


CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
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Item W21e

Filed: August 20, 2001
49th Day: N/A
180th Day: N/A
Staff: KFS-LB 
Staff Report: January 17, 2002
Hearing Date: February 5-8, 2002
Commission Action:

**STAFF REPORT: APPEAL - DE NOVO**

LOCAL GOVERNMENT: City of Dana Point
LOCAL DECISION: Approval with Conditions
APPEAL NUMBER: A-5-DPT-01-336
APPLICANT: Kirk Bell
APPELLANTS: Coastal Commissioners: Sara Wan & Shirley Dettloff
PROJECT LOCATION: 35405 Beach Road, Dana Point, Orange County

RECORD PACKET COPY

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

SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:

At a public hearing on November 13, 2001, the Commission determined that **a substantial issue existed** with respect to the grounds on which appeal number A-5-DPT-01-336 had been filed because the locally approved development raised issues of consistency with the City of Dana Point Local Coastal Program and the public access and recreation policies of Chapter Three of the Coastal Act.

Capistrano Bay, where the subject site is located, is a private gated shorefront community with a private beach. Lateral public access along the beach is limited to the area seaward of the mean high tide line. Capistrano Bay has a history of beach erosion, flooding, and wave induced damage to structures. Revetments and other shoreline protective devices are commonly used in Capistrano Bay to protect against such hazards.

The City's approval required the applicant to retain and maintain a concrete block wall thought to be a seawall on the subject site. There is also anecdotal information suggesting that there is a revetment (or remnant thereof) currently buried on the sandy beach. The City's requirement to preserve shoreline protective measures suggested that the proposed development would be reliant upon shoreline protective measures. Construction of new development reliant upon shoreline protective measures would be inconsistent with LCP policies which require avoidance of the use of such devices in new development. The potential reliance upon shoreline protective devices also raised issues regarding future effects of the development on the beach and associated impacts upon public access along the beach. Furthermore, there were possible issues regarding whether the development was sited in a manner which would preserve the public's ability to use tidelands to traverse the beach. In response to the appeal, supplemental coastal engineering information has been submitted documenting that the development is not reliant upon any shoreline protective device. This information clarified that the concrete block wall thought to be a seawall is only a garden wall and can be removed without adverse impacts. It remains unclear whether there is a buried revetment on the site, however, the development is not reliant upon any buried revetment and the applicant is willing to remove any revetment if any part becomes exposed on the beach (Exhibit 8). The supplemental coastal engineering information also demonstrated that the development is sited in a manner which will protect the public's ability to traverse the beach using public trust lands.

Staff recommends that the Commission, after a public hearing, **approve a de novo coastal development permit** for the demolition of an existing residence and construction of a new residence with eight (8) special conditions which 1) note that this approval does not effect conditions imposed by the City for purposes other than compliance with the Coastal Act; 2) require the applicant to execute and record an assumption-of-risk deed restriction; 3) require the applicant to execute and record a deed restriction waiving any rights for shoreline protective measures; 4) require the applicant to comply with certain construction phase best management practices; 5) require the applicant to submit a drainage and polluted runoff control plan which incorporates best management practices; 6) require the applicant to comply with plans submitted; 7) require the applicant to comply with the recommendations of the coastal engineer regarding foundation design and 8) requires the applicant to remove any shoreline protective devices which may be buried on the site and become exposed over time.

SUBSTANTIVE FILE DOCUMENTS:

- City of Dana Point Local Coastal Program (LCP)
- Wave Runup Study by Skelly Engineering dated January 2001
- Letter from Skelly Engineering dated December 24, 2001
- Letter from Skelly Engineering dated October 24, 2001

I. STAFF RECOMMENDATION FOR APPROVAL:

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

Motion: ***I move that the Commission approve CDP No. A-5-DPT-01-336 pursuant to the staff recommendation.***

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

Resolution to Approve CDP No. A-5-DPT-01-336:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the requirements of the City of Dana Point certified Local Coastal Program and is consistent with the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. **STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. **SPECIAL CONDITIONS:**

1. **Local Government Conditions of Approval**

Special Condition 10 of the City's approval shall be deleted or modified to conform with the requirements of this permit. For all other conditions, approval of Coastal Development Permit No. 5-DPT-01-336 has no effect on conditions imposed by the City of Dana Point pursuant to any authority other than the Coastal Act.

2. **Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction**

- A) By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property, that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards, (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from injury or damage due to such hazards.
- B) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of

subsection A of this condition. The deed restriction shall include a legal description of the applicant's parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. No Future Shoreline Protective Device

A(1) By acceptance of this permit, the applicant agrees, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-5-DPT-01-336 including, but not limited to, the residence, foundation, decks and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 and City of Dana Point Local Coastal Program Conservation/Open Space Element Policy 2.14.

A(2) By acceptance of this permit, the applicant further agrees, on behalf of themselves and all other successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence, foundation and decks, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

B. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO.

A-5-DPT-01-336, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity;
- (b) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- (c) Construction debris and sediment shall be properly contained and secured on site

- with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (d) Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day;
 - (e) The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - (f) A pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines;
 - (g) All BMPs shall be maintained in a functional condition throughout the duration of the project.
 - (h) Debris shall be disposed at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required.

5. Drainage and Polluted Runoff Control Plan

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director a drainage and runoff control plan, including supporting calculations, which indicate that drainage and polluted runoff controls shall incorporate structural and non-structural Best Management Practices (BMPs) designed to minimize the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site. The plans shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with the geologists' recommendations. All design and construction plans, including but not limited to grading plans, foundation plans, site plans, floor plans, elevation plans, roof plans, landscape and hardscape plans shall be consistent with the final drainage and runoff control plan. In addition to the specifications above, the plans shall be in substantial conformance the following requirements:
- (1) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
 - (2) Design elements which will serve to reduce directly connected impervious area and maintain permeable space within the development shall be incorporated where feasible. Options include the use of alternative design features such as concrete grid driveways and/or pavers/stepping stones for walkways, and porous material for or near walkways and driveways;
 - (3) Runoff from all roofs, parking areas, driveways and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices, where feasible. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge excess runoff from the

building site to the street in a non-erosive manner.

- (4) The plan shall include provisions for maintaining the drainage and filtration systems, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. **Compliance With Plans Submitted**

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth above. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

7. **Conformance of Design and Construction Plans to Coastal Engineering Investigation - Hazards**

- A. All final design and construction plans, including grading, foundations, site plans, floor plans, elevation plans, and drainage plans, shall be consistent with all recommendations contained in the *Wave Runup Study, 35405 Beach Road, Dana Point, Ca* dated January 2001, *Response to California Coastal Commission Appeal...* dated October 24, 2001, and *Additional Information Requested by California Coastal Commission...* dated December 24, 2001 prepared by Skelly Engineering of Encinitas, California. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced coastal engineering evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Removal of Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of themselves and all other successors and assigns, in accordance with an amendment to this permit or a new coastal development permit, to remove any possible pre-existing shoreline protective device(s), or portion(s) thereof, which become exposed on the beach on the subject site. Removal of exposed shoreline protective devices, or exposed portions thereof, shall occur in a timely manner to avoid further encroachment of any structures on the beach and to minimize impacts to the beach from removal efforts. Such removal shall be conducted by a qualified professional with expertise in the special demands inherent with demolition/construction on the beach and adjacent to the ocean.
- B. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-5-DPT-01-336**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND

1. Project Location

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

2. Project Description

The proposed project is the demolition of an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel (Exhibit 2). The existing residence is single story and has 1,337 square feet of living space plus a detached 540 square foot garage (Exhibit 2, page 1). There are also existing concrete walkways and patios surrounding the residence including a patio on the seaward side of the structure. Also, an existing approximately 3 foot high concrete block wall is located seaward of the residence and patio (Exhibit 2, page 2).

This low wall was previously identified by the City as a shoreline protective device. However, further investigation by the applicant's coastal engineer has shown that this wall has a shallow footing and serves only as a low garden wall and not as a shoreline protective device. The applicant is proposing to demolish this existing garden wall. In addition, as will be discussed more fully later in these findings, there may also be a buried rock revetment which traverses the site seaward of the existing residence.

The existing residence, garage, concrete patios, walkways and garden wall would be demolished and a new two story, 28 foot tall¹, 3,530 square foot residence would be constructed (Exhibit 2, pages 3-5). The new residence includes an attached two car garage on the landward side of the site. In addition, a new patio would be constructed on the seaward side of the residence. The new patio would extend approximately 12 feet further seaward than the existing patio. However, the new house would be no further seaward than the existing house. The new patio and residence would be consistent with the stringline setback requirements established in the certified LCP.

The enclosed living space and seaside patio would be constructed on a grade beam and caisson foundation system which elevates the structure above flood plain level (+15 ft mean sea level) as well as above the maximum breaking wave. Meanwhile, the garage and patio would be constructed on grade. The garage would be constructed with breakaway wall panels that would allow the free flow of water through the garage in the event of flooding or wave attack.

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

A review of records available to Commission staff at the time of this staff report indicate that there are no prior Commission actions at the site. However, the Commission has issued many coastal development permits for development within the Capistrano Bay Community for remodels to existing structures, demolition and reconstruction of residential structures, new residential structures, repair and installation of seawalls and revetments, among other development. Since certification of the local coastal program for the area, the County of Orange followed by the City of Dana Point (upon municipal incorporation of the area) has also issued many coastal development permits for similar development. The Commission's records indicate that approximately 37 of the Commission's approvals required a lateral public access easement (Exhibit 3). Local government approvals have also required lateral public access easements. However, the total has not yet been quantified and is under investigation by Commission staff.

4. Local Coastal Program Certification

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

The City of Dana Point incorporated in 1989. All of the geographic areas covered by the former Orange County LCP segments of Capistrano Beach, Dana Point, and Laguna Niguel were

¹ The LCP states that "...maximum building height is twenty-eight (28) feet as measured eighteen (18) inches above the Flood Plain Overlay 3 (FP-3) requirement or Beach Road whichever is higher." At the subject site, the FP-3 requirement was determined to be +15 feet MSL which is higher than the elevation of Beach Road. Accordingly, the 28 foot building height is measured from elevation +16.5 MSL (i.e. +15 MSL plus 18 inches = base elevation). +16.5 MSL is approximately 1 foot above the elevation of Beach Road, therefore, the proposed structure will be approximately 29 feet tall above Beach Road.

included within the city limits of the new City of Dana Point. In addition, a portion of the South Laguna segment was within the new City's boundary. The City combined the Capistrano Beach and Dana Point segments, and the portion of the South Laguna segment within its jurisdiction, into one certified LCP segment. After some minor modifications, the City then adopted the County's LCP documents as its first post-incorporation LCP. On September 13, 1989, the Commission approved the City's post-incorporation LCP. Meanwhile, the City did not adopt the LUP which had been certified as the Laguna Niguel segment. In order to differentiate between the new City of Laguna Niguel (which was also incorporated in 1989) and the Laguna Niguel planning area (which was within the new City of Dana Point and not within the new City of Laguna Niguel), the Laguna Niguel LUP planning area was re-named 'Monarch Beach'.

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

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

5. Local Government Action

On July 18, 2001, the City of Dana Point Planning Commission held a public hearing on the proposed project. At the conclusion of the public hearing, the Planning Commission adopted Resolution No. 01-07-18-39 (Exhibit 4), which approved with conditions local Coastal Development Permit CDP No. 01-10 and Site Development Plan SDP 01-27 for *"the demolition of an existing structure and the construction of a new 3,530 square-foot single-family residence, and a Site Development Permit to review the FP-3 Flood Overlay Zone..."* (Only Coastal Development Permit CDP 01-10 is before the Commission at this time.) The action by the City did not involve a local appeal. The local appeal process has now been exhausted. The City's action was then final and an appeal was filed by two Coastal Commissioners during the Coastal Commission's ten- (10) working day appeal period.

The Commission received a notice of final local action on CDP 01-10 on August 6, 2001 (Exhibit 4). As stated previously, CDP 01-10 (assigned appeal no. A-5-DPT-01-336) approved the demolition of an existing residence and construction of a new 3,530 square foot residence on a shorefront 4,526 square foot parcel.

6. Appeal

On August 20, 2001, within ten working days of receipt of the notices of final action, Commissioners Wan and Dettloff appealed the local actions on the grounds that the approved project does not conform to the requirements of the certified LCP and the public access and

recreation requirements of the Coastal Act. The appeal contends that the proposed project, which results in re-development of the site and seaward encroachment of new development, is potentially reliant upon an existing shoreline protective structure. The appellants contend that technical analyses are necessary to determine whether the development is appropriately sited and whether shoreline protective works are necessary. If shoreline protective works are unavoidably necessary then the impact of such devices on the beach seaward of the development must be identified. Furthermore, any visual resource and public access impacts associated with the development must be mitigated.

On November 13, 2001, the Commission found that the appeal raised a substantial issue. Accordingly, Coastal Development Permit CDP01-10 granted by the City has been dissolved and any entitlement and conditions imposed by the City for purposes of conforming the project with the certified LCP are no longer in effect. However, other approvals granted and conditions imposed by the City for Site Development Permit purposes remain in effect and are not affected by this appeal except that any inconsistency between any local approval granted (e.g. SDP, building permit, etc.) by the City must be made to conform with the requirements of the coastal development permit as approved by the Coastal Commission. Special Condition 1 clarifies these circumstances.

B. ADOPTION OF SUBSTANTIAL ISSUE FINDINGS

The findings and declarations set forth in the substantial issue staff report are herein incorporated by reference.

C. STANDARD OF REVIEW

The Commission's standard of review for the proposed amendment is the City of Dana Point certified LCP, pursuant to Section 30604 (b) of the Coastal Act. The portions of the Land Use, Urban Design, and conservation/Open Space Elements of the City of Dana Point General Plan applicable to Capistrano Beach now serve as the LUP for Capistrano Beach. The portions of the City's Zoning Code applicable to Capistrano Beach now serve as the IP for the area.

Additionally, Section 30604 (c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. HAZARDS

1. Wave Uprush and Flooding Hazards

Dana Point LCP Land Use Plan - Conservation/Open Space Element Policies:

Policy 2.1: *Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)*

Policy 2.16: *Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property. (Coastal Act/30235, 30253)*

The proposed project is located on a sandy beach seaward of Pacific Coast Highway. According to coastal engineering analyses prepared for the applicant by Skelly Engineering, the beach at the subject site exhibits typical summer and winter profiles for sandy beaches (Exhibit 7). During winter months beach sands erode and are deposited in a berm offshore. During summer months offshore sands are redeposited on the beach. According to the analysis the average beach width seaward of the subject site is over 170 feet (measured from the mean high tide line to the seaward most point of the proposed development). The Skelly Engineering report dated December 24, 2001 goes on to describe the beach as follows: "...[t]he summer beach is primarily composed of sand with a few cobbles. There is a large cobble field below the sand and, during the winter erosion, there are random, naturally occurring cobble spits some of which make up the beach face and allow for a steeper beach face profile. The naturally occurring cobbles, which are not as mobile as the sand, actually serve as a natural form of shore protection, slowing down the common temporary season retreat of the shoreline, and dissipating wave energy through friction. The back beach area, nearer the site, does not change unless there are very extreme oceanographic conditions such as the 1982-83 El Nino".

The general conditions along Capistrano Beach are described in the Skelly Engineering study dated January 2001 as follows: "...[the] shoreline and homes located along this stretch of coast are subject to periodic wave attack from extreme storms. This area is also subject to occasional high sediment transport rates." Therefore, even though there is a reasonably wide beach at the subject site which is underlain by a cobble field that provides a degree of shoreline protection, the beach can experience significant erosion which exposes development along the beach to wave attack. The Skelly Engineering study dated December 24, 2001, goes on to state that wave runup would only reach the footprint of the proposed home during 'extreme' oceanographic conditions. The December 2001 report predicts that under 'extreme' circumstances only a few inches of water (less than 0.5 feet) would reach the home's footprint. This predication takes into account increases in sea level caused by global warming and El Nino conditions which can be anticipated over the next 75 to 100 years.

The City's certified LCP acknowledges that flooding, erosion and wave hazards exist in the Capistrano Bay community. For instance, COSE Policy 2.16 requires that new development be elevated above the base flood elevation in areas such as Capistrano Bay that are subject to flooding. In order to address potential hazards during extreme oceanographic conditions, the coastal engineer has recommended construction of the residence upon pilings that raise the foundation of the home above the highest potential overtopping water depth. Existing grade at the subject site is approximately +14.5 feet MSL. The coastal engineer determined that the maximum wave runup elevation at the site, under extreme circumstances, would be +15.0 feet MSL. Allowing for some clearance under the foundation and the depth of the grade beams themselves, the finished floor elevation would be +17.0 feet MSL. According to the engineer, elevation of the residence above + 15 feet MSL will allow water to pass beneath the residence and through to the street during any extreme storm event. A clear path must be maintained on along the sides of the house to facilitate free flow of water through the site. The coastal engineer recommends that any garage which might be constructed with a finished floor at or below +15 feet MSL be designed with breakaway panels which allow free flow of water through the structure in the event of flooding. Recommendations are also given regarding minimum piling diameter, spacing and depth to handle

wave forces which may act on the pilings and to mitigate the effects of scouring which could undermine pilings. With incorporation of these recommendations into the foundation design the coastal engineer determines in his letter dated October 24, 2001, that "...no shore protection is necessary to protect the proposed development." The foundation system recommended by the coastal engineer is consistent with the LCP policies regarding construction of new development along Beach Road. In order to assure that the development is constructed in accordance with the coastal engineer's recommendations, the Commission imposes Special Condition 7 which requires the applicant to submit final plans incorporating the coastal engineer's recommendations and which are accompanied by an affidavit by the coastal engineer that the recommendations have been incorporated into the final plans.

