach Colony (f/k/a Treasure Island Resort) ("Project") under de novo Coastal Development Permits A-5-00-78 and A-5-00-79-A (collectively, the "CDP") of Five Star Resorts, LLC. I submit this letter on behalf of the Corrigans (i) in support of their request that the Commission revoke the CDP and (ii) in response to (a) the discussions during the site visit and meetings on October 7, 2002 attended by Commission staff, the Developer, the City, and the Corrigans and (b) the letter to the Commission from counsel for the Developer dated October 8, 2002 ("Developer's October 8 Letter").

Admission of Drastic Change in Off-site Drainage Inconsistent with the EIR and LCP

In the October 7 Meeting and in the Developer's October 8 Letter, the Developer finally has admitted the drastic change in the off-site Drainage after the EIR and LCP approval, i.e., the transfer of 44 acres of off-site drainage from the central storm drain to the southern storm drain ("Storm Drain") with no additional mitigation.

The Developer meekly attempts to argue that this 400% increase in water flow and 240% increase in drainage area "is reasonably accounted for (and allowed by the LCP)" because the

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EIR allegedly permits "flexibility in designing the Drain."[1] Quite to the contrary, the EIR does not contemplate any increase in drainage areas; rather, it merely states "While the design has not been finalized, a goal of the LCP is to minimize disturbance to the existing bluff face" and actually declares that a goal of the design is to "reduce the total potential flow to the southern storm drain."[2] A 400% increase in water flow and a 240% increase in drainage area certainly are not consistent with the stated goal of reducing the total potential flow to the southern storm drain.

Developer and City Motivation for this Drastic Change - Money

In its prior September 5, 2002 letter, the October 7 meeting, and its October 8 Letter, the Developer has admitted the common motivation of the City and the Developer for this drastic non-EIR or LCP approved change in the off-site drainage – money. In fact, in the October 8 Letter, the Developer proudly characterizes its own conduct as "commercially reasonable."[3] Not fair, not good for the environment, nor even in keeping with its prior assurances – only "commercially reasonable."

The shift of the off-site water to the Storm Drain (southern) saved the Developer money in construction costs (no need to build two pre-treatment basins or to route the central drain around the "new" location of the hotel building) and saved the City money in operating costs. The change also protected the major amenity for the Project, the beach at the base of the ramp leading down from the resort – the location of the central storm drain outlet where the EIR and LCP intended the 44 acres of off-site water to discharge – which obviously enhances the Developer's revenue from residential and hotel sales. Most glaringly, the Developer coolly admits that the change allowed the Developer to shift the risk of bluff instability from its bluff to the Corrigan bluff, thereby saving itself the expenses associated with bluff erosion.[4]

Intentionally Inaccurate and Incomplete Information

Role of the City

Because of the Treasure Island Specific Amendment to its Local Coastal Program, the

[1] Developer's October 8 Letter, p.4 fn 3 and p. 7.

[2] EIR PDF 2-3 at p.4.2-6.

[3] See, Developer's October 8 Letter, p. 5 and the February 8, 2002 exhibit thereto.

[4] See, pp. 2-3 of Exhibit K to September 5 Letter and pp. 7 and 8 of Developer's October 8 Letter.

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City must be viewed as a "co-applicant" of the CDP and a sponsor of the Project. This role is all the more evident by the City's vigorous defense of the Developer and of the CDP during our October 7 Meeting. Further, in its October 8 Letter, the Developer candidly describes the control and motivation of the City with respect to the off-site drainage changes. Thus, the City's misleading statements to the public in various staff reports are additional grounds for revocation of the CDP.

Consistent Misrepresentations of Two Material Facts

There are two material facts that the Developer, working closely with the City, intentionally concealed and failed to disclose as part of the CDP process: (1) that the Developer and the City had shifted 100% of the off-site water to the Storm Drain [southern] whereas the EIR and LCP contemplated that 68% of the off-site water would discharge from the central storm drain outlet and only 32% would discharge from the Storm Drain [southern] outlet and (2) that the property most affected by this increased discharge was adjacent non-Project sandy beach property owned, not by the Developer or its "co-applicant," the City, but by the Corrigans.

1. Shift of 44 Acres of Off-site Water from the Central to the Southern Storm Drain

In our meeting, the City and the Developer each attempted to argue that "the record" disclosed the drastic change in the off-site water drainage to the public and the Commission. In its October 8 Letter, the Developer repeatedly uses non-specific phrases such as "clearly articulated in the Record," "clarity of the record," and "documentation specifically and unequivocally addressing the capacity, diameter, drainage and location of the Drain and Outlet."[5] However, despite more than eight months of effort by at least three major law firms, the Developer could only cite two documents, the Master Drainage Report (9-1-99) and the City's CDP Report (March 2000) and the City (at the October 7 Meeting) could only cite one document, a Planning Commission staff report ("City CDD Staff Report" (9-18-99)).

The Corrigans submit that these documents only further reveal the attempts of the Developer and the City to prevent this major change in the drainage system, which greatly benefited the Developer and the City and which greatly injured the Corrigans and their neighbors, from coming to the attention of the Corrigans or their neighbors.

a. Master Drainage Report ("MDR") (9-1-99)

The MDR does state that the Storm Drain will have a drainage area of 65.6 acres (63.1 acres off-site water, which is 100% of the off-site) and that the central storm drain will have a drainage area of 6.8 acres (0 acres off-site). However, it fails to include the critical information

[5] Developer's October 8 Letter, pp. 3 –4.

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needed to evaluate these drainage areas: that these drainage areas are drastically changed from the EIR and LCP proposal on which the Project's mitigation measures were based. There is no statement in the MDR expressing or implying that there had been any change in the off-site water drainage, much less a 100% change from the central drain to the Storm Drain [southern]. In fact, the only report evaluating the impact of the off-site drainage change has concluded that it endangers the stability of the Corrigan bluff.[6]

b. City CDD Staff Report (9-18-99)

The City claims that the shift in the off-site water was disclosed in the City CDD Staff Report (9-18-99), which in fact merely stated the new pipe sizes for the three storm drains and compared them to inaccurate "EIR pipe sizes" of the same drains. The use by the City of inaccurate EIR pipe sizes understated the increase in the pipe size of the Storm Drain by more than 62%. Contrary to the statements made by the City at our October 7 meeting, the report makes no mention of the shift of the off-site water from the central to the southern storm drain.

c. CDP Report (March 2000)

The City compounded the deception in its CDP Report (March 2000), which utilized the fiction of a "fourth" storm, which actually merely consisted of the 44 acres of off-site water from the central storm drain.[7] The CDP Report describes this "fourth" storm drain as having a drainage area of 44 acres and as draining into a "new rip-rap structure at the base of the bluff." Shockingly, the CDP Report fails to reveal that the "new rip-rap structure at the base of the bluff" is actually the Storm Drain [southern], i.e., the 44 acres of off-site water from this fictional new storm drain (diverted from the central storm drain) was combined into the Storm Drain [southern] on top of the bluff. In an intentional deception, the CDP Report actually describes the Storm Drain [southern] as still having a drainage area of 18 acres (rather than the true ±63 acres).

d. Continued Efforts to Hide Information from the Commission and from the Corrigans

In June 2000, after the Commission's ruling on the de novo CDP, the Developer continued to mislead the Corrigans by describing the drastic 44-acre change in the off-site water

[6] See, Borella Report attached to my August 19, 2002 letter to the Commission.

[7] In its October 8 Letter at p.6, the Developer attempts to deny the existence of the "four storm drain charade." However, the CDP Report, in fact, blatantly describes "northerly," "upper middle," lower middle," and "southerly" storm drains, whereas there are only three storm drains and outlets (northern, central, and southern). The fictional "upper middle" is simply the 44 acres of off-site water that the City and the Developer shifted from the central storm drain to the Storm Drain [southern].

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drainage as an "upgrade" and by stating "We do not anticipate this matter will bring you any inconvenience."[8]

However, the best example of the approach taken by the Developer regarding the change in the off-site drainage occurred in our October 7 meeting when I asked the Developer's representative directly "When and how did you notify the Corrigans that the Project was diverting all of the off-site water from the central storm drain to the Storm Drain [southern] contrary to the statements made in the EIR process?" The Developer's attorney instructed the representative not to answer the question. The co-applicants were not caught off-guard by the question. Indeed, the Corrigans have been trying to get an answer to that question for more than a year. I have raised the same question in my correspondence to the Commission. Yet, neither the Developer nor the City has ever provided an answer. The answer, of course, is that the Developer and the City, both co-applicants, actively concealed the change in the off-site drainage system from the Commission and from the Corrigans.

Working together, the Developer and the City were able to complete their purposeful deception of the Commission and the Corrigans and keep everyone from learning of this shift of the off-site water based on (i) assurances made by the Developer at public hearings on the EIR and LCP that "the existing condition [of] the [southernmost] drainage area is not impacted by this project,"[9] (ii) the strength of the EIR, which was approved and finalized before the drastic change was made, (iii) obscure and misleading staff reports, and (iv) an inaccurate and incomplete MDR. This deceptive and misleading morass of a "record," which the Developer euphemistically and repeatedly describes as "complex,"[10] cannot constitute accurate and complete disclosure. It was never intended to be.

2. Non-City Ownership of Affected Sandy Beach Area

In its October 8 Letter, the Developer, in its two attempts to show disclosure to the Commission that the Corrigans, not the City, owned the affected area of the sandy beach, actually further supports the position of the Corrigans that it misled the Commission in this regard.

[8] See, June 29, 2000 letter to the Corrigans attached to my August 19, 2002 letter to the Commission.

[9] Paul S. Carey, P.E. at the October 1, 1997 Planning Commission Meeting. John Montgomery, the Assistant Director of Community Development for the City, was also in attendance.

[10] Developer October 8 Letter, p. 6.