According to the coastal engineer, construction of the proposed residence upon pilings will mitigate any flooding, erosion or wave hazards that could threaten the residential structure. However, it remains that the foundation system would be subject to wave attack under extreme oceanographic conditions. In addition, there is a history of erosion, flooding and damage in the Capistrano Bay community which has prompted application for the repair and construction of protective devices (see table below and Exhibits 5 and 6).

<u>Permit/App#</u>	<u>Applicant</u>	<u>Site (in order upcoast to downcoast)</u>	<u>Project</u>
5-83-493	Taylor	35385 Beach Road	Revetment
5-83-494	Gregory	35391 Beach Road	Revetment
5-81-488	Trindle	35395 Beach Road	Revetment
A-5-DPT-01-336²	Bell	35405 Beach Road	Demo/Const. SFD
5-83-495	Short	35441 Beach Road	Revetment
5-83-514	Fleming	35445 Beach Road	Revetment
5-83-496	Reynolds	35451 Beach Road	Revetment
5-83-497	Renwick	35455 Beach Road	Revetment
5-83-498	Walters	35465 Beach Road	Revetment
5-83-499	Tomlinson	35471 Beach Road	Revetment
5-83-500	Blanchard	35481 Beach Road	Revetment
5-87-276	Jahnke	35671 Beach Road	Demo/rebuild seawall
5-85-138	Johnson	35705 Beach Road	Demo/rebuild seawall
5-84-009	Short & Bullock	35735 & 35737 Beach Rd.	Demo/rebuild seawall
5-83-501	Townley	35735 Beach Road	Revetment
5-81-568	Schaffer et al	35791 – 35841 Beach Rd.	Longard tube
P-11-2-76-9284	Gray	35841 Beach Road	Seawall

The table above suggests, by implication, that the project site may be subject to hazards that could prompt the applicant or future landowners to seek shoreline protective measures. Furthermore, beach areas are dynamic environments which may be subject to unforeseen changes. Such changes may effect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. The presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding

² The subject site is shown in this table to illustrate the location of the site in comparison to surrounding sites known to have applied for shoreline protective measures

from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

The proposed development is subject to significant wave hazards, as described previously. The development exposed to hazards includes all development located on the property owned by the applicant. Therefore, the Commission finds it necessary to require the recordation of an assumption-of-risk deed restriction by the applicant (Special Condition No. 2). The Commission is requiring recordation of a deed restriction which would be attached to the property upon which the residential structure is being built. Therefore, any owners and occupants of the residential structure would be advised of the hazards to which the site is subject. With this standard waiver of liability condition, the applicant is notified that the lot and improvements are located in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the condition insures that future owners of the property will be informed of the risks and the Commission's immunity of liability.

The assumption-of-risk condition is consistent with prior Commission actions for homes in the Capistrano Bay community. For example, Coastal Development Permits 5-82-182 (Anzel), 5-84-9 (Short & Bullock), 5-85-138 (Johnson), 5-84-840 (Jahnke), 5-84-753 (Randol), 5-83-7 (Thomas), 5-85-864 (Hoffman), 5-89-659 (Walters), 5-81-488 (Trindle), 5-83-15 (Dunn), 5-82-483 (Kalb), 5-82-417 (Cumins), 5-82-243 (Bennett) were granted requiring the recordation of assumption-of-risk deed restrictions for improvements to existing homes, construction of new homes on vacant lots and for the demolition and replacement of existing homes. The assumption-of-risk is also consistent with prior actions on coastal development permits granted by the City of Dana Point.

As conditioned by both Special Conditions No. 2 and No. 7, the Commission finds that the proposed project is consistent with COSE Policies 2.1 and 2.16 which requires that geologic and flood hazards be minimized, and that stability and structural integrity be assured.

2. Existing & Future Shoreline Protective Devices

Dana Point LCP Land Use Plan - Conservation/Open Space Element (COSE) Policies:

- Policy 2.5: *Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)*
- Policy 2.9: *Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural land forms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with land forms. (Coastal Act/30240, 30250, 30251, 30253)*
- Policy 2.14: *Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. (Coastal Act/30210-12, 30235)*

- Policy 2.15: *Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253).*
- Policy 6.4: *Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)*

Although the presence of a seawall is unproven, the City's findings indicate that the subject site is protected by an existing seawall. Special Condition 10 of Coastal Development Permit CDP01-10 granted by the City required the applicant to protect, preserve and maintain this existing seawall. The requirement to protect and maintain the seawall suggested that the new development is reliant upon shoreline protection and is not designed to avoid hazards. However, the coastal engineering investigation did not discuss the presence of a seawall and it was unclear whether the proposed project was actually reliant upon shoreline protection. Due to potential adverse impacts upon public access, visual resources and shoreline processes from shoreline protective devices, the City's LCP requires that new development be designed to avoid the need for protective devices. Accordingly, if the new development were reliant upon shoreline protection, the development would be inconsistent with the certified LCP. Rather, the development would need to be sited or otherwise engineered to avoid the need for shoreline protection.

In response to this appeal, the applicant has prepared the technical studies required by Section 9.27.030(a)(5) of the City's IP to determine whether any shoreline protection will be needed to protect the site over its anticipated economic life. In summary, these studies conclude that the elevation of the proposed development upon a caisson and grade beam foundation system above flood plain and breaking wave height will adequately protect the development from flooding, wave uprush, and erosion without the need for shoreline protective devices. Furthermore, the engineering studies determined that the low wall located seaward of the existing residence -thought to be a shoreline protective device- was a garden wall and not a seawall. The applicant is proposing to remove this wall as part of the proposed project.

Although the coastal engineer determined that the low garden wall is not a seawall, the issue regarding the presence of a seawall remains unresolved. The Commission's records [5-81-488 (Trindle)] indicate that there is a rock revetment dating from the 1960's or earlier which protects the single family residence located at 35395 Beach Road which is two lots upcoast of the subject site (herein 'Trindle Residence'). An exhibit in the findings of approval for CDP 5-81-488 suggests that this circa-1960's rock revetment extends both upcoast and downcoast of the Trindle Residence, perhaps traversing the subject site. Furthermore, narrative in the findings of approval for CDP 5-81-488 (which approved augmentation of the revetment at the Trindle Residence) state that the same rock revetment was augmented on 'adjoining' properties without benefit of a coastal development permit. Finally, the Commission's records indicate that 'repair of an underground revetment' was sought at 35445 Beach Road -located 7 lots downcoast of the subject site- under Coastal Development Permit Application 5-83-514 (Fleming) (herein 'Fleming Residence') (see table on page 12 for location of proposed project compared with these other sites). Since the

information suggests that there is a revetment located at the Trindle Residence upcoast of the subject site and at the Fleming Residence downcoast of the subject site, and given that revetments are typically constructed as continuous linear structures, it is probable that the revetment known to exist upcoast and downcoast of the subject site also traverses the subject site.

According to a letter dated January 3, 2002, the applicant cannot confirm or deny the presence of any buried revetment at the subject site (Exhibit 8, pages 13-14). No subsurface investigations have been performed in the area which would most probably contain the revetment. According to the coastal engineer there are no current indications on the beach surface which would suggest that there is a buried revetment. In addition, the applicant has interviewed neighboring residents – some of whom have a long history in the community- regarding the presence of a revetment at the subject site. This anecdotal information suggests that stones have occasionally been exposed on the beach, however, it is unclear whether these stones were natural cobbles or part of a deteriorating revetment. The applicant's coastal engineer stated that additional subsurface investigation would likely reveal whether there is a buried revetment. If the investigation were to show that a revetment was present, the removal of the revetment at this time would significantly disrupt the beach. Rather, in lieu of identifying and removing any buried revetment at this time, the applicant has indicating their willingness to comply with a special condition requiring the removal of any shoreline protective device at the subject site if such a device is exposed during a natural erosion cycle in the future. In this way, disturbance to the beach would be minimized. In either case –whether or not a shoreline protective device exists and whether or not such devices are removed in the future- the coastal engineer has stated that the proposed development is not reliant upon any shoreline protective device. If any revetment does exist at the subject site it would not be required to remain in place to protect the proposed development.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively effect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, this portion of Capistrano Beach is currently characterized as having a wide sandy beach. However, width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the presence of any existing protective device or the placement of a new shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

Conservation/Open Space Element Policy 2.5 requires that beach erosion is decreased by minimizing anthropogenic activities which reduce the replenishment of sand to the beaches. Existing or future shoreline protective devices could contribute to the loss of sand at the subject beach. Policy 2.9 requires that new development preserve significant natural features and landforms, such as beaches. Existing or future protective devices could erode the beach, damaging the natural landform. Policy 2.15 requires that all new seaward construction on beachfront homes occur in a manner which minimizes interference with public access along the beach. Existing and future shoreline protective devices could contribute to beach erosion and the loss of publicly usable beach area as well as interfere with the public's ability to traverse the beach. Finally, Policy 6.4 requires the preservation and enhancement of views to and along the shoreline. Existing views could be improved by removing existing shoreline protective devices which may become exposed along the beach. In addition, views can be preserved by designing development to avoid the need for shoreline protective devices which can degrade visual quality.

The fact that there is some question of whether there is any buried shoreline protective device at the site suggests that the likelihood of its presence is low and –even if present- the structure would be significantly deteriorated. However, it remains that a protective device may exist on the site and that removal of the device, if exposed, would be beneficial in terms of minimizing impacts on the beach, minimizing visual impacts and protecting the public's ability to traverse the beach. Since the proposed development is not reliant upon any shoreline protection, the Commission finds that if such a device were to become exposed on the beach on the project site, the device(s) must be removed. Therefore, the Commission imposes Special Conditions 6 and 8. Special Condition 6 requires the applicant to comply with their proposal to remove the garden wall (previously thought to be a seawall). Meanwhile, Special Condition 8 requires the applicant to agree to remove any shoreline protective device, or portions thereof, which may become exposed on the beach at the subject site in the future. An amendment to this permit or a new coastal development permit would be required for such activity. In order to assure that any future landowner is made aware of this requirement, the Commission requires that the agreement is recorded as a deed restriction on the property. Presently, no shoreline protective device is exposed. In addition, it is not clear whether any protective device remains intact below grade. A proactive approach would require excavation of beach to search for and remove any buried revetment. Such activity would significantly disrupt the beach and the public's ability to use the beach. However, over time seasonal erosion or an 'extreme' storm event may expose any buried protective device. At the time of exposure, the accessible portions of the device can be removed. As noted above, the applicant has indicated their willingness to agree to this requirement (see Exhibit 8).

Also, the Coastal Act and the certified Local Coastal Program limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235 and COSE Policy 2.14 of the certified LCP, a shoreline protective structure must be

approved if all of the following conditions are met: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act and COSE Policy 2.14 of the certified LCP. Proper coastal planning mandates that structures be sited far enough back from hazards to minimize the potential that they would be in danger and require a protective device. In addition, allowing new development that requires the construction of a shoreline protective device would be inconsistent with Section 30251 of the Coastal Act and COSE Policies 2.9 and 6.4 which state that permitted development shall minimize the alteration of natural land forms, including beaches which would be subject to increased erosion from such a device.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. However, as previously discussed, the subject beachfront area has experienced flooding and erosion during severe storm events, such as El Nino storms. In addition, the coastal engineering analysis states that the proposed development may be exposed to flooding, erosion and wave hazards under extreme oceanographic circumstances. The applicant has designed the development to mitigate these hazards. However, it is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards which could lead to a request for a protective device.

Section 30253 (2) of the Coastal Act and corollary COSE Policy 2.5 in the certified LCP state that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act and Policy 2.5 of the certified LCP because such devices contribute to beach erosion.

In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act and corollary policies in the certified LCP including COSE Policy 2.9 and 6.4 which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from shoreline protective devices. As conditioned, the applicant must construct the proposed residence using a caisson and grade beam foundation which will elevate the proposed development above the highest potential overtopping water depth. The applicant's wave run-up analysis has indicated that with the incorporation of the proposed foundation system the development will not be adversely impacted by wave run-up and flooding. Based on the information provided by the applicant, no other mitigation measures, such as a seawall, are anticipated to be needed in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is currently a wide sandy beach in front of the proposed development that currently provides substantial protection from wave activity. However, the presence of the beach cannot be guaranteed.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act and corollary certified LCP COSE Policies 2.5, 2.9, and 6.4 and to ensure that the

proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 3 which requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Sections 30251 and 30253 of the Coastal Act and corollary certified LCP COSE Policies 2.5, 2.9, and 6.4.

By imposing the "No Future Shoreline Protective Device" special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. The Commission also requires that the applicant remove the structure if any government agency has ordered that the structure be removed due to wave uprush and flooding hazards. In addition, in the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Conclusion

Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act and certified LCP COSE Policies 2.5, 2.9, 2.15, and 6.4 and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions 2 and 3 require the applicant to record Assumption-of-Risk, and No Future Shoreline Protective Devices deed restrictions. In addition, Special Condition 7 requires the applicant to submit final grading, foundation, site, floor, elevation plans, and drainage plans along with evidence that such plans conform with the recommendations of the coastal engineer. Finally, Special Condition 6 requires the applicant to conform with their proposal regarding removal of a garden wall. As conditioned, the Commission finds that the proposed project is consistent with COSE Policies 2.5, 2.9, 2.15, and 6.4 of the certified LCP.

E. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

Dana Point LCP Land Use Plan - Land Use Element (LUE) Policies:

- Policy 1.4: *Assure that adequate recreational areas and open space are provided as a part of new residential development to assure that the recreational needs of new residents will not overload nearby coastal recreation areas. (Coastal Act/30252)*
- Policy 2.10: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. (Coastal Act/30221)*
- Policy 2.12: *The location and amount of new development should maintain and enhance public access to the coast by assuring that the recreational needs of new residents will not overload nearby coastal recreation areas through the correlation of the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development (Coastal Act/30252(6))*
- Policy 3.7: *Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act/30210-212.5, 30250, 30252)*
- Policy 3.12: *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)*
- Policy 4.3: *Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
- Policy 4.10: *Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk of life and property damage. (Coastal Act/30253)*

Dana Point LCP Land Use Plan – Conservation/Open Space Element (COSE) Policies:

- Policy 2.15: *Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253).*
- Policy 3.8: *Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through, among other methods, creative site planning and minimizing visual impacts, and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act 30240)*

The subject site is between the first public road and the sea. In addition, the beach landward of the mean high tide line in the Capistrano Bay community is privately owned. Public access is limited to that part of the beach seaward of the mean high tide line (except for locations where lateral access easements required by various coastal development permits have been opened [see Exhibit 3])³. Prior coastal development permit approvals along this private beach have required the dedication of a public access easement over a portion of the beach seaward of the proposed development. These easements were required to mitigate for adverse impacts the development would have upon public access along the shoreline. However, City-granted CDP01-10 was approved without the requirement for a public access easement because the City found that the proposed development would not have any adverse impact upon public access. The City-granted permit was appealed partly on grounds that inadequate technical information was presented to the City to determine whether the development is reliant upon any existing or future shoreline protective device which might in-turn contribute to beach erosion that could adversely impact public access.

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

As noted elsewhere in these findings, the applicant has submitted supplemental coastal engineering analyses to address the contentions raised in the appeal. The supplemental information clarified that the proposed development is not reliant upon any shoreline protective device. Rather, the development is proposed to be elevated upon pilings that would protect the development from flooding, erosion and wave uprush hazards without the need for a protective device.

In addition, the coastal engineering analysis dated October 24, 2001, analyzes the impact that the proposed piling foundation may have upon the private beach and public trust lands located seaward of the proposed development. The coastal engineering analysis states: "...[t]he only time that the piles will interact with the ocean is under the extremely rare conditions when the beach is eroded back underneath the residence. This type of extreme erosion has not occurred along this section of shoreline for at least the last several decades including the 1982-83 El Nino winter, January 18-19, 1988 extreme waves, and the more recent El Nino winters. While this section of shoreline may experience temporary severe erosion due to one winter's oceanographic conditions the overall shoreline has been relatively stable and not eroding." Regarding the interaction of the foundation system with the beach, the engineer goes on to state: "[t]he proposed caisson foundation system will definitely not impact the beach 99.9% of the time because the caisson system will not be exposed to waves. If the caissons are exposed to wave activity then the beach will have already been in a severely eroded condition prior to caisson exposure. The caissons will allow wave runup and erosion to occur beneath the structure much like if the piles were not there. The beach will be eroded down to the cobbles, with most of the actual sand that makes up the

³ A sign posted on the beach at the upcoast and downcoast ends of Capistrano Bay notifies the public of the portions of the beach open for public access. These signs were a requirement imposed under Coastal Development Permit A-293-80 granted by the Commission for the demolition of an existing guardhouse and entry sign and construction of a new guardhouse and sign.

beach removed prior to exposure of the piles. The beach sand is deposited just offshore by waves and will return to the beach during times of low waves. The vertical piles will not significantly impact the movement of the cobbles along the shoreline. During the severely eroded condition, the piles will be in the surf zone and may actually cause destructive interaction of reflected wave energy such that the erosion potential of the waves is reduced. The piles will not have a measurable increase in the erosion potential from waves. The proposed caisson foundation system, designed in conformance with the Wave Runup Study, will have no impact on the beach 99.9% of the time. In addition, in the rare case that the caissons are exposed to waves the piles will not have a significant impact on the beach if any measurable impact at all."

In addition to the physical effects of the development upon the adjacent beach that could affect public access, the siting of the proposed development could potentially affect public access. As noted above, the applicant's private property extends to the mean high tide line. Accordingly, public access is limited to the public trust lands located seaward of mean high tide. The location of the mean high tide line is ambulatory. Factors such as tides and the beach profile—which change over time—determine the location of the mean high tide line. Since the location of the mean high tide line changes over time, so does the area that is available for public access. On very flat beaches the location of the mean high tide line can change dramatically in response to tides and beach profiles. In other words a small increase in tidal height can cause the mean high tide line to move significantly inland (with the converse true as well). The construction of a single family home along the shoreline fixes the location of the back beach. Without a fixed back beach the tide could move inland and still provide sandy beach between the mean high tide line and the surf zone for members of the public to traverse. However, when the back beach is fixed by the presence of a single family residence, a small change in tidal height could cause the mean high tide line to intersect the residence. In these cases there would be little or no sandy beach between the mean high tide line and surf zone for the public to traverse. Accordingly, the presence of the structure could have an adverse impact upon public access along the shoreline.

The applicant's coastal engineer prepared summer and winter beach profiles showing the location of the proposed development compared with the mean high tide line. These profiles show that under typical winter conditions there would be approximately 120 feet of dry sand between the seawardmost portion of the development and the mean high tide line. Accordingly, the residence is setback adequately to preserve the public's ability to traverse the beach using public trust lands.

In addition to the analysis above which is required by the certified LCP, the LCP requires that findings address project effects upon the carrying capacity of recreational facilities, public access, coastal roadways, coastal parking facilities, the aesthetic value of coastal resources and the effects on the demand for new coastal facilities. The City of Dana Point prepared a document addressing these issues which are incorporated here by reference and adopted to the extent the findings pertain to the development specifically described herein (Exhibit 4, pages 21-25).

Therefore, as conditioned, the Commission finds that the proposed development would not result in significant adverse impacts on public access or public recreation. Thus, the Commission finds that the proposed development, as conditioned, would be consistent with Sections 30210, 30211, and 30212 of the Coastal Act and Dana Point LCP LUE Policies 1.4, 2.10, 2.12, 3.7, 3.12, 4.3, 4.10 and COSE Policies 2.15 and 3.8.

F. WATER QUALITY

- COSE Policy 1.4: Protect water quality by seeking strict water quality standards and enforcement with regard to water imported into the County, and the preservation of the quality of water in the groundwater basin, streams, estuaries, and the ocean. (Coastal Act/30231).
- COSE Policy 1.7: Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)
- COSE Policy 2.3: Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and other soil related problems. (Coastal Act/30243)
- COSE Policy 3.9: Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. (Coastal Act 30230) {no intervening modifications}

The proposed development would demolish a 1,335 square foot single story house with a 540 square foot garage and construct a new 3,530 square foot house that will have a 1,377 square foot footprint plus a 558 square foot garage as well as a new 463 square foot patio. Accordingly, the development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. These pollutant laden waters leave the residential site, enter the storm drain system and are ultimately discharged, untreated, to coastal waters. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

To address water quality concerns, drainage and runoff control best management practices (BMPs) could be implemented. For instance, water from roof drains could be directed toward pervious landscaped areas for percolation into the ground. In other coastal communities, such as Surfside in Seal Beach, storm water discharges are directed from the roof and other impervious surfaces to trench drains with drywells (i.e. percolation drains) located in the sideyards and along driveways of the property. These trench drains intercept any nuisance flows or the first flush of storm water runoff from the roof and other impervious surfaces and cause those flows to drain into the sand. Discharging particulate laden storm water into the sand will prevent the particulate matter from being discharged to coastal waters via sheet flow or the storm drain system. Flows which exceed the capacity of the trench drains will overflow and discharge into the gutter located along the street. These types of BMPs could be implemented at the subject site.

The applicant has not submitted any plan or information demonstrating efforts to mitigate water quality impacts that would occur at the project site. In order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of the proposed Best Management Practices which are designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. However, critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition 5, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to coastal waters, the Commission imposes Special Condition 4. Special Condition 4 requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

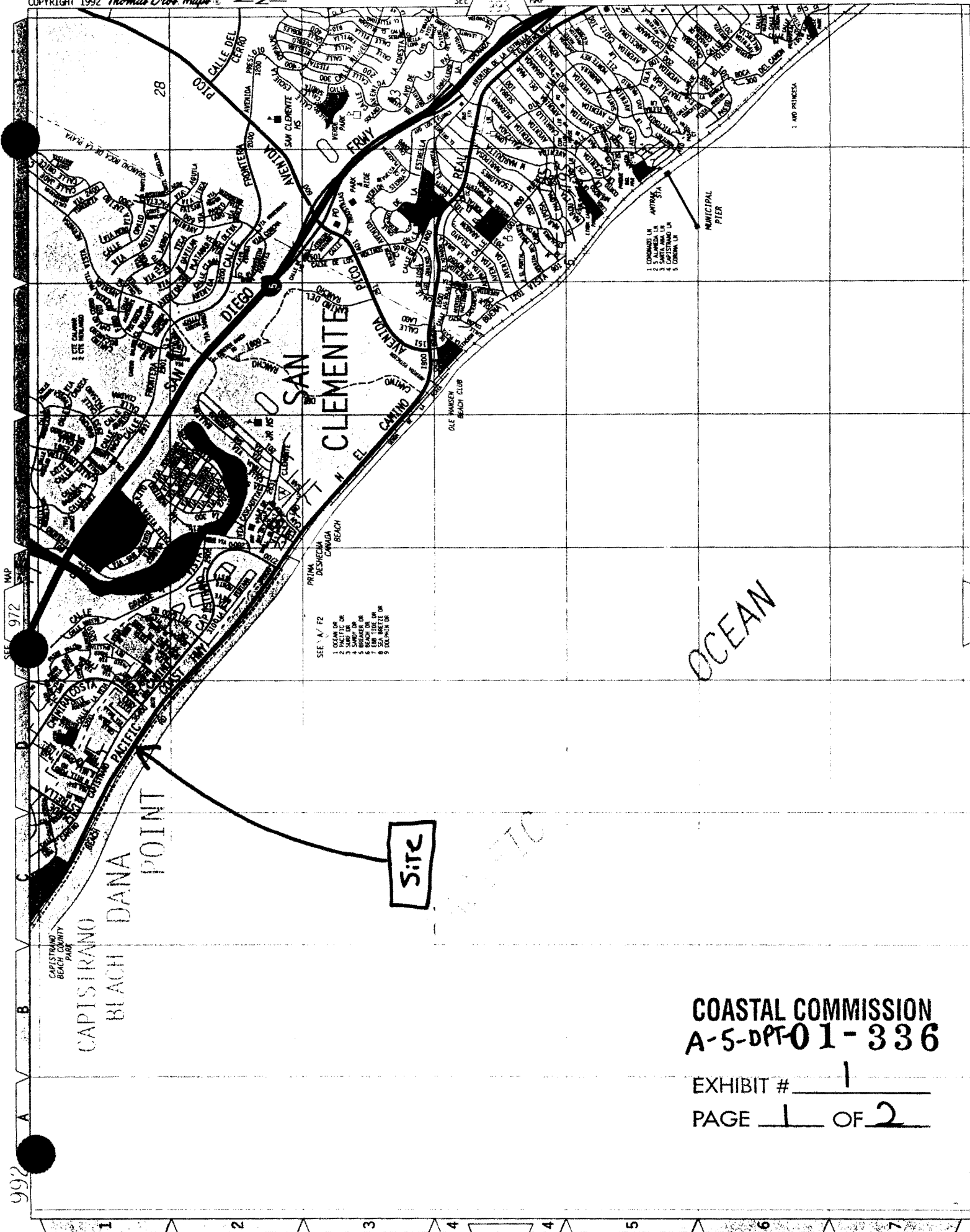
Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan and to comply with construction phase BMPs, is consistent with Conservation/Open Space Element Policies 1.4, 1.7, 2.3 and 3.9 of the City of Dana Point's certified Local Coastal Program.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructures necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard, public access and water quality policies of the certified Local Coastal Program. These conditions also serve to mitigate any significant adverse impacts under CEQA. Mitigation measures requiring assumption-of-risk and no future shoreline protective device deed restrictions, conformance with coastal engineering recommendations, conformance with construction and post-construction phase water quality BMPs, and conformance with a shoreline protective device monitoring and removal plan will minimize any significant adverse effects that the activity may have on the environment.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned is consistent with the requirements of CEQA.

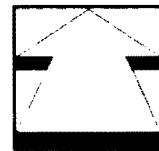
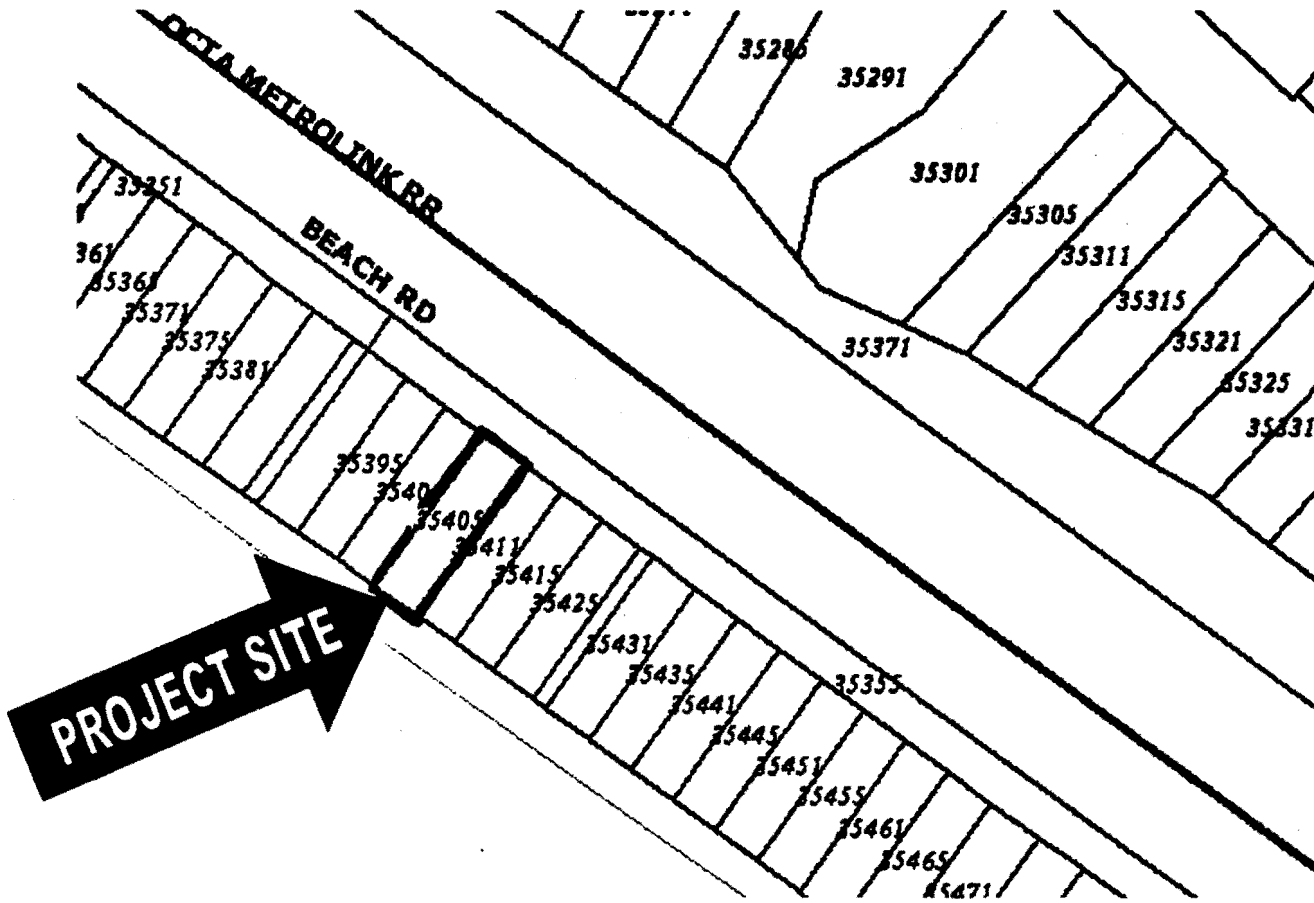


COASTAL COMMISSION
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EXHIBIT # 1

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CITY OF DANA POINT
PLANNING COMMISSION



LOCATION MAP

APPLICANT: Ricardo Nicol (Bell Residence)

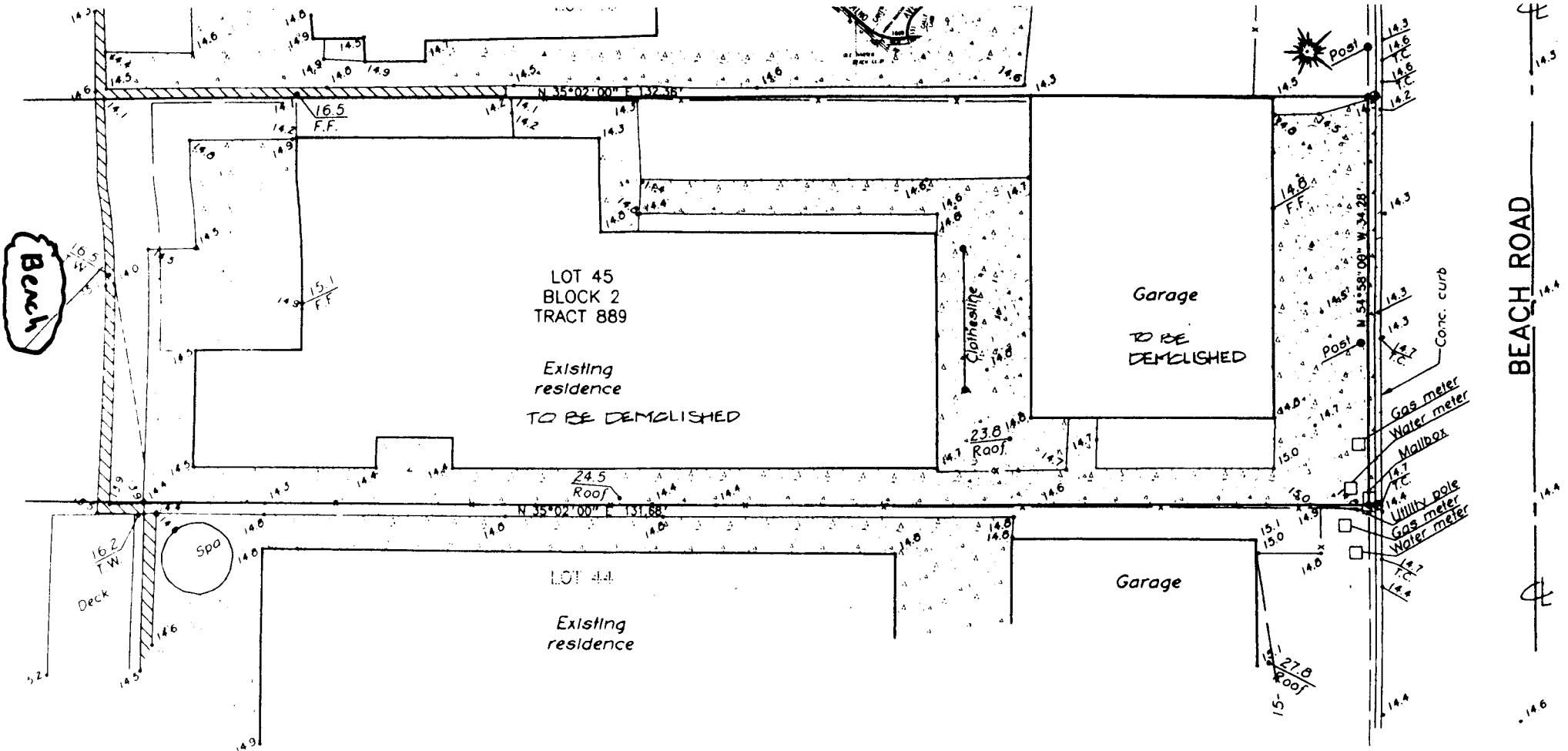
FILE NUMBER: CDP 01-10/ SDP 01-27: 35405 Beach Road