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a. EIR Description of Adjacent Properties

As its best evidence in the voluminous Record of its purported disclosure of the Corrigan ownership of the affected sandy beach area, the Developer quotes the EIR (pp. 3-5) "[s]urrounding land uses include the Blue Lagoon residential condominium complex north of Treasure Island . . . South of the site, 17 single family residences **line the blufftop** seaward of Coast Highway, leading to Aliso Beach County Park, which extends for nearly one mile further to the south." [emphasis added]. Incredibly, that text specifically describes the residential lots as being on the blufftop. "Blufftop," of course, implies that such private property does **not** extend to the sandy beach below. Indeed, the only mention of the sandy beach is that it is a County park.[11]

Thus, the citation proves the Corrigans' point. Nowhere in the voluminous Record is there any mention that the property directly affected by the dramatic change in water flow from the southern Storm Drain is in fact the Corrigan Property.

b. Final Tract Map, EIR Figure 4.2.2, CDP Report Figure 2.4, and Commission CDP Staff Report Exhibit 25

In my September 13 letter, I describe with annotations on each map how each of these maps either shows an improper or missing property line relating to the Corrigan Property, shows the Corrigan Property as part of the on-site drainage area of the Project, and/or implies that the "sandy beach" is all City beach.

In its attempt to refute this characterization, the Developer merely argues that these maps "demonstrate" that the "sand beach owned by the City only relates to that portion of the sand beach included in the Project site."[12] Again, this circular argument is of no assistance and is inaccurate. The Aliso Beach County Park beach area is public and is not distinguished from the Corrigan sandy beach area.

Standards for Revocation

During our October 7 meeting, Commission staff several times reminded the Corrigans that it is rare for the Commission to grant a revocation request and that no one present could

[11] Further, this citation to the EIR undercuts the legal argument advanced by the Developer that statements made in the EIR process have no weight in this revocation request.

[12] Developer's October 8 Letter, p. 8.

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recall the last time that staff recommended that a revocation be granted.

The Corrigans respectfully submit that the application requirements of Regulation §13053.5[13] and § 13105[14] are completely meaningless unless the Commission is willing to enforce them by imposing revocation where appropriate. Otherwise, a clever applicant need only mislead the public and the Commission well enough to get beyond the 10-day appeal period following final action on the local permit. Such a policy is particularly harmful where, as here, the local permit would be granted by a co-sponsor of the project and a party to the deception.

For the Commission not to grant revocation on this matter requires the Commission to find both of the following items to be true: (i) the Developer's and City's repeated and consistent failures to disclose the shift in 44 acres of off-site water and the non-City ownership of the affected property all were unintentional and (ii) that, if the Corrigans had timely appealed the CDP based on the shift in off-site water (which was inconsistent with the EIR and LCP) without any corresponding mitigation measures, the Commission would not have required any mitigation for the 400% increase in water flow and 240% increase in drainage area or any mitigating beach maintenance agreement for the Corrigans (even though the City had required one for the relatively small amount of City property that would be affected by such drainage). It is difficult to imagine that the Commission would fail to take corrective action on such an appeal.

---

[13] California Code of Regulations, Title 14, Natural Resources, Division 5.5, California Coastal Commission , §§ 13001-13666.4 ("Regulations"). Regulation § 13053.5 provides: "(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

* * *

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit."

[14] §13105: "Grounds for revocation of a permit shall be: (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application; (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application."

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"Will-Serve Letter" Requirement of CDP Special Condition No. 7

During our October 7 meeting, the Developer provided the Corrigans for the first time with a copy of a letter to the Commission dated July 14, 2000 from the South Coast Water District as evidence of its compliance with the "will-serve letter" requirement of CDP Special Condition No. 7. The Corrigans offer the following observations: (i) the Corrigans have been asking the Developer for such a letter for 6 months, (ii) the letter is not the May 25, 2000 letter that counsel for the Developer attached to its September 5 letter to the Commission (as Exhibit H) and again referenced in the Developer's October 8 Letter as evidence of its compliance, and (iii) the letter only states that the diversion "can begin upon completion of the Treasure Island Development." What does that phrase mean? Special Condition No. 7 requires the diversion to begin prior to the opening of the resort. "Completion of the development" could be many months later and implies sometime after all residential units have been completed, which was clearly not the intention of the Commission in imposing Special Condition No. 7. Meanwhile, such nuisance flow from 100% of all off-site drainage will continue to be directed onto the Corrigan Property.

Conclusion

The Corrigans have been deprived of their opportunity to participate in the Developer's application process by the combined clever efforts of the City and the Developer that successfully concealed the relevant facts from them. The Corrigan Property was directly and dramatically impacted by the change in the off-site water drainage. However, the Record is absolutely clear that neither the City nor the Developer made any effort to inform them directly or to include a simple declarative sentence in any report regarding the change. The Developer and the City carefully drafted disclosures to the Commission to avoid any actual notice and understanding by the Commission of the existence or impact of the major change in the off-site water drainage. The Commission must not condone this conduct. Otherwise, developers, and co-applicant city sponsors, will be further emboldened by the Commission's own confirmation that they can ignore with impunity the application requirements of the Regulations by providing selective information and that the revocation remedy set forth in the Regulations is meaningless.

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The Corrigans respectfully submit that they have demonstrated to the Commission that adequate grounds exist for revocation of the CDP based on (i) this letter and my prior correspondence to you dated August 19 and September 13, 2002, (ii) the Developer's admissions in its correspondence to you dated September 5 and October 8, 2002, (iii) the matters observable by Commission staff during the October 7, 2002 site visit, and (iv) the admissions of the Developer and the City during our meeting on October 7. The Corrigans request that the Commission revoke the CDP unless the Developer agrees to the inclusion of appropriate additional mitigating conditions to the CDP.

The Corrigans thank the Commission staff for its time and attention to this matter.

Very Truly Yours,

Martin A. Flannes

Martin A. Flannes

cc (via fax):

Teresa Henry	California Coastal Commission	562.590.5084
Stephen Rynas	California Coastal Commission	562.590.5084
Alex Helperin, Esq.	California Coastal Commission	415.904.5235
Brian T. Corrigan, Esq.	(also) Attorney for the Corrigans	213.482.3246
Charles L. Deem, Esq.	Attorney for Laguna Beach Resorts, LLC	858.677.1477
Bruce Martin, Esq.	Attorney for Laguna Beach Resorts, LLC	602.253.8129
Philip D. Kohn, Esq.	Attorney for the City of Laguna Beach	714.546.9035

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Feb or Mar 2001

EXHIBIT No. 7

Application Number:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

Photos from Corrigans

California Coastal Commission

eb of Mar 2001

EX. 7
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Responses from Applicant's Legal Representatives

A. Letter of September 5, 2002
B. Letter of October 8, 2002

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F] 858-677-1477

September 5, 2002
VIA FAX & CERTIFIED US MAIL

Ms. Anne Blemker
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, California, 90802

Re: Laguna Beach Colony (f/k/a Treasure Island Resort) Project
CDP A-5-LGB-00-078 and CDP A-5-LGB-00-079 ("CDPs")

Dear Ms. Blemker:

This firm represents Laguna Beach Resorts, LLC, a Delaware limited liability company (the "Owner"), in connection with its development of the Laguna Beach Colony ("Project") located at 30801 South Coast Highway, Laguna Beach, California. We have received a copy of Martin A. Flannes' letter dated August 19, 2002 ("Flannes Letter") sent on behalf of Joseph and Lorretta Corrigan (collectively, the "Opponents"). The Flannes Letter requests revocation of the CDPs pursuant to Title 14 of the California Code of Regulations (the "Code") and further alleges that the Owner has failed to comply with the CDPs and certain conditions imposed by the California Coastal Commission ("Commission") in approving the CDPs.

The purpose of this response letter is to demonstrate that (1) the Opponents did not establish the grounds necessary for revocation and (2) that the Owner has fully complied with the CDPs and requisite conditions.

I. Factual Background.

In connection with the Project, at the instruction and direction of the City of Laguna Beach ("City") and in full compliance with the CDPs and associated conditions, the Owner designed and constructed a 48-inch diameter storm drain ("Drain") and outlet ("Outlet") to drain storm water from a small 2.2-acre portion of the Project and from an approximately 63-acre drainage area offsite and above the Project. The Drain and Outlet replaced and improved a pre-Project 24-inch diameter storm drain and outlet that ineffectively drained a portion of the Project site and the surrounding community for years prior to the Project's development. The Drain and Outlet are now owned by the City pursuant to Final Tract Map No. 15497, recorded April 5, 2002 (the "Final Map"), and the City has the obligation to maintain and repair the Drain and Outlet pursuant to CC&Rs recorded as Document No. 2002-0336672 of Orange County Official Records. The Outlet terminates near the southerly boundary of a City-owned beach parcel ("Parcel I" on the Final Map) and is situated such that the Outlet faces south towards the ocean. Depictions of the Drain, Outlet and Parcel I are attached hereto as Attachment A (which includes depictions from both the Final Map and Tentative Map). Just as storm water from the pre-Project drain may have flowed across portions of the Opponents' beach property, which lies just south of the City-owned beach parcel between said parcel and the ocean, it is possible that storm water discharge from the Drain may traverse a portion of the Opponents' sandy beach property

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The Flannes Letter's request for revocation of the CDPs is premised upon the Opponents' allegation that the Owner failed to inform the Commission prior to its approval of the CDPs about three components of the Drain and Outlet: (1) the 48-inch diameter size and capacity of the Drain, (2) the drainage area from which the Drain accepts storm water and (3) the location of the Outlet relative to the Opponents' beach property. These same allegations form the basis for the Opponents' request for a compliance order or new conditions to the CDPs.

Nevertheless, this response letter will demonstrate that the Owner and City provided complete and accurate information to the Commission relating to these circumstances. Indeed, the Owner and City were forthright in providing such information prior to the Commission's approval of the CDPs and the information was part of the administrative record on which the Commission relied in making its June 14, 2000 determination to approve the CDPs with conditions.

II. Legal Components of a Revocation Request.

The Code permits "any person *who did not have an opportunity to fully participate* in the original permit proceedings by reason of the applicant's intentional inclusion of inaccurate information" to request that the Commission revoke a coastal development permit. Code § 13106 (emphasis supplied). The party seeking revocation must specify with particularity the grounds for revocation and the request should not proceed to a revocation hearing if the request is "patently frivolous and without merit." Code § 13106. The requesting party must establish grounds for revocation by demonstrating an "[i]ntentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application." Code § 13105(a). The executive director may also institute revocation proceedings on its own motion provided that the grounds for revocation are established. Finally, the party bringing the revocation must do so with "due diligence." Code § 13108(d). This requires that the party making the revocation request file the request in a timely manner.