NORTH
COASTAL COMMISSION
01-336

EXHIBIT # 1

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ATTACHMENT 2



Olav S. Meum
Olav S. Meum LS 4384

SITE SURVEY AND DEMOLITION PLAN

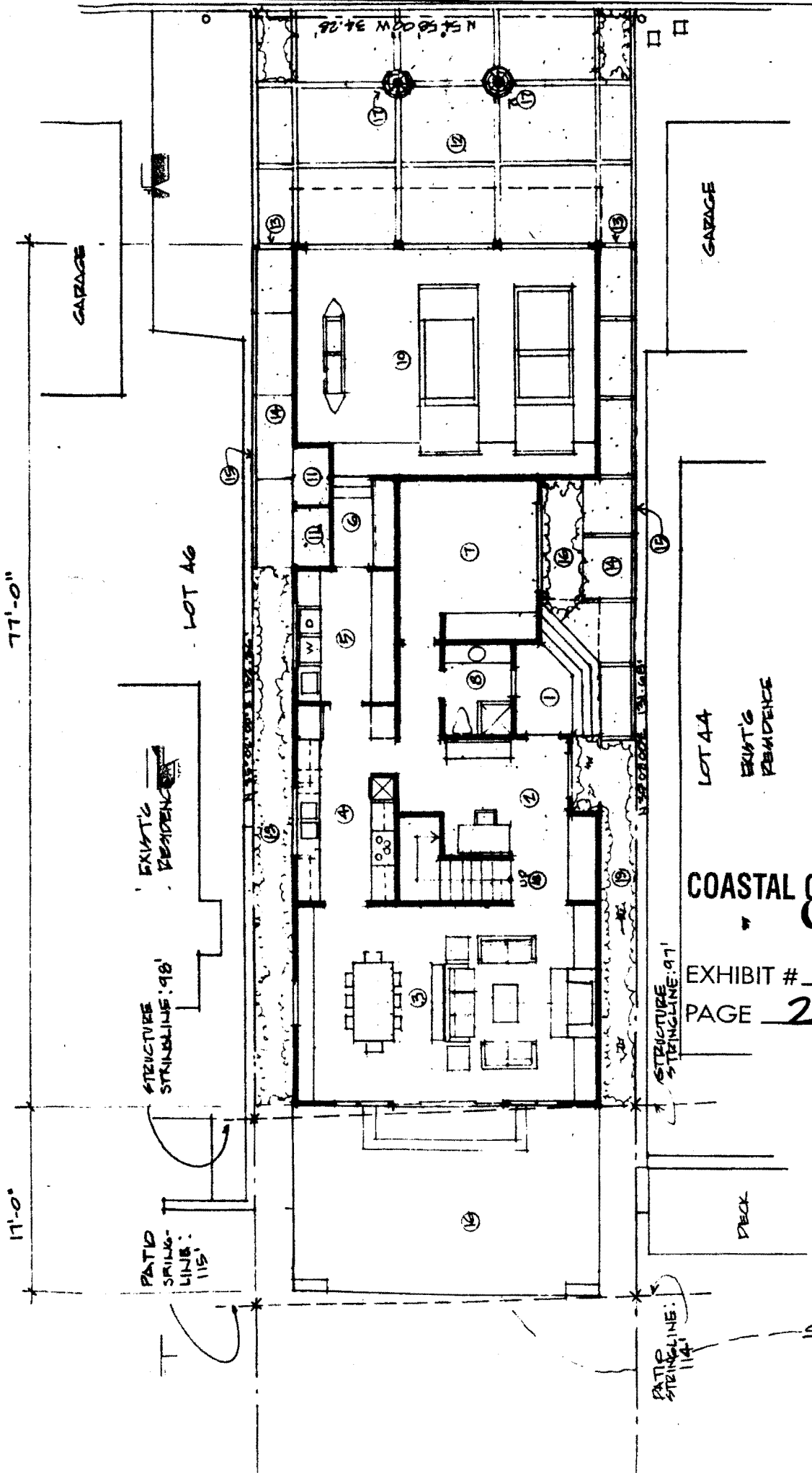
COASTAL COMMISSION
A-5 OF-01-336

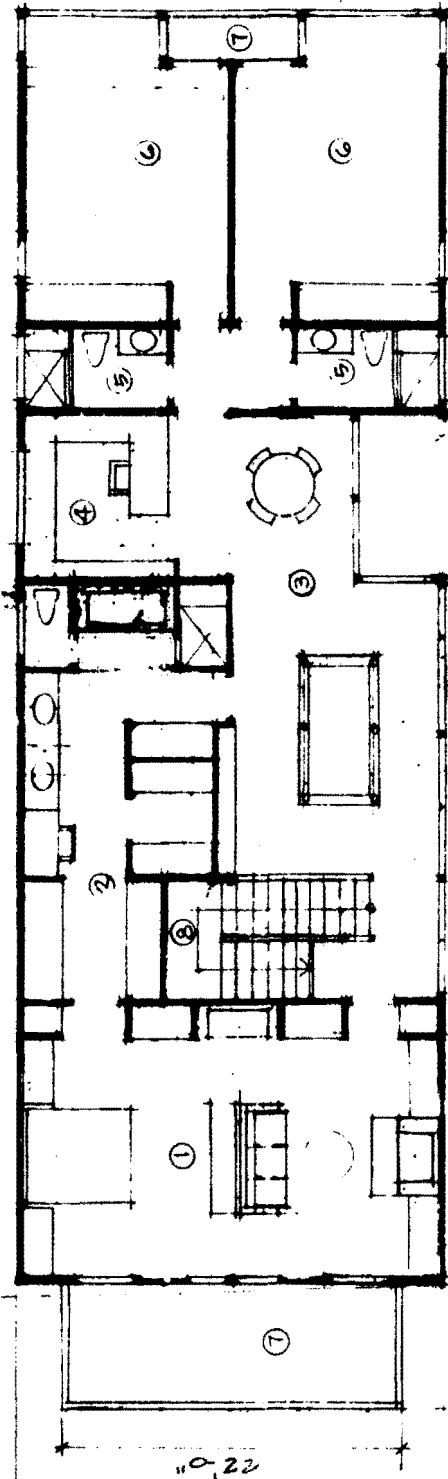
EXHIBIT # 2

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





SECOND FLOOR PLAN 1/8" = 1'-0"

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

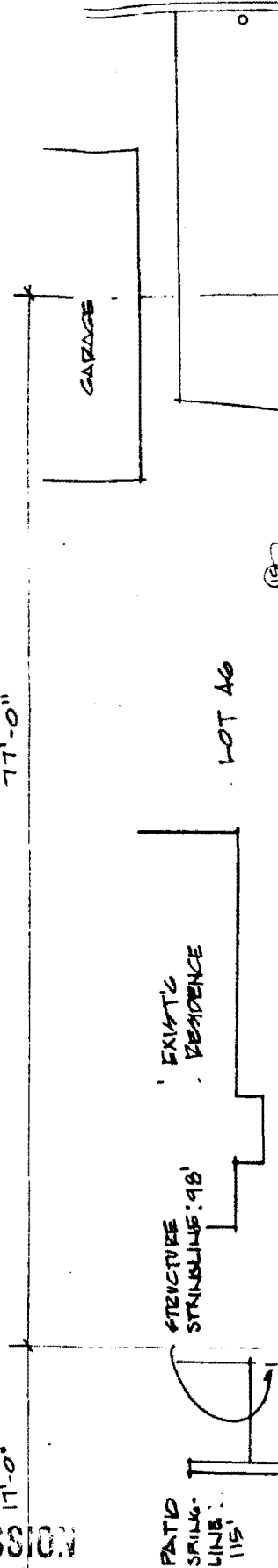
77'-0"

COASTAL COMMISSION

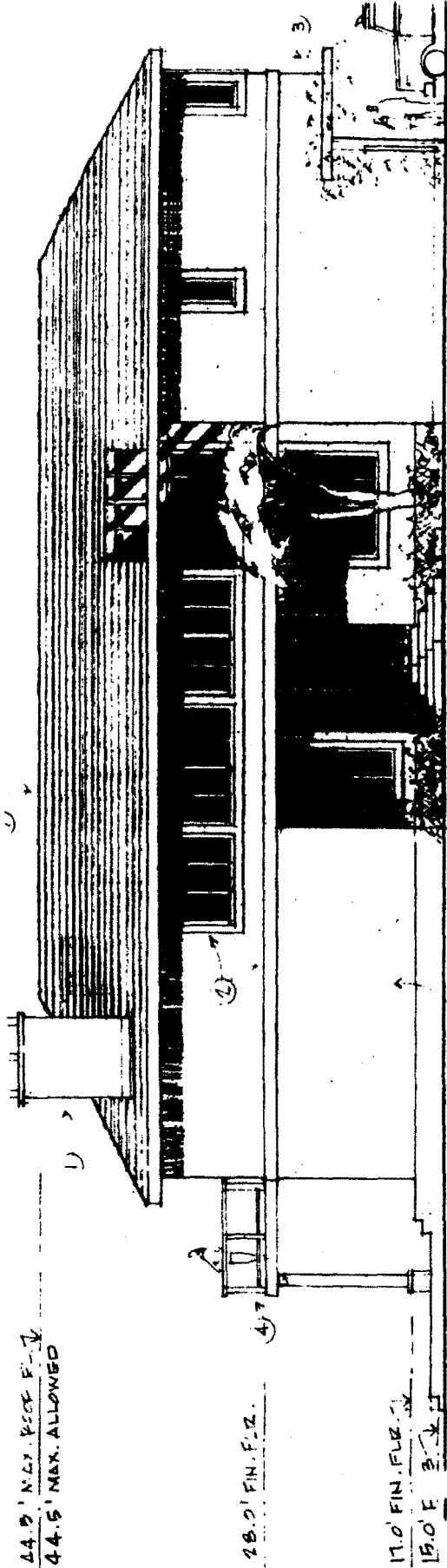
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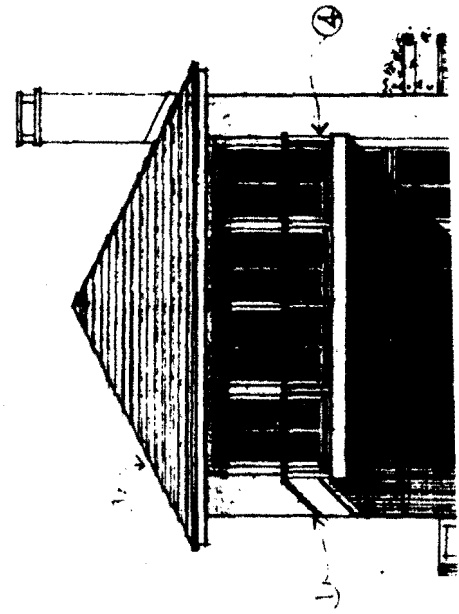
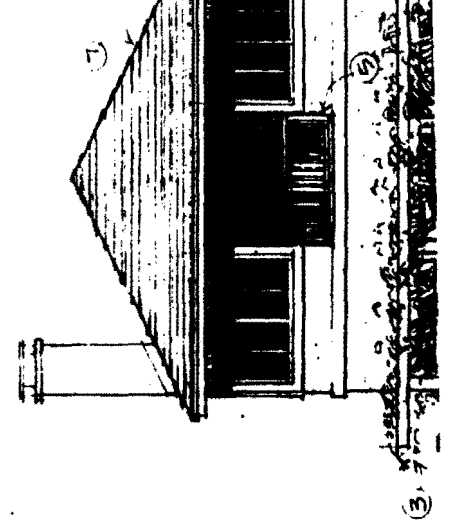


PATIO STRINGLINE: 115'



①
EAST ELEVATION 1/8" = 1'-0"

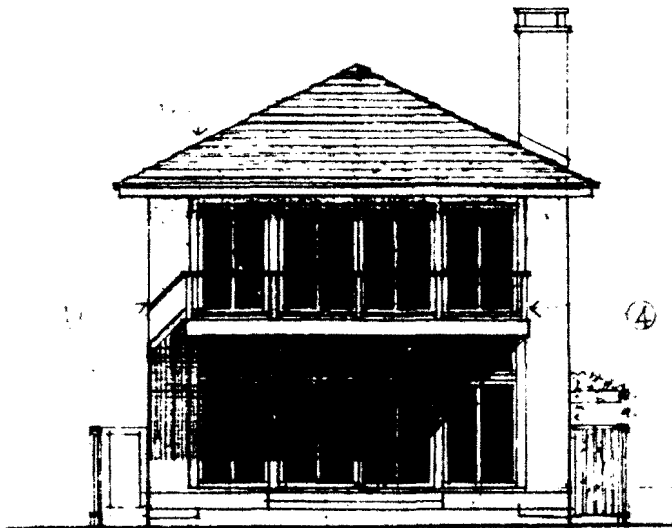
- Exterior Elevations Legend
- 1. Plaster
 - 2. Wood Trim
 - 3. Wood Trellis
 - 4. Wood & Glass Guard Rail
 - 5. Wood Guard Rail
 - 6. Wood Garage Doors
 - 7. Concrete Tile Roofing



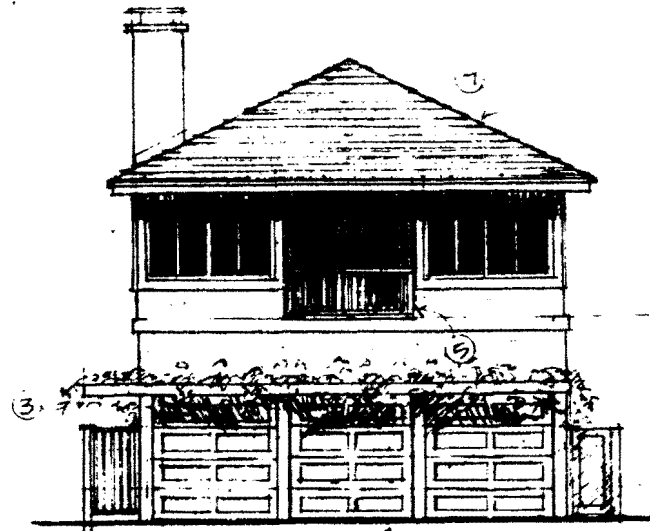
COASTAL COMMISSION
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Exterior Elevations Legend

1. Plaster
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6. Wood Garage Doors
7. Concrete Tile Roofing

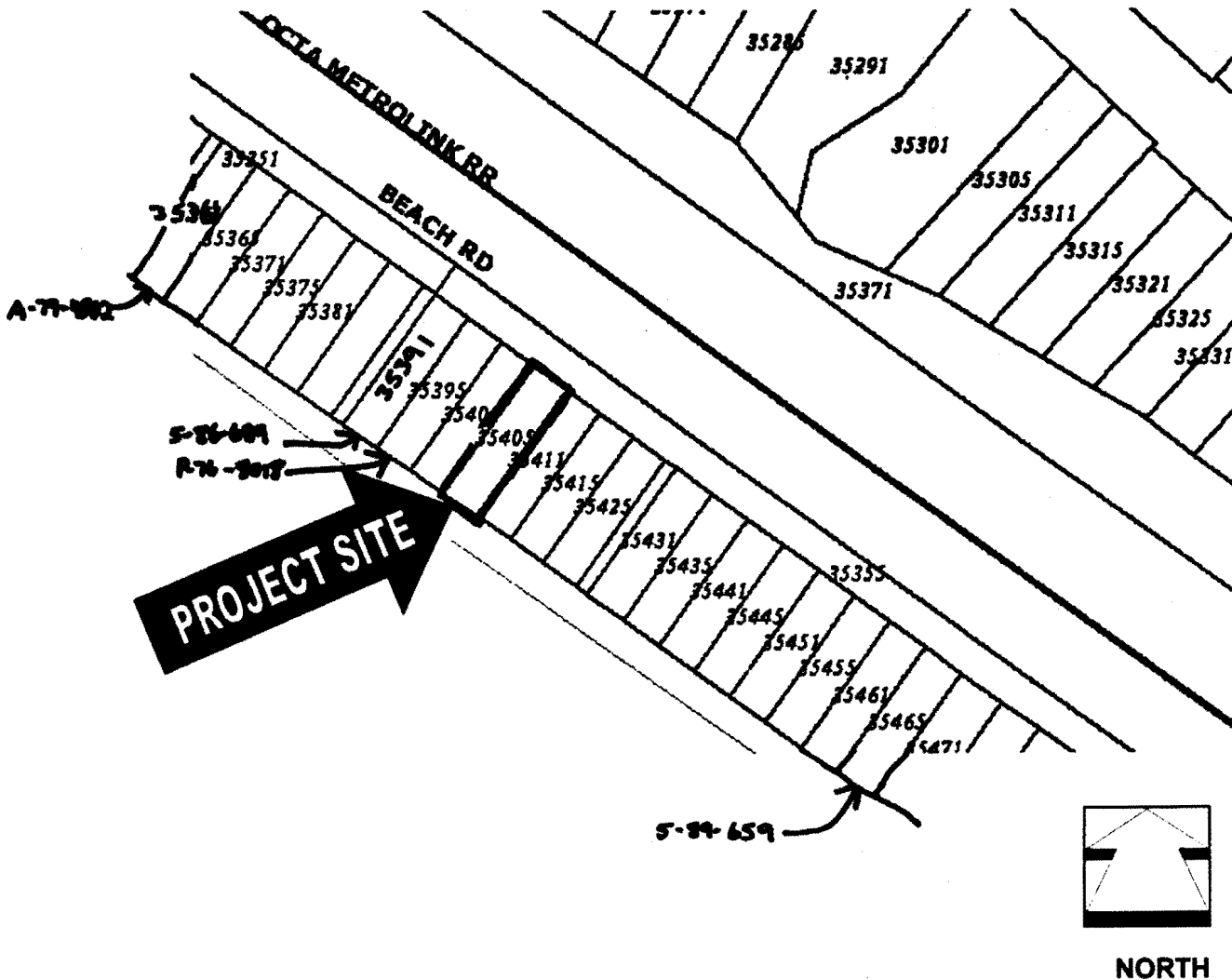


SOUTH ELEVATION 1/8" = 1'-0"



NORTH ELEVATION 1/8" = 1'-0"

CITY OF DANA POINT
PLANNING COMMISSION



LOCATION MAP

APPLICANT: Ricardo Nicol (Bell Residence)

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

ATTACHMENT 2
COASTAL COMMISSION

Nearby Sites with Lateral Access ORDs

EXHIBIT # 3
PAGE 1 OF 2

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

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

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

Ex 3
2 of 2



AUG 9 2001

DATE: August 3, 2001

CALIFORNIA
COASTAL COMMISSION

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

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

**COASTAL DEVELOPMENT PERMIT APPLICATION
NOTICE OF FINAL ACTION**

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

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

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

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

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

Action: ☐ Approved
 ☒ Approved with conditions
 ☐ Denied

Draft Findings and Conditions are attached.