For both procedural and substantive reasons, the Opponents fail to establish the grounds necessary for the Commission to revoke the CDPs.

A. Opponents Lack Standing.

Opponents request for revocation is procedurally defective because the Code does not allow those who have had "an opportunity to fully participate" in the original permit proceedings to later bring a revocation request to the Commission. The Opponents participated in the Local Coastal Permit ("LCP") and CDPs proceedings by offering both oral and written testimony in connection with the Drain and Outlet and their impact on the Opponents' property.[1] Therefore, they are unable to now request revocation of the CDPs. While the executive director does maintain the authority to seek

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[1] The Flannes Letter itself demonstrates that the Opponents lack standing. *See* Flannes Letter at p. 6, item 4 (quoting comments made by the Opponents and incorporated into the administrative record). *See also* Enclosure 7 to Flannes Letter (Letter to City Attorney) at p. 2 (citing comments made by the Opponents in the administrative record). Furthermore, Opponents testified in front of the City Council during hearings on the CDPs. *See* Laguna Beach, Cal., City Council Minutes, February 15, 2000, attached hereto as Attachment B.

revocation on its own motion, the Opponents' lack of standing is no trivial issue because the standard triggering the institution of a revocation proceeding is lower for a third party request.[2] In essence, the Opponents' revocation request absent standing is borderline frivolous because the Opponents are evading the obvious purpose of the Code, which is to allow parties to have a remedy when they are left out of the permit hearing process as a result of a permittee's deception. Here, however, the Opponents have already availed themselves of the hearing process and presented their case to the City.

Notwithstanding the Opponents procedural difficulties in requesting revocation of the CDPs, their request also suffers from serious substantive flaws because they cannot establish the necessary grounds for revocation.

B. The Owner and City Provided Accurate, Correct and Complete Information.

The Opponents allege that the Owner and City "apparently never informed the Commission" of (1) the capacity and size of the Drain, (2) the size of the drainage area and (3) the Outlet's location relative to the Opponents beach property and insinuate that the Owner and City may have "misled" the Commission with regard to these contentions. These assertions, however, are patently false and are based on the Opponents taking certain language in the LCP, the Final Environmental Impact Report ("EIR"), the Master Drainage Report ("MDR") and the Treasure Island CDP Report, dated March 2000 ("CDP Report") out of context.

The information provided by the Owner and City to the Commission was a true, accurate and complete copy of the entire administrative record of the approval process of the CDPs, and included, without limitation, the LCP, EIR, MDR and CDP Report (the "Record"), as well as the minutes of public hearings conducted by the City Council and City departments. The Record provided adequate, accurate, correct and complete information to the Commission in connection with the Drain's and Outlet's size, capacity, location and drainage area.

1. Capacity and Size of the Drain.

The Flannes Letter incorrectly states that the Owner and City failed to inform the Commission that the Drain's capacity would increase and that its size would increase from 24 inches to 48 inches in diameter. A contextual analysis of the Record, however, demonstrates that the Owner and City provided accurate information to the Commission in connection with the design of the Drain and the capacity it would transport.

a. Increased Drain Capacity.

The Record clearly addresses the increased capacity requirements for the Drain. EIR Section 4.2 at page 4.2-1 indicates that the pre-Project design of the Drain (and catch basin for the Drain) was insufficient to capture the intended offsite storm water and states that "the engineer has determined

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[2] The executive director has more discretion to determine whether to institute revocation proceedings on its own motion. Code § 13106 (the director "may initiate revocation proceedings . . . when the grounds for revocation have been established"). However, a third party request for revocation requires that the Commission take action unless the request "is patently frivolous and without merit." Code § 13106.

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that the majority of flow bypasses this catch basin [on Coast Highway that connects to the Drain] and continues south towards Aliso Beach . . . . Preliminary calculations indicate that 15 percent of the existing peak 25 year flow is intercepted by this basin [and delivered to the Drain]." This provision of the EIR and other relevant provisions of the EIR are attached hereto as Attachment C.

Contrary to the Flannes Letter's misinterpretation suggesting that the Drain is limited to receiving flow at its pre-Project capacity level, the EIR is actually pointing out the inadequacy of the pre-Project conditions. Indeed, the EIR requires that the catch basin and Drain be upgraded to capture the flow bypassing the Drain. Specifically, EIR Project Design Feature ("PDF") 2-5 at page 4.2-8 of the EIR clearly requires that the Drain be upgraded: "Drainage inlets to be placed on the west side of Coast Highway shall be *sized to accommodate a 100 year storm event.* These improvements will provide *more efficient collection* of flood waters than existing conditions on the west side of Coast Highway." (Emphasis supplied.) In fact, the EIR specifically gives the City the discretion to increase capacity in order to accommodate 100 year flows. For example, PDF 2-3 at page 4.2-6 of the EIR provides that "[s]torm drains may be larger than shown on the figure, up to 42 to 39 inches, if the City determines that those sizes are needed." PDFs 2-3 and 2-5 are included as part of Attachment C. At the conceptual stage, it was clearly anticipated that the Drain and its capacity would be upgraded. Furthermore, the EIR affirmatively requires the Owner and City to upgrade the Drain to accommodate 100 year flows and increased flow from offsite sources.[3]

Finally, page 32 of the Commission Staff Report and Recommendation on Appeal of De Novo Coastal Development Permit, dated May 25, 2000 ("Commission CDP Staff Report"), acknowledges that the Project's Mitigation and Monitoring Program contained a standard condition (Standard Condition 2-3) requiring "the on-site drainage system shall be designed for a 100-year storm event in order to reduce bluff top erosion." This demonstrates that the Commission was aware of and required that the Drain's capacity would increase.

b. Increased Drain Diameter.

With increased capacity, it was necessary to increase the size of the Drain's diameter to 48 inches. The increase in diameter is clearly reflected in the Record:[4]

- The EIR gives the City flexibility in designing the Drain to accommodate the required increase in flow. *See* EIR PDF 2-3 at p. 4.2-6 (included as part of Attachment C).

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[3] *See also* EIR at p. 4.2-12 [Impacts and Mitigation Measures] ("the three primary drains [including the Drain] will be sized accordingly to accommodate the calculated cumulative surface flow from tributary off-site sources . . .") and at p. 4.2-13 ("Since the existing storm drain in Coast Highway does not have sufficient capacity to intercept all of the flow from this area, this proposed southerly system will provide capacity for all of the existing cumulative runoff in the entire drainage area, *assuming future improvements to the upstream system* by others") (emphasis supplied). EIR pages 4.2-12 and 4.2-13 are included as part of Attachment C.

[4] The Flannes Letter insinuates that neither the LCP nor the EIR contemplated any significant changes to the pre-Project condition of the Drain. Flannes Letter at p. 6, item 3. This section demonstrates that this assertion is incorrect.

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- The LCP clearly and unambiguously specifies that the Drain will be upgraded as part of the Project to a larger diameter.[5]

- Tentative Tract Map No. 15497 ("Tentative Map") was provided to the Commission and constitutes part of the Record. It clearly identifies the Drain as having a 48-inch diameter. A copy of the relevant portion of the Tentative Map is attached hereto as Attachment A.

- The CDP Report also demonstrates that an increased Drain diameter was a Project component. Page 2-11 of this document states "at the southerly end of the Resort Hotel, the existing 24-inch storm drain (public utility easement) which drains Fred Lang Park and approximately 18 acres off-site area will outlet through an upgraded *48-inch pipe* . . . ." This is specifically depicted on Figure 2.4 of the CDP Report. The relevant provisions and figures of the CDP Report are attached hereto as Attachment E.

- City of Laguna Beach Community Development Department Staff Report, dated September 19, 1999 ("City CDD Staff Report") identifies at page 6 that "drainage inlets and proposed storm drain pipe have been sized for a 100-year storm event." The City CDD Staff Report further notes that the Drain is proposed to be 48 inches in diameter. This relevant portion of the City CDD Staff Report is attached hereto as Attachment F.

- The MDR, prepared in connection with the City's approval of the CDPs, clearly identifies the Drain as being 48 inches in diameter on page 9. The relevant portion of the MDR is included as part of Attachment G.

The information described herein relating to Drain capacity and diameter was part of the Record and the Commission considered it in issuing the CDPs. Therefore, the Opponents are incorrect to now allege that the Owner and City misinformed the Commission as to the increase in capacity and diameter of the Drain.

2. Scope of the Drainage Area.

The Flannes Letter erroneously alleges that the Owner and City did not inform the Commission of the scope of the drainage area. Once again, analysis of the salient portions of the Record demonstrates that the Opponents are incorrect.

References in the Record and documents recorded in connection with the Commission's approval of the CDPs unambiguously demonstrate the Commission's awareness that the Drain's drainage area would include an area of approximately 63 acres, offsite and above the Project.

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[5] LCP § 10.6.1 at p. 10-35 [Conceptual Drainage Plan] states that the pre-Project Drain would be improved "by [constructing] a new catch basin on the ocean side of Coast Highway that will connect to the existing 24-inch storm drain which runs under Coast Highway and outlets at an existing outfall structure at the base of the bluff top. (This pipe is identified to be upgraded to 39 inches in the South Laguna Master Plan of Drainage.)" LCP § 10.6.1 is attached hereto as Attachment D.

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First, the Commission CDP Staff Report demonstrate the Commission's awareness that the Drain would accept discharge from the 63-acre offsite drainage area. Page 33 of this report states "Commission staff has since confirmed that it is the applicant's intent to divert dry weather nuisance flow (estimated to be approximately 5,000 – 6,000 gallons per day) from the project site and *from the 60 acre neighborhood above* the development to the wastewater collection system for ultimate treatment in the Coastal Wastewater Treatment Plant on a year-round basis." (Emphasis supplied.) This report then cites to an Exhibit 25 [Project Water Quality Improvements] attached to the report, which includes a reference to the offsite drainage area and a depiction of the offsite area. Exhibit 25 to the Commission CDP Staff Report is included as part of Attachment H.