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

City of Dana Point Contact: Sara Pashalides, Consultant – Project Manager
Phone: (949) 248-3570

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

COASTAL COMMISSION
A-5-DPT 01-336
EXHIBIT # 4
PAGE 1 OF 25

FILE COPY

RESOLUTION NO. 01-07-18-39

RECEIVED

SEP 24 2001

CALIFORNIA
ASTAL COMMISSION

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

Applicant: Ricardo Nicol / Kirk Bell

Case No.: FF#610-70/CDP01-10/SDP01-27/ Beach Road, 35405

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

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

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

WHEREAS, the Applicant has made an application for a Coastal Development Permit for the demolition of an existing structure and the construction of a new 3,530 square-foot single-family residence, and a Site Development Permit to review the FP-3 Flood Overlay Zone; and

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

WHEREAS, the Planning Commission did, on the 18th day of July, 2001, hold a duly noticed public hearing as prescribed by law to consider said request; and

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

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

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Commission adopts the following findings and approves Coastal Development Permit CDP01-10/Site Development Permit SDP01-27 for the property located at 35405 Beach Road subject to the following conditions;

COASTAL COMMISSION

01-336

EXHIBIT # 4

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Findings:

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

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EXHIBIT # 4
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12. That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas in that the design and building mass of the structure is consistent with other structures in the neighborhood.
13. The proposed development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use the public tidelands and coastal resources. Furthermore, there are no current access burdens in the vicinity that could be alleviated by an access dedication requirement on this proposed development.
14. That the proposed development will not have a significant negative effect on demand for access and recreation in that the surrounding area provides a variety of public use facilities that can accommodate a large population. In addition, the proposed replacement of an existing dwelling with a new single-family residence does not significantly affect the existing public facilities or cause these facilities to be diminished. Furthermore, due to the location of public facilities on both sides of the Capistrano Bay Community, public tidal areas located along the Capistrano Bay Beach can be accessed from the existing public facilities within the public lands. Since the public tidelands extend to the mean high tide line, the public tidelands are dry most of the time to allow for easy passage.
15. The proposed development will not have a significant negative effect on the shoreline process nor will it affect the public's ability to use the tidelands in that the proposed project has been designed on caissons to comply with the Floodplain Overlay District requirements in order to minimize negative impacts to the shoreline. The caissons prevent erosion of the beach and minimize impacts to sources of sand or sand transport.
16. The proposed development will not create any physical obstructions that would preclude public access to the tidelands in that the proposed development area is located within the setbacks established by the code and situated more than 88 feet from the mean high tide line.
17. The proposed development will not have any other significant negative effect on coastal access due to the distance separation between this development and the existing public recreation area. The project will not have a cumulative negative effect on public access to the tidelands since the development is located more than 88-feet from the mean high tide line and will not physically block access.

Conditions:

A. General:

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

COASTAL COMMISSION
01-336

EXHIBIT # 4
PAGE 4 OF 25

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

2. Approval of this application is valid for a period of twenty-four (24) months from the date of determination. If the use approved by this action is not established within such period of time, the application shall be terminated and shall thereafter be null and void.
3. The application is approved as a precise plan for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved, will nullify this approving action. If any changes are proposed regarding the location or alteration of a use or structure, an amendment to this permit shall be submitted for approval of the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plot plan, he may approve the amendment without requiring a new public hearing.
4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant and owner, and their successors, heirs, and assigns, shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any claim, action, or proceeding against the City, its agents, officers, or employees to attack, set aside, void, or annul the approval granted by this Resolution, which action is brought within the appropriate statute of limitations period.

The applicant and owner, and their successors, heirs, and assigns, shall further defend, indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, actions, or proceedings against the City, its agents, officers, or employees arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors.
6. The applicant and owner, and their successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and owner, and their successors in interest shall be responsible for payment of all applicable fees.

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EXHIBIT # 4
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8. The Applicant shall obtain a building permit and/or grading permit for the proposed improvements.
9. The applicant, property owner or successor in interest shall prepare a waste management plan, which shows how demolition and construction materials will be recycled. The site plan shall show the location of receptacle(s) to accumulate on-site generated solid waste for recycling purposes as a result of construction. Said plan shall be reviewed and approved by the City prior to the issuance of any permits.

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

Planning

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

Engineering

11. All grading and improvements on the subject property shall be made in accordance with the Grading Ordinance and to the satisfaction of the Director of Public Works.
12. The applicant shall submit a grading plan, in compliance with City standards, for review and approval by the Director of Public Works. All grading work must be in compliance with the approved plan and completed to the satisfaction of the Director of Public Works.
13. A drainage plan shall be approved by the Engineering Department. Roof drains and site drains shall be designed to drain to Beach Road. All paved sideyard areas, courtyard areas, and roof drains shall drain to Beach Road, except as otherwise approved by the Engineering Department. All site improvements shall be designed and constructed in compliance with the Floodplain Overlay requirements of the zoning code.
14. The grading/drainage plan shall include the following notes:
 - a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
 - b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
 - c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

COASTAL COMMISSION
01-336

EXHIBIT # 4
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15. The applicant shall submit a Hazardous Material Disclosure Statement.
16. The applicant shall submit a soils and geological report, including the following, for review and approval by the Building Official:
 - a. Provide borings to bedrock
 - b. Address the depth of caisson/piling embedment as it relates to scour elevation, wave impact and structural design.

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

Planning

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

Building

20. The applicant shall submit two (2) sets of construction documents for building plan check, including structural and energy calculations, a soils/geology report and a drainage plan. A third set of plans containing only the site plan, floor plans, and elevations is required to be submitted at the time of final approval. All documents shall be signed by the licensed

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professional that prepared them.

22. A rough grade certification is required from the Director of Public Works by separate submittal.
23. Conditions of approval shall appear on the drawings as the first or second sheet.
24. The design and construction of the structure shall comply with the most recently adopted local and State building code regulations, which may include the 1998 CBC, CMC, CPC and CEC with state amendments for disabled accessibility and energy conservation, and all other code regulations that may apply.
25. The minimum roof classification is B.
26. Undergrounding of all on-site utilities is required.
27. A fire sprinkler system is required.
28. Fire Department review is required. Submit three (3) separate sets of building plans to the Building Department for review by the Fire Department.
29. Verification of all conditions of approval is required.
30. All approvals from outside departments and agencies are required.
31. The dwelling shall be designed to be sound attenuated against present and project noise, which shall be the sum of all the noise impacting the project, so as not to exceed an exterior standard 65db CNEL in outdoor living areas, and an interior standard of 45db CNEL in all habitable rooms. Evidence prepared under the supervision of an acoustical engineer that these standards will be satisfied in a manner consistent with the applicable zoning and building regulations shall be submitted as follows:

Prior to issuance of a building permit, an Acoustical Analysis Report describing the acoustical design features of the structure required to satisfy the exterior and interior noise standards shall be submitted to the Director of Community Development for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report(s) have been incorporated into the design of the project.
32. The applicant shall submit payment for all supplemental fees, including school, park, water and sewer fees.

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

Engineering

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

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

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

Fire Department

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

SDG&E

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

D. Prior to issuance of a Certificate of Occupancy:

Planning

48. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. A State licensed landscape architect shall certify that all plant and irrigation materials have been installed in accordance with the specifications of the final plan and shall submit said certification in writing to the Director of Community Development. The Community Development Department shall inspect the site to ensure that the landscaping has been installed in accordance with the approved plan.
 - Landscaping and irrigation shall be kept in a neat, clean, and thriving condition.
49. The applicant shall submit the appropriate payment for the General Government Facilities Impact Fee.

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Building

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

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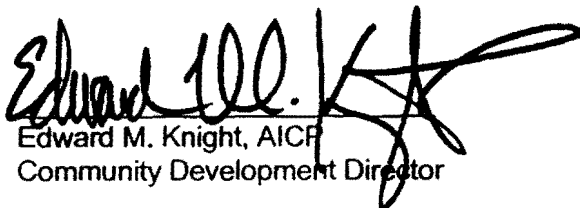
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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 18th day of July, 2001, by the following vote, to wit:

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


J. Scott Schoeffel, Chairman
Planning Commission

ATTEST:


Edward M. Knight, AICP
Community Development Director

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**CITY OF DANA POINT
AGENDA REPORT**

DATE: JULY 18, 2001

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

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

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

APPLICANT: Ricardo Nicol
OWNER: Kirk Bell

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

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

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

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

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

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Code, and LCP?

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

BACKGROUND:

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

DISCUSSION:

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

Coastal Development Permit/Site Development Permit

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

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

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

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

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

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

Lateral Access Findings

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

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

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

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

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

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

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

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

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

Required Findings for Access:

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

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

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

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

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

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

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

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

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

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

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

Required Findings for Coastal Development Permit:

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

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

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

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

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

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

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

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

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

5. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

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

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

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in visually degraded areas.

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

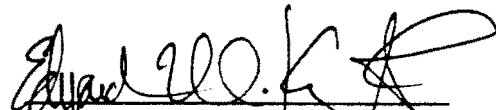
7. The proposed development will conform to the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or other applicable adopted plans and programs.

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

CONCLUSION:

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


Sara J. Pashalides
Project Manager/Consultant


Edward M. Knight, AICP
Director Community Development

ACTION DOCUMENTS:

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

SUPPORTING DOCUMENTS:

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

EXHIBITS:

- A. Building Plans and Elevations

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Existing Baseline Conditions

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

A. COASTAL RECREATION FACILITIES/COASTAL ACCESS

Doheny Beach State Park

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

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

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

Capistrano Beach Park

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

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

Capistrano Bay Beach

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

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

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

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

Poche Beach

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

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

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

B. CIRCULATION NETWORK

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

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C. PARKING FACILITIES

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

D. SENSITIVE MARINE RESOURCES

Doheny Beach Marine Refuge/Under Water Park

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

San Juan Creek

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

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

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

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APPENDIX A **Coastal Resource Project &** **Cumulative Effect Check List**

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

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

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FINDINGS OF FACTS

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

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

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

Dana Point Harbor breakwater.

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

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

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

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

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

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



• SHORELINE CONDITION •

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

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MAP NUMBER

119

STATE OF CALIFORNIA

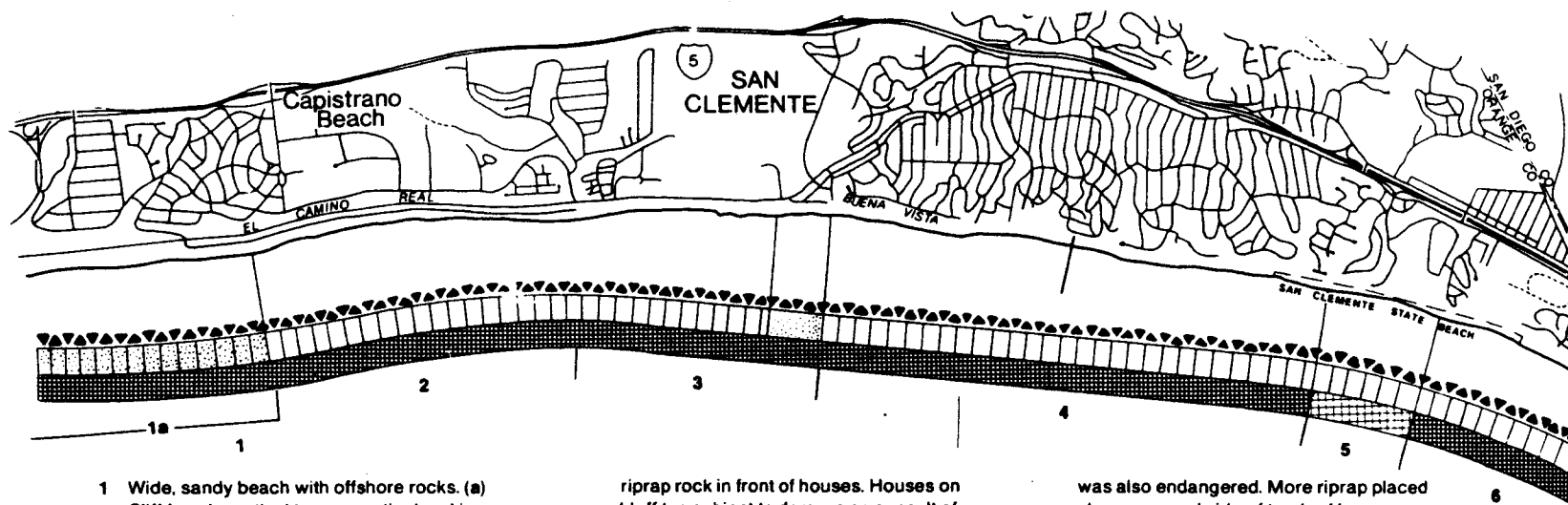
THE RESOURCES AGENCY

DEPARTMENT OF NAVIGATION & OCEAN DEVELOPMENT

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A-5-DPT-01-336 Ex. 5



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

- riprap rock in front of houses. Houses on bluff top subject to damage as a result of cliff erosion. Many recent cliff failures visible.
- 3 Narrow sandy beach backed by low wooden seawall, mobile home park, railroad, highway, and high eroding coastal bluff. Three sand-filled Longard tubes placed in front of timber wall collapsed. Seawall overtopped and mobile homes sustained severe damage during winter storms of January-March 1983. Railroad

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

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

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WAVE RUNUP STUDY

35405 BEACH ROAD
DANA POINT, CA

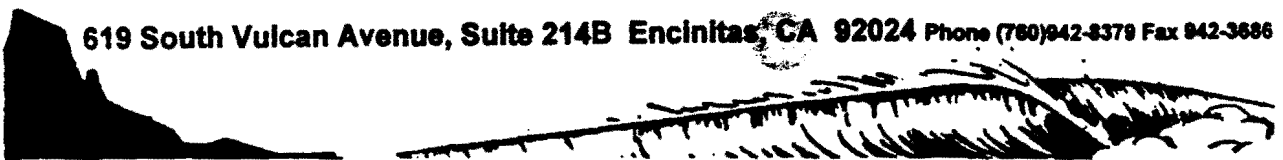
JANUARY 2001

Prepared For
Capistrano Bay
Community Services District

COASTAL COMMISSION
A-S-DPT-01-336

EXHIBIT # 7
PAGE 1 OF 18

619 South Vulcan Avenue, Suite 214B Encinitas, CA 92024 Phone (760)942-8379 Fax 942-3686



I. INTRODUCTION

The subject property, 35405 Beach Road, Dana Point, is a rectangular lot that is situated at the back of a sandy beach, see Figure 1. There is currently an existing structure on the lot and it is our understanding that this structure is to be demolished and a new residence will replace it. The new residence will be supported on a pile foundation. This section of shoreline in the Dana Point area is characterized by relatively wide sandy beaches backed by two roads, the railroad and a sea cliff. The shoreline and homes located along this stretch of coast are subject to periodic wave attack from extreme storms. This area is also subject to occasional high sediment transport rates. This report constitutes an investigation and analysis of wave runup and overtopping of the existing beach berm and the resulting wave and debris forces on pile structures. The purpose of the study is to provide the necessary information for the FP-3 Floodplain Certification as required by the City of Dana Point, Orange County, California.



WIDE BEACH

Figure 1. Site photograph taken December 12, 2000.

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II. DATUM

Two datums will be used in this report the first datum is Mean Sea Level (MSL), which is -0.08 feet Orange County Vertical Datum (OCVD) or about . The second datum is the North America Vertical Datum (NAVD) which is 2.09 feet above MSL. The site was inspected on December 12, 2000.

III. WAVE RUNUP AND OVERTOPPING

As waves encounter the beach in front of this lot the water rushes up, and sometimes over, the beach berm. Often, wave runup and overtopping, strongly influence the design and the cost of coastal projects. Wave runup is defined as the vertical height above the still water level to which a wave will rise on a structure (beach slope) of infinite height, see Figure 2. Overtopping is the flow rate of water over the top of a finite height structure (the steep beach berm) as a result of wave runup. The beach is a finite height structure so overtopping must be considered,

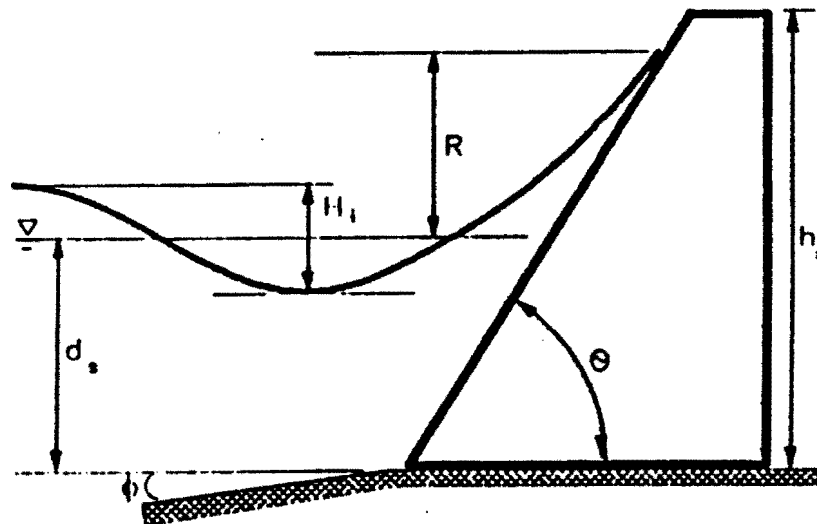


Figure 2. Wave runup terms from ACES manual.

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Wave runup and overtopping for the properties is calculated using the US Army Corps of Engineers Automated Coastal Engineering System, ACES. ACES is an interactive computer based design and analysis system in the field of coastal engineering. The methods to calculate runup and overtopping implemented within this ACES application are discussed in greater detail in Chapter 7 of the Shore Protection Manual (1984). The overtopping estimates calculated herein are corrected for the effect of onshore winds.

The empirical expression for the monochromatic-wave overtopping rate is:

$$Q = C_w \sqrt{g Q_0^* H_0^3} \left(\frac{R+F}{R-F} \right)^{\frac{-0.1085}{\alpha}}$$

where

Q = overtopping rate/unit length of structure

C_w = wind correction factor

g = gravitational acceleration

Q_0^*, α = empirical coefficients (see SPM Figure* = 7-27)

H_0 = unrefracted deepwater wave height

R = runup

$F = h_s - d_s$ = freeboard

h_s = height of structure

d_s = water depth at structure

The correction for offshore winds is:

$$C_w = 1 + W_f \left(\frac{F}{R} + 0.1 \right) \sin \theta$$

where

$$W_f = \frac{U^2}{1800}$$

U = onshore wind speed (mph)

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The wave, wind and water level data used as input to the ACES runup and overtopping application was taken from the historical data reported in USACOE (1986, 1988) and design data reported in Moffatt & Nichol (1985, 1993). The Capistrano Bay shoreline has experienced a series of storms over the years.

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These events have impacted coastal property and beaches depending upon the severity of the storm, the direction of wave approach and the local shoreline orientation. The ACES analysis was performed on oceanographic conditions that represent a 75 to 100 year recurrence storm. The onshore wind speed was chosen to be 40 knots. During storm conditions the sea surface rises along the shoreline (super-elevation) and allows waves to break closer to the shoreline and runup on the revetment. Superelevation of the sea surface can be accounted for by: wave set-up, wind set-up, inverse barometer, wave group effects, and El Niño and global warming effects. These conditions rarely occur simultaneously. Tidal datums and historical extreme water level for the area can be found on the NOAA web site listed in the references. The extreme water elevation used in this analysis is +6.0' MSL (100 year recurrence water level).

The wave that has the greatest runup is the wave that has not yet broken when it reaches the toe of the beach. It is not the largest wave to come into the area. The larger waves break offshore of the beach or structure and lose most of their energy before reaching the shoreline. If the total water depth is 8.5 feet, based upon a maximum scour depth at the toe of the beach of -2.5 MSL (from Moffatt & Nichol 1993) and a water elevation of +6.0' MSL, then the design wave height would be about 6.6 feet. The breaking wave elevation for this design wave will be less than +12.0' MSL. For the ACES analysis a 18 second wave period was used because longer waves generally have greater runup. The average height of top of the beach berm is +13.5' MSL. The design slope of the beach is 1/12 (V/H) and the nearshore slope was chosen to be 1/50. Table I is the ACES output for these design conditions.

Table I

AUTOMATED COASTAL ENGINEERING SYSTEM ... Version 1.02 1/ 4/2001 9:11
Project: WAVE ANALYSIS 35405 BEACH RAOD DANA POINT

WAVE RUNUP AND OVERTOPPING ON IMPERMEABLE STRUCTURES				
Item		Unit	Value	
Wave Height at Toe	Hi:	ft	6.600	Smooth Slope
Wave Period	T:	sec	18.000	Runup and
COTAN of Nearshore Slope			50.000	Overtopping
Water Depth at Toe	ds:	ft	8.500	
COTAN of Structure Slope			12.000	
Structure Height Above Toe	hs:	ft	15.500	
Deepwater Wave Height	H0:	ft	3.922	
Relative Height	(ds/H0):		0.376E-03	
Wave Steepness	(H0/gT ²):		8.737	
Wave Runup	R:	ft	67.512	
Onshore Wind Velocity	U:	ft/sec	0.700E-01	
Overtopping Coefficient	Alpha:		0.700E-01	
Overtopping Coefficient	Qstar0:		0.417	
Overtopping Rate	Q:	ft ³ /s-ft		

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IV. WATER DEPTH, VELOCITY AND WAVE FORCE

The maximum wave runup on a beach of infinite height is to about 15.0' MSL. The maximum overtopping rate of 0.42 ft³/s-ft can be used to calculate the water depth and velocity (Manning Equation). The ocean frontage of the property serves as a wide channel for the overtopping waters to flow from the berm crest through the properties. Using the overtopping rates per length of beach along the ocean front of the property, yields a water depth of less than 0.5 feet and a velocity of about 1.5 feet per second.

Pile structures at this site would be subject to direct wave attack and debris impact loads. The calculations made herein use the Coastal Construction Manual procedure. This procedure calculates horizontal water loads per foot of pile for varying wind speeds, water depths and velocities. The maximum water loads include inertial and drag forces of waves, current drag forces, and impact forces of waterborne storm debris. The Coastal Construction Manual method is conservative and often yields excessive wave forces when using extreme wave conditions. The results of the analysis, with a factor of safety of at least 1.5, is a design force of 500 lbs/ft of pile.

V. CONCLUSIONS AND RECOMMENDATIONS

Prediction of runup and overtopping on a beach during extreme storm events is a very complex problem. The flow rates presented here represent what is defined as flow which is sustained by continuous volume flow, even though it will actually occur with the cycle of the waves. The calculations made herein use state of the art methods, yet they are based on several simplifying assumptions (see Chapter 7 of SPM). The combined wave impact force is considered to be acting horizontally against the face of a concrete pile. The total wave force should be considered acting per foot of pile height. Differential lateral forces caused by waves acting against sidewalls (and decks) of the structure will be less.

The breaking wave elevation is +12.0' MSL (+14.1' NAVD) and the maximum wave runup elevation is about +15.0' MSL (+17.1' NAVD). It is important to point out that the wave cannot runup any higher than the grade of the beach. Once it reaches the highest beach grade it become overtopping which in this case in less than 0.5' of water. These elevations are in reasonable agreement with the Moffatt & Nichol analysis. Structural elements lower than +15.0' (+17.1 NAVD) MSL will be subject to possible water or wave runup

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splash. It is recommended that a minimum of one foot of space be maintained between the bottom of any horizontal structural element and the top of the sand beneath the structure. During storm events with the eroded beach condition, water will pass beneath the residence and through to the street. The water must have a clear path along the sides of the residence to do this. For garage floor elevations below +15' MSL (+17.1 NAVD) breakaway panels may be installed at the bottom two feet of the portion of the garage wall that is parallel to the shoreline.

A minimum 12"X12" concrete pile is recommended with a minimum spacing between piles of 10 feet. Larger diameter piles can be used with the size and spacing determined by the structural engineer. The maximum scour depth will not exceed the low tide terrace, which is at about elevation -2.5 MSL. A recommended minimum design wave force (horizontal water force) is 500 lbs/ft. The wave force resultant will act at the maximum still water level of + 6.0 MSL (+8.1 NAVD). The maximum bending moment will occur when the beach is eroded to the maximum scour depth and the still water is at its maximum elevation. While highly unlikely, it can be presumed that scour will occur under the entire building. In addition, it is very unlikely that the maximum scour will occur at the same time as the maximum water level during the maximum wave event. The support beams of the structure should be designed to withstand the full wave force with a safety factor of at least 1.5. The structural components should be designed by a structural engineer with experience in pile design and construction.

VI. CERTIFICATION

This report is prepared in accordance with accepted standards of engineering practice, based on the site conditions, the materials observed and historical data reported. No warranty is expressed or implied.

VII. COPYRIGHT

This report is an instrument of professional service provided by Skelly Engineering to Capistrano Bay Community Services District. As such it is protected by the copyright laws of the United States. Reproduction of this report, in whole or in part, is permitted only if title, date, and author is cited in full. Any secondary use of this report is made entirely at the risk of the user. It is strongly recommended that a competent coastal engineer be consulted when interpreting any of this information.

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VIII. REFERENCES

Coastal Construction Manual, 1986 FEMA (Federal Emergency Management Agency)

Moffatt & Nichol, Engineers, 1985, County of Orange, E.M.A., "Coastal Flood Plain Development Study", January 1985

Moffatt & Nichol, Engineers, 1993, "Coastal Flood Plain Development Study Update for the Capistrano Bay Community", December 1993.

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USACOE LAD, 1986, "Southern California Coastal Processes Data Summary" Ref # CCSTW 86-1.

USACOE LAD, 1988 CCSTWS report #88-6 "Historic Wave and Water Level Data Report San Diego Region.

Respectfully Submitted,

David W. Skelly, MS
RCE #47857

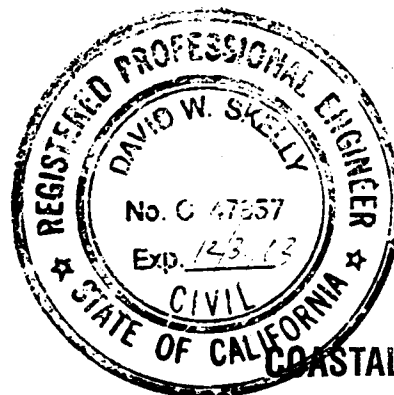


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DAVID W. SKELLY COASTAL ENGINEER

October 24, 2001

Mr. Jeff Goldfarb
Runtan & Tucker LLP
611 Anton Blvd, 14th Floor
Costa Mesa, CA 92626-1988

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CALIFORNIA
COASTAL COMMISSION

Subject: Response to California Coastal Commission Appeal A-5-DPT-01-336,
35405 Beach Road, Dana Point.

Dear Mr. Goldfarb;

At your request I have reviewed the above referenced California Coastal Commission (CCC) appeal and would like to offer the following response to some of the issues stated as reasons supporting the appeal. For ease of review I will provide the page number, paragraph number, line number(s) and the text from the appeal in italics. Following this italicized information will be our response.

Page 3, paragraph 2, line 3 - 8, Protection of the proposed development from hazards may cause the beach seaward of the site to erode. This erosion may have adverse impacts upon the ability of the public to use the beach seaward of the mean high tide line for public access and recreation. The mitigation of hazards using shoreline protective devices may also result in adverse impacts to views to and along the shoreline.

No protection of the proposed development, such as a seawall, is proposed. The existing garden wall on the seaward portion of the lot is to be removed. While this wall also is in front of the property to the north, it can easily be removed from in front of the subject site without jeopardizing the adjacent property. The proposed development is supported on a pile foundation which allows the shoreline to naturally erode and accrete. The location of the lowest horizontal member of the pile foundation is above the maximum breaking wave and the maximum wave runup. The hazards from shoreline erosion and waves is mitigated by the foundation design. Therefore, no shore protection is necessary to protect the proposed development.

Page 3, paragraph 3, lines 13-20, The City's approval of the Coastal Development Permit CDP01-10 raises issues with respect to conformity with the certified Local

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Coastal Plan because it has not been demonstrated that adequate technical study and analysis have been prepared which shows that the proposed development minimizes and/or avoids hazards and the need for protective works and minimizes or avoids adverse impacts upon public access and visual resources along the shoreline.

The City of Dana Point requires a technical study and analysis termed a Wave Runup Study. The purpose is to provide the technical information to minimize and/or avoid hazards and the need for protective works while minimizing or avoiding adverse impacts upon public access and visual resources along the shoreline. This is accomplished by identifying the site specific maximum wave runup elevation and the elevation of the maximum breaking wave crest. The foundation of the proposed development is then designed based upon these elevations. By performing the Wave Runup Study and designing the foundation based upon the study the applicant has performed the necessary technical study and analysis to avoid oceanographic hazards and to avoid the need for protective works. The proposed development is entirely on private property and well above the mean high tide line so it will not impact public access or visual resources along the shoreline.

Page 4, paragraph 2, lines 1 - 4, A Wave Runup Study indicates that the site is subject to periodic wave attack and high sediment transport rates. Therefore, the information suggests that the proposed development may require shoreline protective devices to protect the development from wave attack and erosion hazard.

The study does not suggest or recommend that the development requires shoreline protective devices. The purpose of the Wave Runup Study is to provide design parameters so that the proposed development is protected from wave attack and erosion without a shore protection device. No shore protection device is proposed or necessary for the proposed development.

Page 4, paragraph 2, lines 4- 7, Although required by the LUE Policies 3.11 and 4.2, COSE Policy 2.15 and 3.8 and Implementation Plan (IP) Section 9.27.030(a)(5) of the LCP, a Wave Runup Study prepared for the site does not document that the proposed caisson foundation system will avoid impacts upon the beach.

The Wave Runup Study provides design parameters that place the lowest horizontal foundation structural member above the maximum wave crest elevation and above the maximum wave runup/overtopping elevation. The proposed design conforms to these design parameters. The portion of the development that may be subject to wave attack, is the vertical piles which the residence will be supported upon. The

piles extend well below the maximum beach scour depth. The only time that the piles will interact with the ocean is under the extremely rare conditions when the beach is eroded back underneath the residence. This type of extreme erosion has not occurred along this section of shoreline for at least the last several decades including the 1982-83 El Nino winter, January 18-19 1988 extreme waves, and the more recent El Nino winters. While this section of shoreline may experience temporary severe erosion due to one winter's oceanographic conditions the overall shoreline has been relatively stable and not eroding.

The proposed caisson foundation system will definitely not impact the beach 99.9% of the time because the caisson system will not be exposed to waves. If the caissons are exposed to wave activity then the beach will have already been in a severely eroded condition prior to caisson exposure. The caissons will allow wave runup and erosion to occur beneath the structure much like if the piles were not there. The beach will be eroded down to the cobbles, with most of the actual sand that makes up the beach removed prior to exposure of the piles. The beach sand is deposited just offshore by waves and will return to the beach during times of low waves. The vertical piles will not significantly impact the movement of the cobbles along the shoreline. During the severely eroded condition, the piles will be in the surf zone and may actually cause destructive interaction of reflected wave energy such that the erosion potential of the waves is reduced. The piles will not have a measurable increase in the erosion potential from waves. The proposed caisson foundation system, designed in conformance with the Wave Runup Study, will have no impact on the beach 99.9% of the time. In addition, in the rare case that the caissons are exposed to waves the piles will not have a significant impact on the beach if any measurable impact at all.

Page 4, paragraph 2, lines 7 - 9. Furthermore, the City's approval indicates that the existing residence is protected by an ocean protective device.

The ocean protective device that the City is referring to is nothing more than 30" block garden wall and footing in front of the subject property and the property to the north. The wall and footing are shown in the Photograph 1. The top of the wall is at about +16.5' Mean Sea Level (MSL) the bottom of the footing is at above +12.0 MSL. The elevation of the beach is about +15.0' MSL. The wall is not founded deep enough to be termed a seawall or ocean protective device. A seawall would need to extend down below MSL. The wall provides a minimum of privacy and prevents beach sands from blowing into the existing residence. It is our opinion that a portion of the wall can be easily removed and that such a wall is not necessary to protect the proposed development. Even though it is part of a wall system that continues on to the property

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to the north the portion on the subject property can be separated without damage to the remaining walls. Finally, the removal of the wall will not subject the adjacent property to exacerbated oceanographic processes (wave forces, erosion, elevated water level, etc.). It is the intent of the owner to remove the wall if permitted by the Commission.



Photograph 1. Garden wall and exposed shallow footing at 35405 Beach Road.

Page 4, paragraph 3, lines 1 - 3. Although required by COSE Policy 2.14 and IP Section 9.27.030 (a)(5) of the LCP, the Wave Runup Study for the subject site does not address the presence of the existing protective device and or the need for retaining and maintaining the existing protective device.

The Wave Runup Study is for the proposed development. The submitted plans,

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reviewed by this office, do not show any such garden wall. It was our understanding that the garden wall is to be removed, so it was not considered in the coastal processes analysis. It is further our understanding that the City will also allow such removal if permitted by the Commission.

Page 4, paragraph 3, lines 4 - 6. In addition, as required by LUE Policies 4.2 and 4.10 and COSE Policies 2.1, 2.5, 2.8, and 2.9, new development should be designed to avoid or minimize the need for ocean protective devices.

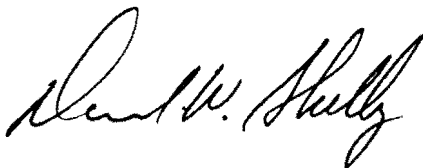
The proposed development does not propose or require the use of any protective device. The proposed development is consistent with the stated LUE and COSE Policies because it avoids the use of a protective device.

Page 4, paragraph 3, lines 4 - 6. The removal of ocean protective devices which may be causing erosion at the site would improve views to and along the shoreline and improve lateral public access along the shoreline by restoring beach width and providing additional area for the public to traverse the beach.

This statement clearly does not apply to this proposed project. The garden wall has incorrectly been termed an ocean protective device. The wall is only about 18 inches above the sand level. It does not block any public views. The wall sits entirely on private property and is well landward of the mean high tide line. It does not obstruct or impact in any way public access either laterally along the shoreline or across the shoreline.

If you have any questions or would like to discuss this further please contact me at the number below.

Sincerely,



David W. Skelly MS, PE
 RCE#47857



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DAVID W. SKELLY COASTAL ENGINEER

December 24, 2001

Mr. Jeff Goldfarb
Runtan & Tucker LLP
611 Anton Blvd, 14th Floor
Costa Mesa, CA 92626-1988

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South Coast Region

JAN 4 2002

CALIFORNIA
COASTAL COMMISSION

Subject: Additional Information Requested by California Coastal Commission for
Appeal No. A-5-DPT-01-336: 35405 Beach Road, Dana Point.