Second, as a condition of the CDPs approval, the Owner was required to divert year-round nuisance flow "from the project site and from the *60 acre drainage area* above the site." Commission CDP Staff Report, Special Condition 7 at p. 8 (emphasis supplied).[6]

Third, in connection with approval of the CDPs, the Commission required the Owner to record a deed restriction ("Deed Restriction") to effect certain conditions of approval (including Special Condition 7). The Deed Restriction was acknowledged by the Commission on August 31, 2000 and recorded September 5, 2000 as Instrument No. 2000-0463206 in Orange County Official Records. Item "i" on Exhibit D of the Deed Restriction [Covenants, Conditions and Restrictions] specifically identifies the increased offsite drainage area. Deed Restriction Exhibit D is attached hereto as Attachment I.

The Commission clearly was aware prior to and at the time of the CDPs approval that the Drain would accept storm water from an offsite area of approximately 63 acres. The Record and recorded documents acknowledged by the Commission dispositively establish the Commission's awareness. Therefore, the Flannes Letter does not establish that the Owner or the City failed to provide accurate, complete or correct information to the Commission in connection with the CDPs applications. On the contrary, this section demonstrates that the City and the Owner provided and updated the Commission with accurate information.

3. Location of the Outlet.

The Flannes Letter alleges that the Owner and City did not inform the Commission of the Outlet's location relative to the Opponent's beach property. Once again, analysis of the relevant portions of the Record demonstrates that the Opponents are incorrect.

The location of the Outlet is depicted in numerous documents provided to the Commission as part of the Record. The Outlet is depicted on the Tentative Map (part of Attachment A). The Outlet is also depicted on the EIR at Figure 4.2.2 (Attachment C) and on page 3 of Exhibit 25 of the Commission CDP Staff Report (Attachment H). *See also* Attachment E (Figure 2.4 depicts the location of the Outlet as being near the Project's southerly property line).

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[6] Compliance with Special Condition 7 is addressed below.

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The Opponents utterly fail to demonstrate that the Owner or the City failed to provide the Commission with accurate, correct and complete information in connection with the Drain's and Outlet's capacity, diameter, drainage area and location. Therefore, the Opponents fail to demonstrate the grounds necessary for revocation under Code Section 13105. The Opponents request should be denied.

C. Opponents Lack Due Diligence.

The Opponents participated in the CDP and LCP hearing process by submitting both oral and written testimony. After considering the Record, the Commission approved the CDPs with conditions on June 14, 2000. According to the Flannes Letter, in January of 2002 the Opponents contacted the Commission and expressed concern with the Drain and Outlet. By this time, the Drain and Outlet were designed, constructed and approved by both the City and Commission. The City is currently the owner of the Drain and Outlet and pursuant to the Final Map and the CC&Rs and the City must repair and maintain the Drain and Outlet. Opponents filed this request for revocation August 19, 2002, more than two years after the Commission's approval of the CDPs.

In order to comply with the due diligence requirement of Code Section 13108(d), the Opponents had to file their request in a timely manner. The request for revocation was filed more than two years after the Commission approved the CDPs, after the Drain and Outlet were constructed and nearly eight months after the Opponents brought their concerns to the Commission's attention.[7] Such request, therefore, is not timely and for this reason the Commission should deny the Opponents revocation request.

III. Compliance with CDP and Conditions.

The Opponents assert that the Owner and City failed to comply with certain conditions of the CDPs, specifically EIR Mitigation Measure 2-1 and Special Condition 7. Opponents once again are incorrect. The Owner and City are in compliance with all applicable conditions, or will be at the time compliance is required. Furthermore, the Commission has on past occasion determined that the violation of the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the Code.[8]

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[7] During the time period of January 2002 through August 2002 the Owner's predecessor-in-interest (Five Star Resorts, LLC) and the Opponents tried to reach agreement for the maintenance of the Opponent's beach property. The Opponents, however, sought terms and conditions to a beach maintenance agreement that exceeded the reasonable scope of maintaining the Opponent's sandy beach area. The Owner initially considered entering such an agreement with the Opponents to be a good neighbor – such obligation was not required by and conditions to the CDPs. The Owner's obligation to maintain the beach area owned by the City is currently the subject of a beach maintenance agreement executed by the City and Owner and the Owner is complying with said condition.

[8] To the extent that the Flannes Letter requests revocation as a remedy for CDP compliance, this remedy is, therefore, inappropriate.

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A. Mitigation Measure 2-1.

EIR Mitigation Measure 2-1 requires that "*[i]f there is no practical method* of reducing the projected beach erosion to an insignificant level, as determined by the Coastal Engineer, *the project applicant shall enter into a Beach Maintenance Agreement* with the City or County of Orange to replace beach sand after significant storm seasons or events." EIR at p. 4.2-16 (included on Attachment C). As required by the EIR, the MDR was prepared in connection with the City's processing of the CDPs and the MDR was part of the Record submitted to the Commission in connection with its approval of the CDPs. The MDR anticipated changes and upgrades to the Drain and Outlet and recommended a concrete headwall and rip-rap apron of approximately 15 by 15 feet, which design was upgraded to 20 by 20 feet pursuant to the CDP Report and CDPs.[9] MDR at p. 6. However, the MDR determined that "[e]ven with the provided rip-rap apron, some erosion of beach sand at these outlets can be expected. Additional measures to further minimize erosion, such as impact dissipaters or large rip-rap aprons, *are not practicable in these locations* for both *safety* and aesthetic reasons." *Id.* (emphasis supplied). Based on this finding, the MDR recommended entering a beach maintenance agreement with the City as provided by EIR Mitigation Measure 2-1. Relevant portions of the MDR are included as part of Attachment G. Therefore, contrary to the Opponents' assertion, other methods to control sand loss are not practicable.

The Owner has complied with Mitigation Measure 2-1 and entered an Agreement Regarding Beach Maintenance with the City.[10] This document is included as Attachment J.

B. Special Condition 7.

Special Condition 7 requires that the Owner conduct year-round nuisance flow diversion. The South Coast Water District ("SCWD") has verified to the Commission that it has capacity and has committed to accept nuisance flow up to a maximum of 10,000 gallons per day on a year-round basis. *See* Exhibit 26 to the Commission CDP Staff Report (included as part of Attachment H). This condition requires diversion to begin on "completion of the project, and prior to the opening of the resort . . . ." Special Condition 7 is included in the Deed Restriction and is included as item "i" on attached Attachment I.

The Owner is in compliance with this condition and will commence diversion of nuisance flow when required by the CDP and Deed Restriction. The nuisance flow diversion system is completed and is ready for operation. Furthermore, as noted in Exhibit 26 to the Commission CDP Staff Report, the SCWD is prepared to accept diverted nuisance flow of up to 10,000 gallons per day. Contrary to Opponent's assertion that that "spirit and intent" of Special Condition 7 requires diversion at this

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[9] The rip rap was adjusted to reduce erosion and protect the bluffs. This adjustment was performed at the City's request and was contemplated in the CDP Report. *See* Section III.C below.

[10] The Opponents insinuate that the City's and Owner's obligation to enter a beach maintenance agreement are duplicitous because the Opponents allege that most of the water flow from the Drain crosses the Opponents' beach property and that the City and Owner did not make this information available to the Commission. However, as demonstrated in Section II.B.3 above, the Commission was aware of the Drain and Outlet location.

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time, the Project is not complete and the resort has not opened – the clear and unambiguous requirements triggering the Owner's obligation. Therefore, at this time, the Owner is not required to commence nuisance flow diversion but will do so no later than the opening of the resort, as required by the CDPs.

C. Recent Improvement to Outlet.

The Flannes Letter asserts that "modifications" to the Outlet made in March and April of 2002 contradict the approved CDPs and redirected water onto the Opponents' beach property. These assertions both mischaracterize the improvements made earlier this year and mischaracterize the Opponents' role in these improvements.

In January of 2002, the Opponents, the Owners predecessor-in-interest and the City met to discuss the Outlet. The parties agreed that the Project design engineer, The Keith Companies, Inc., would review the Outlet for the purpose of suggesting additional measures to help alleviate sand and bluff erosion. At the City's request the engineer prepared a report of its suggestions, which report was entitled "Treasure Island Storm Drain Outfall 'D' Design Report", dated March 5, 2002 (the "Outlet Update Report"). The Outlet Update Report is attached hereto as Attachment K.

Among other things this report documented and restated the pre-Project design of the Drain and Outlet and suggested additional measures to improve the Drain and Outlet. The Outlet Update Report recommended excavating sand down to bedrock at a deeper and steeper slope of 1.5:1 in addition to retaining the 20-foot by 20-foot riprap apron, thus decreasing beach erosion and backwash from the Drain. Outlet Update Report at pp. 4, 5. The purpose of this improvement was to upgrade the Outlet to reduce erosion and such improvements fully complied with the CDPs.

The work done was not a "modification" in the pejorative way Opponents suggest (i.e., that such work violated the CDPs). In fact, contrary to the Opponents' contention, the CDP actually authorizes and requires a 20 by 20 foot riprap apron. *See* CDP Report at Figure 2.5 included as part of Attachment E. CDP Report page 2-11 states that the Drain would "outlet through an upgraded 48-inch pipe and rip-rap (*see Figure 2.5*, Rip-Rap and Headwall Detail) . . . ." (Emphasis supplied.) This "modification", therefore, was actually an implementation of the CDPs and an effort by the City and Owner to further improve the system.[11]

Obviously, the Opponents are mistaken that the recent improvements to the Outlet are not in compliance with the CDPs. Furthermore, the City required and approved the recent improvements, which were performed under CDP authorization and in an extra effort to improve the already approved Drain.

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[11] The Opponents suggest that the Owner should consider constructing a diversion channel in underlying bedrock as one solution to storm water discharge. This solution, among others considered, however, is "*not practicable in these locations* for both *safety* and aesthetic reasons." MDR at p.6 (emphasis supplied); *see also* Outlet Upgrade Report at pp. 3-4. Thus, such additional measure is not required by either EIR Mitigation Measure 2-1 or the CDPs.

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IV. Conclusion.

The Opponents are unable to establish the grounds necessary to revoke the CDPs. The Record clearly, unambiguously and accurately identifies (1) the increased capacity and size of the Drain, (2) the increased drainage area served by the Drain and (3) the location of the Outlet relative to the Opponents' beach property. Likewise, the Opponents have not demonstrated the Owner's failure to comply with any provision of the CDPs nor any required conditions. On the contrary, the Owner is in compliance with the CDPs and all relevant conditions and will comply with all other conditions when required by the CDPs.

The Owner's predecessor-in-interest (Five Star Resorts, LLC) initially tried to be a good neighbor and offered to enter an agreement to provide beach maintenance for the Opponents' beach property (on terms similar to the Beach Maintenance Agreement between the Owner and the City) – although it is not required to do so under the CDPs. However, the Opponents demanded additional and unreasonable terms that were not consistent with merely maintaining the beach after storm events. Therefore, despite the Owner's good will, it was not possible to reach agreement with the Opponents.

For the reasons set forth above, we respectfully request that the Opponent's requests be denied. If you or your staff has questions or comments regarding our clients position in this matter, please call at your convenience.

Very truly yours,

Gray Cary Ware & Freidenrich LLP

By: Charles L. Deem

Charles L. Deem
cdeem@graycary.com

Admitted to practice in California

CLD:MRH
Attachments (listed below)
Gray Cary\SD\1523286.1

cc: Mr. Alex Helperin, Esq. (via fax and U.S. Mail)
Mr. John Mansour (via fax only)
Bruce Martin, Esq. (via fax only)
Karen M. ZoBell, Esq. (w/o attachments)
Michael R.W. Houston, Esq. (w/o attachments)
Philip D. Kohn, Esq. (via fax only)

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Attachments:

A - Drain Depiction, Tentative Tract Map No. 15497, Final Map No. 15497 (relevant portions)
B - Laguna Beach City Council Minutes, February 15, 2000 (relevant portion)
C - EIR (relevant provisions and depictions)
D - LCP (relevant provisions and depictions)
E - CDP Report (relevant provisions and depictions)
F - City CDD Staff Report (relevant provisions)
G - MDR (relevant provisions)
H - Commission CDP Staff Report (relevant provisions)
I - Deed Restriction Exhibit D
J - Agreement Regarding Beach Maintenance
K - Outlet Update Report (relevant portion)

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October 8, 2002
VIA ELECTRONIC TRANSMISSION & FEDERAL EXPRESS

Ms. Anne Blemker
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, California, 90802

Re: Laguna Beach Colony (f/k/a Treasure Island Resort) Project CDP A-5-LGB-00-078 and CDP A-5-LGB-00-079 ("CDPs")

Dear Ms. Blemker:

Thank you for the opportunity to meet with you, Mr. Steve Rynas, Ms. Teresa Henry and Alex Helperin, Esq., (on the telephone) regarding the request by Joseph and Lorretta Corrigan (collectively, the "Opponents") to revoke the coastal development permits issued for the Laguna Beach Colony development. This letter constitutes the response of Laguna Beach Resorts, LLC (the "Owner") to the September 13, 2002 reply letter sent by Martin A. Flannes, Esq., ("Reply") to the California Coastal Commission ("Commission) on behalf of the Opponents. The Reply again (or "formally" as the Opponents' counsel suggests) requests revocation of the CDPs pursuant to Title 14 of the California Code of Regulations (the "Code") and continues to allege that the Owner failed to comply with the CDPs and certain conditions imposed by the California Coastal Commission ("Commission") in approving the CDPs.

The Reply erroneously asserts that the Owner and City conceded certain factual points by not specifically addressing every item of Opponents' initial August 19, 2002 letter to the Commission ("Flannes Letter"). Such characterization is incorrect. No such concessions were made in the Owner's initial September 5, 2002 response letter to the Commission ("Owner's Initial Response") and no such admission can be implied. Rather, the Owner was responding to the pertinent legal arguments made by the Opponents in as clear and concise a manner as possible.

We will not use this letter to refute every factual assertion and legal conclusion in the Opponents' Reply or in the Flannes Letter. In general we disagree with many of the Opponents' factual characterizations and legal conclusions. Additionally, we are cognizant of the amount of documentation already sent to the Commission in connection with this matter. Therefore, this letter incorporates the Owner's Initial Response by this reference, and, to the extent practicable, this letter will refer to the Owner's Initial Response by page/section/attachment reference in responding to specific allegations contained in the Reply. Terms capitalized herein but not otherwise defined herein shall have the meaning attributed to them in the Owner's Initial Response.

The purposes of this letter are (1) to respond to specific newly-alleged assertions contained in the Reply, (2) to demonstrate that the Opponents still have not established the grounds necessary for revocation of the CDPs and (3) to show that the Owner has complied with the CDPs and requisite conditions.

EX. 8B
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I. Summary of Positions.

In summary, the following points were originally made in the Owner's Initial Response:

1. The Record clearly demonstrates the Drain diameter, capacity, drainage area and the location of the Outlet relative to the Opponents' sandy beach property. The Record was available not only to the Commission but also to all members of the public, including the Opponents. The Commission used the Record in issuing the CDPs and was aware of its contents. As such, the Owner did not intentionally provide inaccurate, erroneous or incomplete information.

2. The Flannes Letter and the Reply do not establish that the Owner provided inaccurate, erroneous or incomplete information to the Commission, nor do such documents demonstrate the Owner failed to provide the notice required by Code Section 13105(b).[1] –

3. A revocation proceeding does not permit the Opponents to challenge the Owner's or City's compliance with the CDPs. Nevertheless, the Owner has complied with all conditions imposed in the CDPs. Therefore, the Flannes Letter and Reply do not establish that the Owner has failed to comply with the CDPs, nor any conditions imposed pursuant to the CDPs approval.

Therefore, the Owner respectfully requests that the Opponents' requests be denied.

II. Response to Specific Issues Raised in the Reply.

The Owner responds to the issues raised in the Reply as follows, and such responses are organized to track the Reply's headings and page references:

A. Noteworthy Omissions in the Response (Reply p. 3).

1. October 1, 1997 Planning Commission Meeting.

The Reply takes the comments of the Project engineer at this meeting out of context. The Project engineer made these comments during the conceptual stage of the Project. While the Owner can understand how the Opponents could seek to misinterpret this one statement, the engineer's comments must be taken in the context of the entire Record. The Owner's Initial Response (§ II.B) demonstrates by numerous references to the Record that it provided the Commission (and any party taking the time to review the record) accurate, correct and complete information about the Drain and Outlet. The EIR (at p. 4.2-6) acknowledged that flexibility was required in designing the Drain, noted that the "design has not been finalized" and gave the City discretion to design a larger storm drain capacity and diameter. Thus, the Opponents take the Project engineer's remarks at a point when the Project was still in the conceptual development stage out of context. Furthermore, the meeting referred in the Reply was part of the Record and was reviewed by the Commission in making its findings and determinations in connection with the CDPs.

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[1] Unless otherwise noted, all references to code sections in this letter refer to Title 14 of the California Code of Regulations (the "Code").

Ex. 8B
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2. The July 2000 Promise.

The Reply alleges that the Owner "promised" to implement design changes to the Outlet. The text of these letters, however, demonstrates that no such "promises" were made. Regardless of the Opponents' claims in this regard, this subject is not properly within the Commission's purview because it approved the CDPs on June 14, 2000, prior to the alleged promise. Nevertheless, the letters to which the Reply alludes do not promise a specific resolution. The June 29, 2000 letter does not provide any specific assurance that a particular design will be followed. The July 12, 2000 letter also does not provide any specific assurance. Rather, the letter states that the Owner would "ask the engineer to design an 'embankment'." Essentially, this letter stated that the Owner would consider certain designs. The letters do not amount to a specific promise to construct an embankment. The Project engineer did look at creating an embankment. Such a device, however, would cut off public access across the entirety of the beach and below the mean high tideline. This would contradict Commission policies related to public access, and such device is not required by the CDPs. To the extent that the Owner could agree to anything, such agreement would necessarily be limited by the CDPs and conditions of approval. The Owner could not, and would not, agree to make a design change in a manner inconsistent with the CDPs.

3. Erosion to the Opponents' Sandy Beach Property/Bluff Failure.

At this time, the Owner is not able to assess the veracity of the Opponents' claims on these issues. Nevertheless, erosion of the sandy beach was a pre-existing condition occurring as a result of the pre-Project storm drain and outlet. The Outlet Update Report indicates that the pre-Project drain route traversed the beach at the approximate location of the current route and that such pre-Project drain caused erosion to the beach from time-to-time. According to the Outlet Update Report, however, natural processes typically replaced such sand erosion over a two to three-day period. Outlet Update Report at p. 3. The Owner is sending photographs detailing erosion caused by the pre-Project storm drain under cover of a separate letter.

B. <u>Proper Standing and Due Diligence (Reply pp. 4-7)</u>.

1. Specific Assurances to the Corrigans (Reply pp. 4-5).

As indicated in the Owner's Initial Reply in Section II.B, the Record establishes that the Owner provided accurate, correct and complete information to the Commission in connection with the Drain capacity, Drain diameter, drainage area and Outlet location. Further, the Record establishes that the Opponents participated in, and had the opportunity to fully participate in, the CDP process.[2]

The Drain capacity, diameter, offsite drainage area and the Outlet location were clearly articulated in the Record. Therefore, the Opponents were not prejudiced by a lack of information. Indeed, given the clarity of the record, it seems that what really occurred is that the Opponents did not review the Record until long after the Commission issued the CDPs. Thus, the Opponents request for revocation is not timely and, for this reason, they lack standing and due diligence to seek revocation of all or a portion of the CDPs.

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[2] The Owner did not submit <u>Attachment B</u> to the Owner's Initial Response to the Commission for the purpose of suggesting that the Drain or Outlet was discussed at that particular meeting. Rather, this Attachment merely demonstrates that the Opponents' participated in the CDP process and that they had an "opportunity to fully participate." Code § 13105(a).