Dear Mr. Goldfarb:

At your request we are pleased to provide the following letter report providing the information request by California Coastal Commission (the "Commission") staff (the "Staff") in our meeting with the Staff on December 7, 2001, concerning the of Appeal No. A-5-DPT-01-336 (the "Appeal"). The appeal involves the City of Dana Points granting of CDP 01-10 to Mr. Kirk Bell to rebuild his single family home (the "Home") located at 35405 Beach Road (the "Site"). At that meeting, Staff told us they requested the information to support this office's certification that:

1. The location (siting) and re-construction of the Bell's home minimizes risks to life and property.
2. While in extremely rare situations sea water may reach that portion of the lot upon which the Bell's home will be re-constructed, the home itself, due to its design and location upon the lot will not be subject to hazards such as wave attack and erosion.

In particular, Staff requested some information on beach width, summer/winter beach profiles, and a discussion of the expected frequency of inundation (wave runup and overtopping) of the Site.

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The attached figure shows the typical winter and summer beach profiles for the beach on the Site. The beach profiles were determined by from Site specific beach monitoring, and shoreline erosion reports prepared by Moffatt & Nichol, Engineers ("Moffatt & Nichol") in 1985 & 1993 (the "Reports"). Based upon our observations of current conditions as compared to the beach conditions determined in the Reports, the beach does not appear to have changed significantly from the conditions described in the Reports. The beach on the Site exhibits the typical summer and winter type profile with a portion of the beach eroded in the winter months and then fully built out again in the summer months. The average beach width seaward of the Site, as measured from the mean high tide to the seaward most point of the proposed development, is over 170 feet. The summer beach is primarily composed of sand with a few cobbles. There is a large cobble field below the sand and, during the winter erosion, there are random, naturally occurring cobble spits some of which make up the beach face and allow for a steeper beach face profile. The naturally occurring cobbles, which are not as mobile as the sand, actually serve as a natural form of shore protection, slowing down the common temporary seasonal retreat of the shoreline, and dissipating wave energy through friction. The back beach area, nearer the Site, does not change unless there are **very extreme** oceanographic conditions such as the 1982-83 El Nino.

During these "extreme" oceanographic conditions, the wave runup may potentially reach the homes footprint. The very conservative wave runup and coastal engineering analysis performed by this office determined that, at a maximum, only a few inches, (less than 0.5'), of water will reach the home's footprint during extreme oceanographic conditions. This conservative analysis takes into account increases in sea level from factors such as global warming and El Nino. The grade on the Site is at about elevation +14.5' MSL, while the finished first floor of the Home is proposed at +17' MSL. The reason for the elevation difference is because the Home, as approved, will be re-built on pilings, raising the foundation well above the highest potential overtopping water depth. Even though water may reach the footprint of the Home in extremely rare oceanographic conditions, the Home itself will never be subject to inundation from wave run up because it is located well above any potential flood and wave overtopping water elevation.

The design of the Home also reduces the risk from wave attack and beach erosion. The Home is founded on piles. The horizontal structural members connecting the piles, just below the first floor, are located above the maximum breaking wave crest and above the potential flood elevation. Waves will not hit the first floor of the Home. Water will not reach the elevation of the first floor. The piles will not significantly impact beach erosion or accretion processes. To the best of our knowledge a pile supported or pier like structure

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has never been identified as a significant cause of beach erosion. A structure supported on properly designed piles is the preferred method of design in many coastal applications.

If you have any questions or need additional information please contact us at the number below.

Sincerely,



David W. Skelly MS,PE
RCE#47857



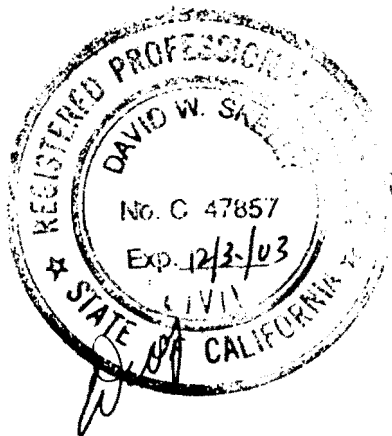
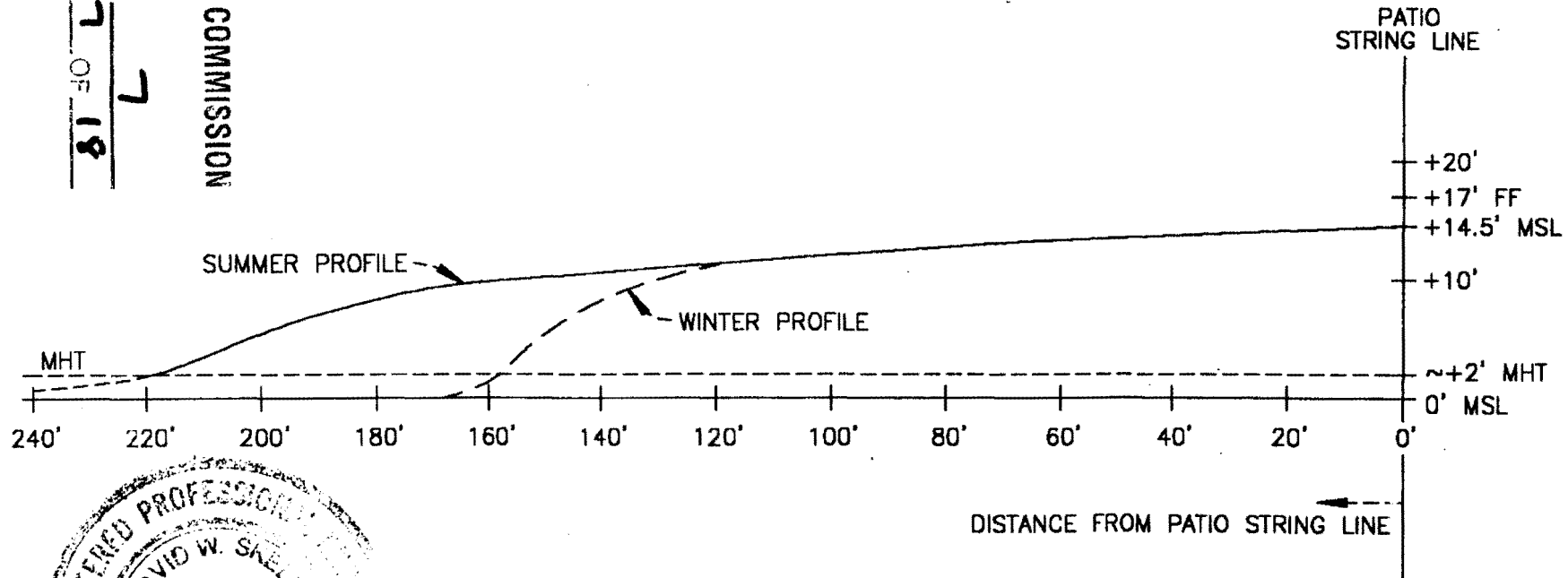
REFERENCES

Moffatt & Nichol, Engineers, 1985, County of Orange, E.M.A., "Coastal Flood Plain Development Study", January 1985

Moffatt & Nichol, Engineers, 1993, "Coastal Flood Plain Development Study Update for the Capistrano Bay Community", December 1993.

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TYPICAL SUMMER/WINTER BEACH PROFILE
35405 BEACH ROAD, CAPISTRANO BEACH

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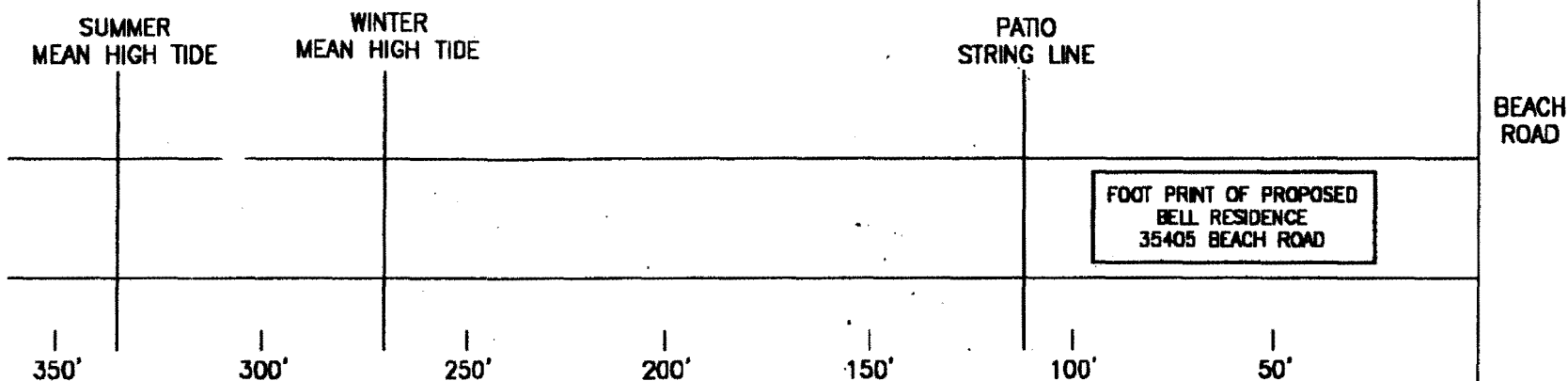


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SITE PLAN

35405 BEACH ROAD, CAPISTRANO BEACH

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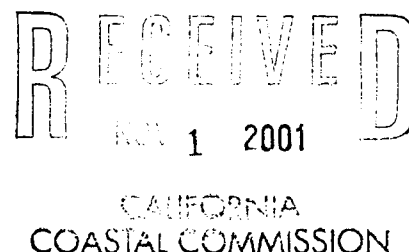
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October 24, 2001

Chairman and Honorable Commissioners
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302



Re: Appeal No. A-5-DPT-01-336

Dear Chairman and Honorable Commissioners:

This office represents Appellee Kirk Bell in Appeal A-5-DPT-01-336 (the "Appeal"). This letter is in response to the initial notice of appeal filed by Commissioners Dettloff and Wan. Appellee requests that this letter be provided to all Commissioners and be included in the record on this Appeal. This letter is not intended to be viewed as Appellee's only responsive writing. Appellee reserves the right to file additional written responses along with necessary documentary evidence once the Coastal Commission staff report is received.

The Notice of Appeal fails to accurately characterize Mr. Bell's project. The project is the Bells' rebuilding of their single family home on the property located at 35405 Beach Road (the "Property") in the Beach Road Community of Dana Point. The Property is currently developed with an old deteriorating single family home in which the Bells currently reside. Consequently, the proposed use will be no more intense than the use currently being made of the Property. It is also important to note that the Property is located in the middle of an 80-year old residential development, such that Mr. Bell's lot is sandwiched between the 112 developed lots on the south and the 86 developed lots on the north. Furthermore, Mr. Bell's lot is separated from the Pacific Coast Highway, nearest public road, by an intensively used railroad line, a six-foot high block safety wall over which Mr. Bell has no control, and a private road also over which Mr. Bell has no control. It should also be noted that the Beach Road community in which the Property is located is also separated from the closest residential development not only by the above described gauntlet, but by a 150 foot shear cliff running the entire length of the Beach Road Community with no pedestrian or vehicular access and no plan or reasonable means of achieving pedestrian egress. Accordingly, there is not an ability on the part of the community in

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California Coastal Commissioners

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the vicinity of Beach Road to walk to any Beach Road property other than at the nearby access points (public parks) serviced by two east/west arterials.

The Appeal appears to raise two distinct issues with the approval by the City of Dana Point (the "City") of a Coastal Development Permit (the "Permit") for Mr. Bell's reconstruction of his single family home: 1) whether and to what extent the so-called "coastal protective device" will cause coastal beach erosion, and 2) whether the City should have required Mr. Bell to dedicate a coastal access easement in violation of the Fifth Amendment of the United States Constitution and whether the proposed reconstruction will be accomplished in a way that will not cause substantial coastal erosion.. Each of these issues are addressed below.

I. THERE IS NO OCEAN PROTECTIVE DEVICE ON THE PROPERTY, ONLY A SMALL PATIO WALL WHICH THE CITY HAS AGREED TO ALLOW MR. BELL TO REMOVE IN CONJUNCTION WITH THE COASTAL COMMISSION'S APPROVAL OF THIS PERMIT.

In the Notice of Appeal, the author noted "the City's approval indicates that the existing single family residence is protected by an ocean protective device. The special conditions require that the protective device remain in place and be preserved and maintained until such time that the device is no longer needed." (NOA p. 4.) Staff is correct that the City's staff report for the Permit assumed the existence of an "ocean protective device" on the Property which the conditions of approval require remain in place until no longer necessary. This conclusion in the City's staff report resulted from an unfortunate error. The assumed ocean protective device is simply a patio privacy wall. As explained in the amended wave run-up study attached hereto as Exhibit 1, an excavation of the wall revealed that its base did not penetrate through the sand. Accordingly, the wall does not even attach to the subsurface structure below the sand nor does it extend to the scour depth of the underlying bedrock. If the wall were subjected to any significant wave action, the wall would simply be washed away. Mr. Bell consents to a condition on this Permit directing him to remove the wall in conjunction with the rebuilding of his single family home. Therefore, any issues associated with the impact the wall may have on beach erosion or visibility are moot.

II. ANY REQUIREMENT THAT MR. BELL DEDICATE A PUBLIC ACCESS EASEMENT ACROSS HIS PROPERTY WOULD CONSTITUTE AN UNCONSTITUTIONAL TAKING OF PROPERTY IN VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The specific facts of this case preclude the Coastal Commission from imposing on Mr. Bell either a lateral or vertical public access easement which complies with the requirements of the Fifth Amendment of the United States Constitution. This is because the United States Supreme Court has determined that imposing a condition requiring a person to dedicate a public access easement across their property constitutes an unconstitutional taking of property in

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violation of the Fifth Amendment unless the specific facts of the case demonstrate a "close relationship between the development of the project and the need for the public access easement." (*Nollan v. California Coastal Commission* (1987) 107 S.Ct. 3141.) In the present case, no such finding is possible.

As previously noted, Mr. Bell's Property is separated from the closest public roadway (Pacific Coast Highway) by the railroad line and right-of-way currently operated by the Orange County Transportation Authority. This railroad line pre-existed the development of the Beach Road community. Between that intervening railroad line and Mr. Bell's Property is a six-foot high safety barrier adjoining the railroad tracks and a private road. Existing public beach access is currently obtained over the Property through the lateral public access easement created by the public trust doctrine (the "Existing Easement"). The subject site is approximately 200 feet in depth, with the southwestern edge located at the mean high tide line.

As noted in Attachment 5, the Capistrano Bay Community is surrounded on both sides by facilities that are open and accessible to the general public. These facilities, Capistrano and Poche Beaches, either provide parking or have public parking immediately adjacent thereto and have overnight and day use with active and passive recreation areas on the beach. The surrounding area, which includes Doheny State Beach Park, supports numerous public facilities that are essential to residents and visitors of California that do not live on the coast. The three facilities have an estimated combined attendance of 1.6 million visitors each year. The surrounding area provides a variety of public use facilities that can accommodate a large and diverse population. Since Mr. Bell's project involves the replacement of his existing single family home dwelling with a reconstructed single family home, the future demand on public facilities will not be affected in any way. Nor will Mr. Bell's reconstruction of his house in any way diminish access or use of existing beach facilities. The demand will remain the same as it is today with no impact from Mr. Bell's rebuilding of his home.

With respect to shoreline access, Mr. Bell's rebuilding of his family home will not in any way impact the public's ability to access the public shoreline, let alone significantly impact that access. The home and site improvements are located more than 88-feet from the water's edge and will not create any physical barriers along the existing public access easement. Even if Mr. Bell wanted to, he could not rebuild his home in a manner which interfered with the existing Public easement across the Beach. While the staff reports that the new home "would result in seaward encroachment of development," the report fails to mention that through the Commission and the LCP of the City a fixed structural stringline well back from the easement area which prohibits the seaward construction of any structure beyond the stringline. The public currently has access to two public beaches on both the west and east sides of the Capistrano Bay Community. Public parking is provided within the 140-space facility that is accessible from Pacific Coast Highway. There are no physical barriers, man made features, or natural rock formations that currently hinder the public's ability to walk along the public tidelands adjacent to

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Capistrano Bay Beach. Due to the location of public facilities on both sides of this community, the public easement currently located along the Capistrano Bay Beach can be accessed laterally from the existing public facilities within the existing public tidelands. The proposed development does not negatively affect the public access to the shoreline or use of tidal waters.

Requiring a dedication of an additional lateral public access easement would not in any way provide additional public access, and thus would not serve any legitimate governmental purpose. This is because the public can only access coastal resources on or adjacent to Mr. Bell's Property by using the existing public easement below mean high tide line. This is because, as previously noted, Mr. Bell's Property is separated from the closest public roadway (Pacific Coast Highway) by a heavily used rail line, a six-foot high safety barrier adjoining the railroad tracks, and a private road. Mr. Bell does not own any of these improvements and therefore lacks any legal ability to grant to the public the right to traverse any of these improvements. As a result, requiring Mr. Bell to dedicate a lateral public access easement would not enhance public access to the public tidelands or coastal resources because the only way the public could access a newly created lateral access easement across Mr. Bell's Property would be to use the existing public access easement below the mean high tide line from either public beach until they reached Mr. Bell's lot.