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As discussed above, the Opponent's place great weight on the remarks made by the Project engineer at the October 1997 Planning Committee meeting. The Commission, however, must consider the entire Record. Certainly, if the Owner meant to mislead the City, the Commission or any other party, it would not have provided documentation specifically and unequivocally addressing the capacity, diameter, drainage area and location of the Drain and Outlet. *See* Owner's Initial Response at pp. 3-4 (Record references to the Drain capacity), 4-5 (Record references to the Drain diameter), pp.5-6 (Record references to the drainage area scope), pp. 6-7 (Record references to the Outlet location).[3]

The Owner did not promise to make design changes in a manner contrary to the approved CDPs. In fact, the design implemented by the Owner did not change from what the Commission approved.

Finally, the ultimate issue before the Commission in determining whether the Commission should revoke the CDPs is whether the Owner provided inaccurate, incomplete or erroneous information or failed to provide the required notice. The post-CDP approval correspondence between the Owner and the Opponents is not relevant to this inquiry, nor is it relevant to determining whether the Owner is in compliance with the CDPs or conditions.[4]

2. No Adequate Notice to the Opponents (Reply pp. 5-6).

The Reply insinuates that the Owner failed to notify the Opponents of its construction activity on the Drain and Outlet after the Commission approved the CDPs. The Reply, however, mischaracterizes the legal basis on which a notice-based revocation request can be brought.

Code Section 13105(b) ["Grounds for Revocation"] only allows for revocation of a CDP on grounds of failure to give notice if the applicant fails "to comply with the notice provisions of *Section 13054*, where the view of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application."[5] (Emphasis supplied.) Section 13054 does not impose upon the applicant or permittee an obligation to provide notice to any and all third parties at every juncture of the CDP process as the project moves toward approval. The Owner's purported "obligation" to give constant and repeated notices is essentially what the Opponents are arguing for in the Reply.

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[3] The Opponents' must also demonstrate that any inaccurate, erroneous or incomplete information was "intentional." The Opponent's have offered no evidence indicating the Project engineer's statement was intentionally misleading. Indeed, the EIR (which was certified after the Project engineer's statement was made) permits flexibility in designing the Drain, and in the context of a complex project, the October 1997 statements are best viewed as remarks on the conceptual framework of the Project. The entirety of the Record supports this conclusion.

[4] The Reply suggest that the term "upgrades" used by the Owner in post-CDP approval correspondence describing the Drain and Outlet (as approved in the CDPs) is misleading and should have been more precise. The Opponents, however, had access to the Record and certainly had the ability to review it. Apparently, the Opponents never spent the time reviewing the Record until after the Commission approved the *de novo* CDPs.

[5] Code § 13054 requires that the applicant provide to the Commission the names and addresses (along with addressed stamped envelopes) of certain parties that are located adjacent to or nearby the proposed project. It also requires that the applicant post a notice near the project site.

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Nowhere in the Reply or Flannes Letter is there evidence that the Owner or City failed to provide the statutory notice required by Code Section 10354. Thus, the Opponents' argument and the statutory provision cited by the Opponents are inapplicable to the facts alleged by the Reply.

3. Delay Tactics (Reply pp. 6-7).

The Reply reiterates the Opponents' allegation that the City and the Owner delayed resolving the alleged design infirmities of the Drain and Outlet. One should note, however, that the Opponents did not go to the Commission with their allegations until January 2002 (17 months after approval of the Drain and Outlet as part of the CDPs).

The Reply alleges the Owner (1) agreed to maintain the Opponents' sandy beach area and indemnify the Opponents, (2) engaged in bad faith negotiations and (3) had a duty to notify the Opponents of the Drain and Outlet design after the Commission approved the CDP. None of these allegations is correct.

First, the Owner did not agree to maintain the Opponents' sandy beach area or to indemnify the Opponents; rather, it agreed to take commercially reasonable efforts to document an agreement. In a February 8, 2002 letter to the City, the Owner agreed that it would "exercise commercially reasonable efforts to conclude an agreement" with the Opponents for beach maintenance and indemnity of personal and property damage occurring on the Opponents' sandy beach area consistent with the Opponents' "requirements [as] described in paragraph 3 of the letter dated January 31, 2002 from Martin A. Flannes, Esq. to Philip D. Kohn, Esq." This letter from the Owner is attached hereto as Exhibit 1. Paragraph 3 of the January 31, 2002 letter from Opponents counsel required that the Owner commit to (a) repairing erosion to the Opponents' sandy beach area, (b) indemnifying the Opponents for third party claims and damage to the Opponents' property "caused directly or indirectly from water flowing from the Outlet."[6] Thus, the Owner merely agreed to take commercially reasonable efforts to document such an agreement.

Second, the Owner did not engage in bad faith negotiation in documenting such an agreement. The Owner received a draft agreement from the Opponents on March 14, 2002. The Opponents, however, sought to include additional material terms that did not comport to their January 31, 2001 proposal, and such terms were not acceptable to the Owner.[7] Therefore, contrary to the Opponents' assertion, the failure to reach agreement was a result of the Opponents' adding terms that were outside of what the Owner initially sought to document, and such terms were not commercially reasonable.

Third, the Reply is incorrect that the Owner had a special and specific duty to individually notify the Opponents about all aspects and circumstances surrounding the construction of the Drain and Outlet. There is no basis for this assertion in the Code.

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[6] The letter from the Opponents counsel has been previously provided to the Commission by Mr. Flannes. The quotation thereto is located on page 9 thereof.

[7] These material terms included a lifetime free membership at the resort spa and indemnity for the deposit of hazardous material on the Opponents' beach from offsite sources. However, Owner does not own nor have an obligation to maintain the Drain and, therefore, could not reasonably bear the cost for offsite hazardous material deposits which it had not control over. These added requirements clearly were outside of indemnifying for damage caused by "water flowing from the Outlet."

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C. Failure to Provide Accurate, Correct and Complete Information.

The Reply essentially rephrases and repackages arguments in the Flannes Letter. This response will not do the same thing. Rather, this section will merely address points raised by the Reply as a matter of first impression. The Commission should refer to the Owner's Initial Response for a thorough analysis supporting the conclusion that the Record provided the Commission with accurate, correct and complete information relating to the Drain diameter, capacity, drainage area and Outlet location.

The essence of the Reply and the Flannes Letter is that the Record is, at a minimum, unclear and ambiguous and, at most, duplicitous, inaccurate, incomplete and erroneous. Neither of these characterizations is correct, however. The Owner acknowledges that the Project is complex and that this complexity was reflected in the Record, which contained a large amount of technical data and design review. As the Project moved through the City, LCP and CDP approval processes, conceptual designs were reviewed by numerous governmental entities, including the City and Commission. Alterations were made to the Project's design in many areas prior to issuance of the CDP. Therefore, the Owner appreciates the complexity of the Record. However, the Opponents' allegation that the Owner intentionally provided "inaccurate, erroneous or incomplete information" (Code § 13105(a)) is not a sustainable proxy for their own failure to review the Record, despite its complexity.

1. Code Section 13053.5 – Description of Vicinity (Reply pp. 7-8).

The Reply asserts for the first time that the Owner violated Code § 13053.5 because it did not inform the Commission of the nature of the surrounding area and the impact of the Drain and Outlet on the Opponents' sandy beach area. This is incorrect. The Owner and City properly complied with all application procedures.

The application and the Record satisfied the requirements of Section 13053.5. Absent an incomplete or inaccurate description of the vicinity, the City and Commission would not have been able to deem the application complete. The EIR also described the surrounding vicinity. Page 3-5 of the EIR states, "[s]urrounding land uses include the Blue Lagoon residential condominium complex north of Treasure Island . . . . *South of the site, 17 single family residences line the bluff-top seaward of Coast Highway*, leading into Aliso Beach County Park, which extends for nearly one mile further to the south." (Emphasis supplied.) This was sufficient to inform the Commission "as to present uses and plans, both public and private." Code § 13053.5(a).

Code Section 13053.5 also requires the application "include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment." The Opponents did not offer one scintilla of evidence demonstrating that the CDP application, which the Owner submitted to the City and the City deemed complete on September 29, 1999, failed to satisfy Section 13053.5's requirements.

2. EIR and LCP (Reply pp. 8-9).

The Reply repackages the arguments first made in the Flannes Letter. The Owner's Initial Response clearly detailed that the EIR and LCP permitted the City to adjust the size of the Drain to accommodate more volume. The Reply erroneously alleges that the transfer of offsite drainage

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area to the Drain (as opposed to having it remain part of the flow being transmitted from the "central" drain) mislead the Commission. This assertion is incorrect. As noted in the Reply, the CDP Report (at p. 2-11 and 2-12 and the MDR at p. 6) clearly articulates that the offsite drainage area would travel through the Drain. The modification from the "conceptual design" included in the EIR and LCP is reasonably accounted for (and allowed by the LCP), and such information was provided to the Commission. The Opponents had the opportunity to review this information during the CDPs hearing process. The basis for such modification is that the City has the obligation to maintain the drains transferring offsite storm water. Therefore, the City required that all offsite flow be transmitted through the Drain, for efficiency. This modification was adequately noted in the Record relied upon by the Commission.

3. CDP Report (Reply pp. 9-10).

The Reply insinuates that the CDP Report "disguises the huge change to the Storm Drain" by describing "four storm drains." This mischaracterization incorrectly suggests that the Owner was duplicitous in describing the storm drain system. The Record reflects that such an assertion is incorrect. The Owner's Initial Response Attachment E provides a total excerpt of the CDP Report relevant to this issue. It clearly states that offsite flow would pass through the Project in the Drain and exit the site at the Outlet. The storm drain system is complex and the CDP Report articulates, as clearly as possible, the mechanics and location of the drains and outlets making up the entirety of the storm drain system. The "increase" in the Drain's drainage area was contemplated by the CDP Report and allowed by the Commission. The CDP report accurately described the design by which offsite storm water will be directed to the Drain. This is clear and as concise as possible and accurately reflected in the CDP Report.

There was no "four storm drain charade" (Reply p. 10), as the Reply asserts. The Record always stated that there would be three storms drain outlets and three main drains. Further, the CDP, the MDR and the Outlet Update Report took a complex engineering project (the storm drain system) and tried to simplify its components so that the Commission had accurate and complete information as to its operation and the drainage area of the Drain.

4. City CDD Staff Report (Reply p. 10).

The EIR at PDF 2-3 (p. 4.2-6) states "storm drains may be longer than shown on the figure, up to 42 to 39 inches . . ." The City CDP Staff Report cross reference to the EIR correctly cites the parameters included in EIR PDF 2-3. Therefore, the Reply incorrectly alleges that the City CDP Report contained erroneous information.

5. Master Drainage Report (Reply p. 10).

The Project engineer prepared the MDR in compliance with the City's requirements and industry standards. The Reply merely asserts that the MDR is "seriously flawed" but does not offer any specific evidence that the MDR was prepared outside of industry protocol. This issue was never raised by the Opponents during the Commission hearings and no evidence suggests that the Reply's allegation is even remotely correct.

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6. Commission Awareness of the Drainage Area (Reply p. 10).

The Reply insinuates that the Commission was not aware that the 63-acre offsite drainage area would travel through the Drain.

The Commission was aware that the Drain would accept storm water from nearly 63 acres of offsite drainage area. The Record includes the CDP Report and the MDR, which expressly states that the Drain would drain storm water from approximately 63 acres. The Reply, therefore, is incorrect in its assertion that the Commission had no awareness of the scope of the offsite drainage area.

7. Outlet Update Report (Reply pp. 10-11).

The Reply re-asserts that the Owner and City were somehow deceitful by having the 63-acre offsite drainage area exit the Project site at the Outlet. Once again, however, the Owner's Initial Response clearly demonstrates that the Record provided adequate basis for having the 63 acres drain through the Drain and exit the Outlet. (Owners Initial Response pp. 5-6.) There are sound bases for having the Drain accept offsite flow, which is why the City required the offsite flow to be directed to the Drain. First, as noted previously, the City must maintain drains carrying offsite storm water. The City, therefore, required that the same drain carry all offsite storm water. This was the most efficient and safest method for the proper treatment and release of offsite storm water flow. Second, the Project engineer and City determined that the central storm drain and outlet were not the appropriate delivery structure because there was the potential for bluff failure at that location. Therefore, the City concluded (and the Owner agreed) that the Drain and Outlet should service offsite flow. Third, the basis for this conclusion was spelled out in the Outlet Update Report (Owner's Initial Response Exhibit K): there was a historical basis for draining offsite flow from Pacific Coast Highway at the site of the current Outlet. The Outlet Update Report (at p.1) noted that the pre-existing storm drain had been operating there for at least 10 years. The pre-existing drain's drainage path provided a historical route for offsite drainage. Therefore, the Project engineer and City concluded that the Drain and Outlet provided the appropriate mechanism to ferry offsite storm water.

8. Location of the Outlet Relative to the Corrigan Property (Reply p. 12).

The Reply strains to provide a basis by which it can allege that the Owner and City misled the Commission about the location of the Outlet relative to the Opponent's property. The maps provided as part of the Owner's Initial Response were part of the Record. They accurately depicted the Outlet's location. All of these maps show the Owner's property line and the Record demonstrates that the Commission therefore had notice of the Opponent's property to the immediate south of the Project site as well as the location of the shoreline relative to both properties. Therefore, the Commission had accurate and complete information of the Outlet location relative to the Opponent's property. The maps contained in the exhibits attached to the Owner's Initial Response do not insinuate that the "sand beach" includes the Opponents' private beach. Rather, a review of these documents demonstrates that the sand beach owned by the City only relates to that portion of the sand beach included in the Project site.

D. Compliance with CDP and Conditions.

The issues raised by the Opponents relating to CDP and condition compliance is not germane to the issue of whether the Commission should revoke the CDPs, as the Opponents request. The

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Commission has iterated this point of law numerous times. Indeed, the Commission made this point in its January 19, 2001 "Staff Report: Revocation Request" that related to a revocation request brought by the South Laguna Civic Association and Village Laguna in connection with the Project's tentative map: "A violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of Regulations."

Therefore, as the Commission is only considering revocation of the CDPs, the Opponents' allegations that the Owner is not in compliance with the CDPs and conditions are immaterial and should be rejected. Similarly, there is no legal or factual merit to Opponents' suggestion that the Commission can conditionally deny revocation, based upon the Commission's imposing upon the Owners or the City new conditions of approval. Nevertheless, as the Opponents have made such allegations, the Owner hereby responds as follows.

1. Mitigation Measure 2-1 (Reply pp. 13-15).

The MDR and Outlet Update Report analyzed several alternatives to the design permitted by the Commission and constructed by the Owner. The Project engineer, as allowed by EIR mitigation measure 2-1, determined that these alternatives were not practicable for numerous reasons, including public safety, aesthetic and public access reasons. The Opponents have offered several alternatives, including (i) a diversion berm to direct storm water away from their property, (ii) a subterranean pipe outletting storm water offshore and (iii) a culvert cut down to bedrock. None of these suggestions complies with the CDPs. The diversion berm would inhibit public access to the sand beach and below the mean high-tide line (which is public property). The subterranean pipe would affect marine biological resources, resources cited in the LCP and EIR as being significantly impacted by an underwater storm drain outlet. (See EIR at pp. 4.4-10 – 4.4-12; LCP § 3.1.2.) Finally, a bedrock culvert would inhibit public access to the beach and would not necessarily prevent erosion of the beach.

The Project engineer's concluded that there were no practicable alternatives to the Drain and Outlet design approved by the Commission. Therefore, the Owner and City satisfied Mitigation Measure 2-1 by entering into a beach maintenance agreement with the City.

The Reply asserts that the Outlet is a total failure because there is a possibility that erosion will occur on the Opponent's sandy beach area. The Reply and Flannes Letter neglect to inform the Commission that erosion occurred during operation of the pre-Project drain system. The Owner has provided pictures to the Commission that demonstrate that the pre-Project drain and outlet design caused significant erosion. The MDR acknowledged that natural forces normally replaced this sand erosion within two to three days. (MDR p. 5.) Additionally, the Reply does not consider the positive features of the Drain and Outlet that actually benefit the Opponent's property. These features are discussed in a letter from the Owner to the Commission, which letter is being sent under separate cover. In summary the Owner's letter states that the Drain and Outlet offer the following benefits that did not exist in the pre-Project design: (1) 10,000 gallon per day diversion of a first flush that prevents this water from ever reaching the beach, (2) inclusion of a continuous deflection system ("CDS") that traps debris and trash before it reaches the beach and (3) fossil filters in the catch basins to treat storm water before it reaches the beach.

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2. Special Condition No. 7 (Reply p. 15).

The South Coast Water District letter attached to the Commission Staff Report as Exhibit 26 indicates that "all other District facilities have the capacity to convey/treat the estimated wastewater flow and estimated 10,000 gallon per day dry weather nuisance water runoff."

3. Modifications to the Outlet (Reply p. 16).

No "modification" was made to the Drain or Outlet. The Drain and Outlet were constructed in compliance with the CDPs. The adjustment to the Outlet made in March and April of this year was just that, an adjustment that deepened the rip rap slope to slow and dissipate storm water. (See Owners Initial Response at p. 9.) This adjustment was within the design parameters of the CDP and did not require further Commission approval. Further, it certainly did not require the approval of the Opponents.

For the reasons provided in the Owner's Initial Response, which are incorporated herein by this reference, and for the reasons included in this letter, we respectfully request that the Commission deny the Corrigan's request for revocation of the CDPs.

Please call me if you have any questions.

Very truly yours,

Gray Cary Ware & Freidenrich LLP

By: Charles L. Deem

Charles L. Deem
cdeem@graycary.com

Admitted to practice in California

CLD:MHR:mfm
Exhibits
Gray Cary\SD\1526057.2

cc: Mr. Alex Helperin, Esq. (via email only)
Mr. John Mansour (via email only)
Bruce Martin, Esq. (via email only)
Karen M. ZoBell, Esq.
Michael R.W. Houston, Esq.
Philip D. Kohn, Esq. (via email only)
Martin A. Flannes, Esq. (via email only)
Brian T. Corrigan, Esq. (via email only)

Exhibit 1: Letter from Owner to City, dated February 8, 2002

Ex. 8B
10/10

September 5, 2002

Mrs. Anne Blemker
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Dear Mrs. Blemker:

This letter is in response to a letter prepared by Martin Flannes dated August 19, 2002, sent on behalf of Joseph and Lorretta Corrigan regarding the Treasure Island Resort Project (Coastal Development Permits [CDPs] A-5-LGB-00-078 and A-5-LGB-00-079). Mr. Flannes's letter requests revocation of the CDPs and alleges that the owner/applicant and the City have failed to comply with the CDPs and certain conditions of approval. At issue are the 48-inch storm drain, its outlet and related facilities at the south end of the project near the Corrigan's property. The City is aware that the owner/applicant of the project has prepared a response letter and we have reviewed the factual content contained therein. The purpose of this letter is to clearly concur with the owner/applicant's rebuttal letter and to affirm that the City and owner/applicant are in full compliance with the CDPs and conditions of approval regarding the Treasure Island Project.

The main points the City wants to emphasize are as follows:

- The owner/applicant and the City fully informed the Coastal Commission prior to approval of the CDPs about the storm drain's size and capacity.
- The owner/applicant and the City fully informed the Coastal Commission prior to approval of the CDPs about the drainage area from which the storm drain accepts storm water.
- The owner/applicant and the City fully informed the Coastal Commission prior to approval of the CDPs about the location of the storm drain.
- The owner/applicant and the City are in full compliance with the CDPs and conditions of approval.

The City respectfully request that the Corrigan's requests be denied. If you have any questions or want to visit with staff directly on these matters, please call John Montgomery at (949) 497-0361.