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

The above individualized facts also preclude requiring Mr. Bell from dedicating a vertical public access easement (an access easement extending from the closest public street down to the Public Trust Easement). Both the Commissions Regulations Dana Point Municipal Code Section 9.27.030 (which is a portion of the City's LCP) specifically exempts coastal development from the requirement to provide vertical access easements when such access is inconsistent with public safety, when such access will not alleviate the access burdens created by the project, or when adequate access exists nearby. As previously noted, Mr. Bell's Property is separated from the nearest public street by the railroad tracks and right-of-way currently operated by the Orange County Transportation Authority, a six-foot high safety barrier adjoining the railroad tracks, and a private road. Accordingly, access to any vertical easement on Mr. Bell's Property would require the public to trespass across railroad tracks frequently used by both freight and passenger train services, then to scale a six foot cinder block safety barrier and, finally, to trespass a third time by crossing the private street abutting Mr. Bell's Property. Only once the public has thrice violated the State's trespass laws and successfully navigated this labyrinth could they obtain access to a vertical access easement. Given the safety factors involved, the availability of adequate nearby access, and the fact that the law would absolutely forbid the public's use of the

COASTAL COMMISSION

vertical access easement¹, Mr. Bell's Property squarely falls within the exemption from the dedication requirement by Dana Point Municipal Code Section 9.27.030.

III. MR. BELL'S RECONSTRUCTION PLANS MINIMIZE THE EXPOSURE OF THE HOME TO HAZARDS.

As demonstrated by the plans for the reconstruction for the Bells' home, the wave run-up study originally submitted to the City, and the revised wave run-up study attached hereto as Exhibit 1 demonstrate the Bells' home is going to be constructed on pilings sunk into the bedrock lying below the sand. This form of construction is consistent with the FP3 requirements of the Federal Emergency Management Agency established for properties developed in areas subject to wave action as well as Commission Regulations and guidelines. Moreover, as demonstrated by the revised wave run-up study, this form of construction is designed to reduce the stresses placed on the structure by wave action because it minimizes surface area exposed to the waves and allows the energy to be dispersed by permitting the wave to pass under the structure rather than slam into it. Any erosion that results in the freak storm conditions that bring wave action high enough on the beach to approach the home will result from the ferocity of the storm itself, and not from the existence of the house, as the water will simply pass under the house.

IV. THE NOTICE OF APPEAL MAKES SEVERAL REFERENCES TO "VIEW OBSTRUCTION" BUT FAILS TO EXPLAIN WHAT VIEW IS ALLEGED AS BEING OBSTRUCTED.

The Notice of Appeal makes several references to a potential violation of various view protection provisions in the City's Coastal Element, but fails to give any indication of what view is potentially being obstructed by the Bells' home. Without more information, it is impossible to respond to the allegation, let alone respond. We would be happy to respond once the Commission explains its concerns on this issue.

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¹ Each of these are considered independently sufficient grounds for the granting of the exemption.

California Coastal Commissioners

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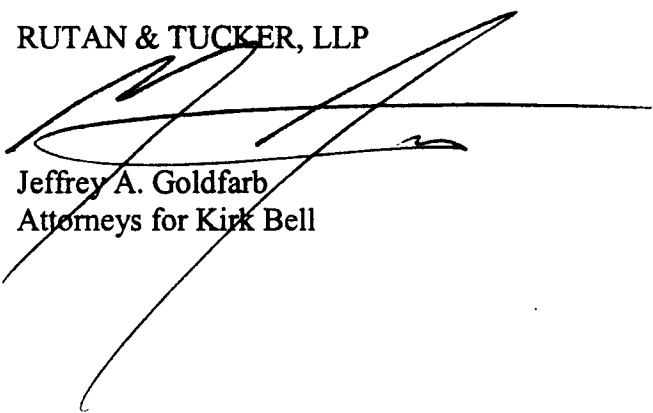
Page 6

V. CONCLUSION

As explained above, the Bells believe that their proposed home, which was unanimously approved by the City's Planning Commission, does not violate any provision of the City's Coastal Element. The Bells therefore request the Commission find that this appeal raises no substantial issues. Accordingly, the Bells request that the Commission dismiss this appeal so they can rebuild their home.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey A. Goldfarb
Attorneys for Kirk Bell

JAG:jh
Enclosure

COASTAL COMMISSION

EXHIBIT #

8

PAGE

6

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14

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November 8, 2001

Karl Schwing
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802

Agenda Item No. T12a
Jeffrey A. Goldfarb, Attorney for Respondent
Kirk Bell, In favor of the project
RECEIVED
South Coast Region

NOV 9 2001

CALIFORNIA
COASTAL COMMISSION

Re: Substantial Issue Hearing on PLA-5-DPT-01-336

Dear Mr. Schwing:

This letter is in response the Staff Report for the Substantial Issue Hearing on the above-referenced appeal. On September 7, 2001, I provided a letter to the Commission (attached hereto as Exhibit "A") requesting that I be placed on the mailing list for all notices, reports and other communications regarding this appeal given that I am Mr. Bell's legal representative. The above notwithstanding, I did not receive a copy of the report when it was originally mailed out. Accordingly, on November 1, 2001, I faxed an additional letter to the Commission requesting that I immediately be faxed a copy of the report. The above requests notwithstanding, as of noon, November 6, 2001, I still had not received a copy of the report. It was not until I called the Commission Staff on November 6th and again reiterated that I had not received a copy of the report that it was finally provided to me. In the unlikely event that the Commission determines this appeal raises a substantial issue, there will be additional reports prepared on the Bells' home project. I therefore request that the Commission Staff verify that I have been added to the mailing list so that I may timely be provided all staff reports in the future.

The Staff Report on the above-referenced appeal requests that the Commission find the appeal to present a substantial issue. Staff asserts that a substantial issue is presented because the City's approval of the Bells' redevelopment of their single family home "did not address whether the proposed development is appropriately sited and whether or not the existing seawall is needed to protect the proposed residence." We believe, however, that no substantial issue is presented.

COASTAL COMMISSION

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As noted in the plans for the project and the October 24, 2001 letter from Coastal Engineer David W. Skelly supplementing the Wave Run-Up Study originally submitted for the project (the "Wave Run-Up Supplement"), the house is proposed to be built on caissons which place the house over fifteen (15) feet above mean sea level. This places the lowest horizontal member of the house well above the maximum breaking wave and maximum wave run-up. (Wave Run-Up Supplement, p. 1.) Accordingly, and as noted in my October 17 letter to the Commission, the project is not reliant upon a shoreline protective device.

Nor is there any validity to the belief that there is an existing ocean or shoreline protective device on the property. As more fully explained in my previous letter to the Commission, the City staff erred in reaching this conclusion. This error stemmed from City staff's assumption that a patio privacy wall was an ocean protective device. That City staff's conclusion was an error is demonstrated by the Wave Run-Up Supplement which states: ***"The ocean protective device that the City is referring to is nothing more than a 30" block garden wall and footing in front of the subject property...."*** The wall is not founded deep enough to be termed a seawall or ocean protective device. A seawall would need to extend down below the MSL [mean seal level]. The wall provides a minimum of privacy and prevents beach sands from blowing into the existing residence." (Wave Run-Up Supplement, p. 3.) Accordingly, the wall does not even attach to the subsurface structure below the sand nor does it extend to the scour depth of the underlying bedrock. If the wall were subjected to any significant wave action, the wall would simply be washed away. ***Mr. Bell consents to a condition on this permit directing him to remove the wall in conjunction with the rebuilding of his single family home.*** Therefore, any issues or studies associated with the impact the wall may have on beach erosion or visibility are moot. there is no shoreline protective device proposed for the project.

Nor is there any substantial issue regarding the siting of the project. Preliminarily, it must be noted, precedence alone supports the appropriateness of the home's siting. Within the past two years, the Commission had no problem with the design or siting of the homes approved by the City at the following Beach Road addresses: 35375, 35425, 35691, or 35077. Each of these homes is sited and constructed in a fashion similar to the Bell's. Precedence however is not the only reason to conclude that the siting and design of the Bells' home is consistent with both the City's LCP and applicable coastal policies. Because the home will be constructed on caissons which are taller than the highest breaking wave, neither wave action nor erosion will in any way impact the home. As noted in the Wave Run-Up Supplement, ***"the location of the lowest horizontal member of the pile foundation is above the maximum breaking wave and maximum wave run-up."*** The hazard from shoreline erosion and waves is mitigated by the foundation design. Therefore, no shore protection is necessary to protect the proposed development." (October 24, 2001 Skelly Report, p. 1.) Given the absence of any shoreline protective devices, any and all concerns noted in the Staff Report regarding the impacts of shoreline protective devices are irrelevant as it relates to the development of the project.

COASTAL COMMISSION

November 8, 2001

Page 3

The Staff Report indicates that the Commission's Coastal Engineer believed that there are "several deficiencies which need to be remedied in order to accurately draw conclusions regarding the project's consistency with the certified LCP and the Public Access Policies of Chapter 3 of the Coastal Act." (Staff Report, p. 15.) In support of this conclusion, the Report notes the record lacks "a complete site plan showing the entire property including the beach area seaward of the proposed development. Staff argues that "since the site presently has a shoreline protective device and the new development could perpetuate the need for this device it should be shown on all site plans and included in the site improvements that are listed. There should be a full site plan that shows all the critical features." As previously noted, however, ***there is simply no shoreline protective devices associated with the proposed project.*** Accordingly, there are no improvements to be shown on a site plan seaward of the proposed development.

Staff also argues that "the applicant should provide information about long term shoreline and beach change." Staff supports this request for expensive and extremely technical information by stating "[i]f this is an eroding beach, the new development may need to be cited far enough landward that it can be shown to have no risk from erosion over its proposed life. Since this is an active beach area, the analysis of the beach and shoreline change should consider, discuss and, if possible, quantify both reversible seasonal shoreline changes and longer term trends and rates of change." (Staff Report, p. 16.) This request for additional information, however is based upon severely flawed assumptions. As previously noted in both the plan, the Wave Run-Up Study, and the Wave Run-Up Supplement, the project is being constructed on caissons which exceed the height of the maximum breaking wave. ***Because the caissons "extend well below the maximum beach scour depth" (Wave Run-Up Supplement, p. 3), neither wave run-up nor beach erosion will have any impact upon the project.*** "The caissons will allow wave run-up and erosion to occur beneath the structure much like if the piles were not there." (*Id.*) In the extremely rare situation where the wave run-up would actually reach the caissons, "the caissons will allow wave run-up and erosion to occur beneath the structure much like if the pylons [and house] were not there. The beach will be eroded down to the cobbles, with most of the actual sand that makes up the beach removed prior to exposure of the piles. The beach sand is deposited just off shore by the waves and will return to the beach during times of low waves." (*Id.*) Based on the foregoing, the proposed studies would not in any way add relevant information to a determination as to whether the project is properly located on the site or whether the project should or should not be approved.

COASTAL COMMISSION

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November 8, 2001
Page 4

Based on the foregoing, we strongly disagree with Staff's conclusion that the proposed appeal raises any substantial issue. We accordingly request the Commission find that no substantial issue is presented and allow the Bells to rebuild their single family home.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey A. Goldfarb
Attorney for Respondent Kirk Bell

JAG:jh

COASTAL COMMISSION

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PAGE 10 OF 18

RUTAN & TUCKER

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*A PROFESSIONAL
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December 10, 2001

RECEIVED
South Coast Region

DEC 13 2001

CALIFORNIA
COASTAL COMMISSION

Mr. Karl Schwing
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802

Re: Meeting of December 7, 2001 re CDP No. 01-10

Dear Karl:

I would like to thank you, Leslie and Steve for having met with myself and Mr. Dave Skelly, Mr. Bell's oceanographic engineer, on Friday, December 7, 2001 to discuss the above-referenced appeal. At the meeting, we discussed at length the siting and construction features of the house for the purposes of explaining that the house will be elevated above any water level, even in the extremely rare situation that the sand is eroded down to the cobbles. By way of this letter, I would like to confirm that the Coastal Commission (through Leslie) has asked that Mr. Skelly provide a number of documents to support his conclusion that the house, as proposed to be constructed, reduces risks to life and property. These documents include a typical winter and summer beach profile, a small discussion of the frequency of inundation under the proposed footprint of the for the Bell house, and the NOAA mean high tide information.

At the meeting we also discussed the oft-mentioned (but non-existent) "shoreline protective device." As we had previously explained on several occasions, and as evidenced by the pictures we presented to you at the meeting, the "shoreline protective device" is actually nothing more than a shallow patio wall that we intend to remove during reconstruction. During the meeting you mentioned the possibility that there was a rock revetment buried somewhere below the property. As I mentioned at the meeting, I had talked to various residents in the area and they have never seen a rock revetment on this property. I nevertheless committed to asking 5 residents on either side of the Bells if they have ever seen a rock revetment on the property.

We also discussed the lateral access issue. At the meeting, Steve noted that, in the absence of a substantial change in the understanding based upon the discussion that we had at the

COASTAL COMMISSION

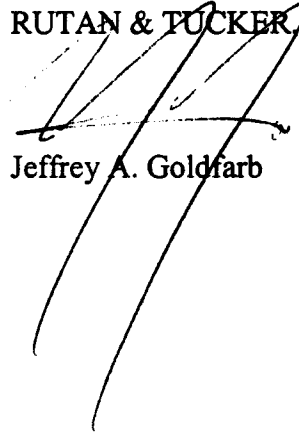
Mr. Karl Schwing
December 10, 2001
Page 2

meeting, there is no nexus between the development of the house and the need for a lateral public access easement.

Should your understanding of the meeting or any of the particulars differ, please immediately respond to me in writing so that we may clarify the issue. Again, thank you for having taken the time to meet with us.

Sincerely,

RUTAN & TUCKER/LLP



Jeffrey A. Goldfarb

JAG:jh

cc: Steve Rynas
Leslie Ewing
David W. Skelly

COASTAL COMMISSION

EXHIBIT # 8
PAGE 12 OF 14

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January 3, 2002

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Karl Schwing
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802

Re: Appeal A-5 DPT-01-336

Dear Karl:

Enclosed please find the information the Coastal Commission staff requested regarding the above-referenced appeal at our meeting with you on December 7, 2001. Staff requested this information to verify that, as approved, the Bells' house is sited in a manner that minimizes risks to life and property. As I mentioned at the meeting, we question the relevance of the requested material. Preliminarily, it must be noted, precedence alone supports the appropriateness of the home's siting. Within the past two years, the Commission had no problem with the design or siting of the homes approved by the City at the following Beach Road addresses: 35375, 35425, 35691, or 35077. Each of these homes is sited and constructed in a fashion similar to the Bells'. Precedence, however, is not the only reason to conclude that the siting and design of the Bells' home is consistent with both the City's LCP and applicable coastal policies. Moreover, the house is proposed to be constructed behind the Commission-approved "structure stringline," which is 17 feet behind the Commission-approved "patio stringline." Given that the Commission approved development behind this stringline, it is difficult to understand how constructing a home behind this line would raise any siting issues. Furthermore, because the Commission is in receipt of documents that demonstrate the home will be constructed on caissons which are taller than the highest breaking wave, it is clear that neither wave action nor erosion will in any way impact the home. As noted in the Wave Run-Up Supplement, *"the location of the lowest horizontal member of the pile foundation is above the maximum breaking wave and maximum wave run-up."* The hazards from shoreline erosion and waves is mitigated by the foundation design. Therefore, no shore protection is necessary to protect the proposed development." (October 24, 2001 Skelly Report, p. 1.) The above notwithstanding, and in an effort to expedite

COASTAL COMMISSION

Mr. Karl Schwing
January 3, 2002
Page 2

the approval of the Bells' reconstruction of their home, we are providing the information as staff has requested.

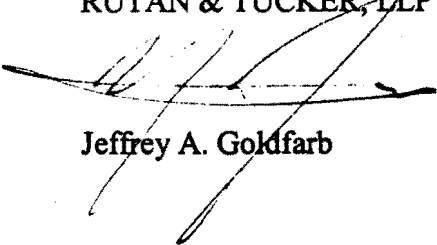
Enclosed you will find the letter from Skelly Engineering demonstrating that the reconstruction of the Bells' home minimizes the risks to life and property. Attached to that letter are also the summer and winter beach profiles and the site plan showing the mean high tide line in summer and winter. As you will note, we have specially prepared a site plan to show the area between Beach Road and the mean high tide line. This could not be shown on the existing site plan because the mean high tide line in both summer and winter is so far away from the footprint of the Bells' home that it could not be shown on the scale with which the original site plan was drawn. In fact, as can be seen on the site plan, even in winter the mean high tide line is no less than 160 feet from the patio stringline, which lies an additional 16 feet seaward of the proposed house.

The final issue relates to allegations concerning a buried revetment on the Bell property. As requested, we have discussed the issue with several residents in the area. Unfortunately, these discussions were not conclusive. Some residents indicate that they have seen some large rocks in the vicinity of the property while others have not. It is unclear to us whether the large rocks described are simply large, naturally occurring cobbles, or whether a revetment was placed on some property in the vicinity at some point in the past. In any event, as we discussed at our December 7th meeting, the Bells would accept a condition imposed upon their property which requires them to remove a non-naturally occurring revetment that exists on their property at such time as a revetment would be exposed, to the extent that they have the legal right to do so.

As you indicated at our December 7th meeting, if we were able to provide you with the attached information prior to January 5, 2002, you stated that you would be able to place the *de novo* hearing on the Bells' application on the Commission's February meeting. Given that the Commission's appeal of the Bells' home has already consumed a substantial amount of time, we look forward to fully and finally resolving this appeal at the Board's February meeting.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey A. Goldfarb

JAG:jh

cc: David W. Skelly

COASTAL COMMISSION