Sincerely,

Kenneth Frank
City Manager

cc: City Council
City Attorney
Director of Community Development
Athens Group

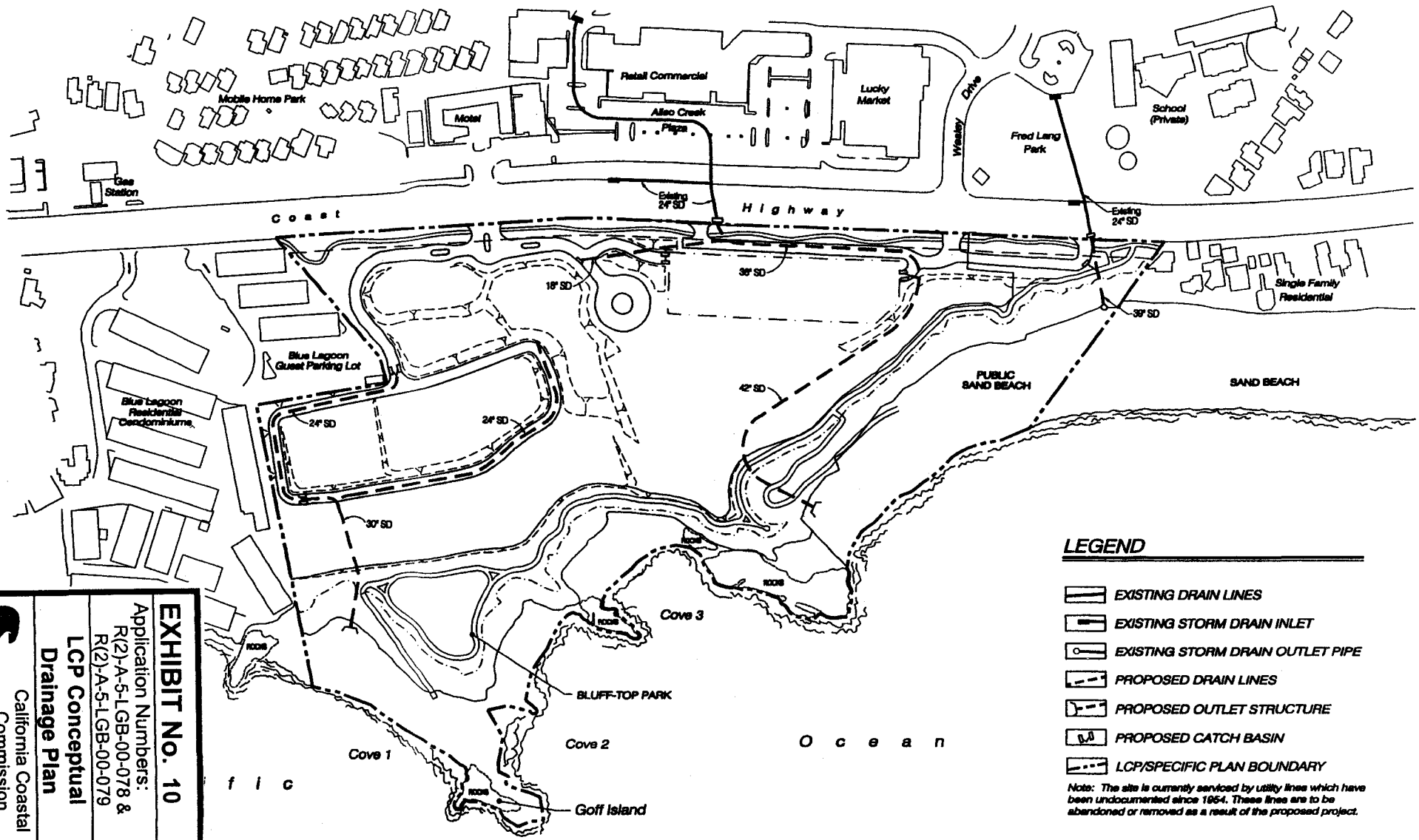

EXHIBIT No. 10

Application Numbers:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

LCP Conceptual Drainage Plan

California Coastal Commission

Treasure Island
LAGUNA BEACH, CALIFORNIA

Figure 10.6-1
CONCEPTUAL DRAINAGE PLAN

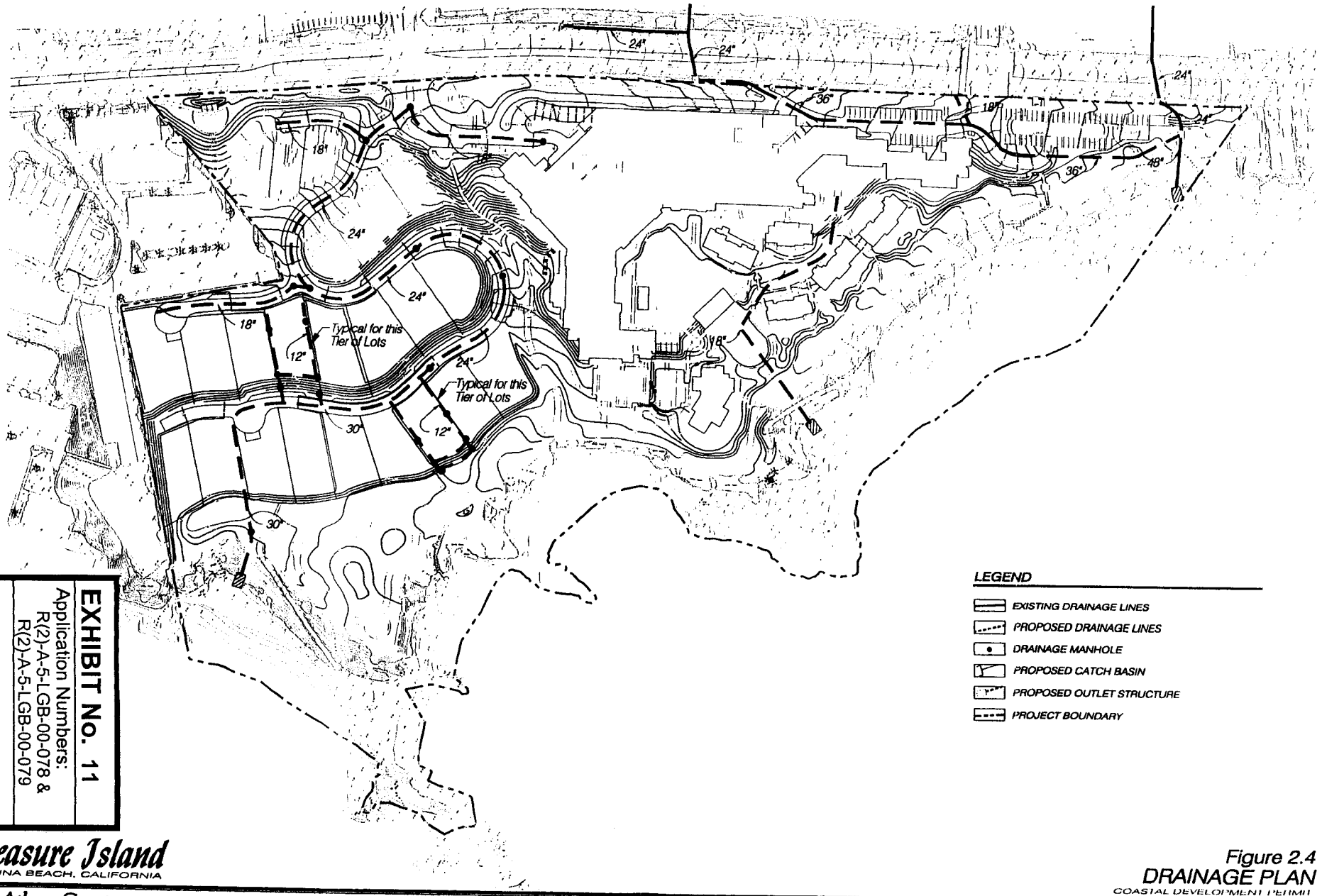

EXHIBIT No. 11

Application Numbers:
R(2)-A-5-LGB-00-078 &
R(2)-A-5-LGB-00-079

CDP Drainage Plan

California Coastal Commission

Treasure Island
LAGUNA BEACH, CALIFORNIA
The Athens Group

Figure 2.4
DRAINAGE PLAN
COASTAL DEVELOPMENT PERMIT

October 8, 2002

Anne Blemker
Coastal Program Analyst
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Montage Resort & Spa (Formerly Treasure Island)
Revocation Request Response

Dear Anne,

In order to restate a few water quality measures that have been implemented as part of the Treasure Island Local Coastal Program and subsequent Coastal Development Permit, the following improvements are associated with the southern storm drain system and outfall (storm drain D):

1. The street catch basins including those in Coast Highway within the tributary area of storm drain D will now be provided with fossil filters capturing trash and solids preventing them from ending up on the beaches and into the ocean.
2. All storm water will also pass through a Continuous Deflection Separator (CDS) that will further capture trash and solids preventing their deposit on the beaches and in the ocean.
3. A dry weather nuisance flow diversion to the sewer system of up to 10,000 gallons per day is almost complete. This will divert most if not all nuisance water to the sewer system for approximately 6-8 months a year and will come on-line prior to the opening of the hotel.
4. The first flush of a rainstorm that includes the most trash and solids will also be filtered through the CDS unit.
5. These improvements will be regularly maintained by the City of Laguna Beach.
6. Both the City of Laguna Beach and the Hotel Operator will maintain the beach on a regular basis.
7. A beach maintenance agreement with the City Of Laguna Beach has been filed which requires the Hotel Operator to replenish the sand lost due to storm drain activity during a major storm event with adjacent sand.

We hope this will serve as a recap to the improvements that have been implemented at Storm Drain D. In addition we have included an updated copy of the "Master Drainage Report" which is item R of your administrative record and an updated copy of the "Water Quality Management Plan" which had been updated twice since the one you have as item Q of your administrative record.

Additionally, We have enclosed some pre-project/ pre-construction photos of the storm drain in question, as it previously existed. It is obvious the storm water from the outfall had a tendency to channel straight through the beach to the ocean crossing the Corrigan's property even in its original condition as a 24-inch outlet. Please call me with any questions you might have.

Regards,

Sean Finnegan Project Coordinator
CC John Montgomery, City of Laguna Beach

30801 South Coast Highway
Laguna Beach, CA 92651
949/499-4794 Fax 949/499-4174