

**CALIFORNIA COASTAL COMMISSION**

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Filed: May 2, 2002  
49th Day: June 20, 2002  
Staff: SFR-LB  
Staff Report: June 20, 2002  
Hearing Date: July 8-12, 2002  
Commission Action:

**M8c****RECORD PACKET COPY****STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** City of Dana Point

**LOCAL DECISION:** Approval with Conditions

**APPEAL NUMBER:** A-5-DPT-02-137

**APPLICANT:** Monarch Bay Club

**APPELLANTS:** Monarch Bay Association

**PROJECT LOCATION:** 500 Monarch Bay Drive, Dana Point, Orange County

**PROJECT DESCRIPTION:** Construction of a maximum 17 foot high retaining wall to accommodate a paved pathway for a private tram connecting the St. Regis Hotel and golf course to the Bay Club plus associated hardscape and landscaping improvements.

**SUMMARY OF STAFF RECOMMENDATION & ISSUES TO BE RESOLVED:**

The staff recommends that the Commission, after a public hearing, determine that **A SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which appeal number A-5-DPT-02-137 has been filed because the locally approved development raises issues of consistency with the City of Dana Point Local Coastal Program as well as with the public access policies of Chapter 3 of the Coastal Act. The motion to carry out the staff recommendation is found on page 5.

The Commission on June 11, 2002 opened the hearing on this appeal. However, the Commission did not act on this appeal at that time as the administrative record from the City of Dana Point had not yet been received by the Commission. The City's administrative record was received on May 24, 2002, which was after the May 23, 2002 mailing of the June staff reports.

The project approved by the City of Dana Point (City) is the construction of a maximum 17-foot high by 130-foot long retaining wall to accommodate a paved pathway for a private tram connecting the St. Regis Hotel and golf course to the Bay Club plus associated hardscape and landscaping improvements. Approximately 50 feet of the retaining wall is in Tract #4472 within the confines of the Monarch Bay Association (a private lock gated community). The remaining 80 feet of the retaining wall is in Tract 12119 (See Figure 1 on Page 7) which is part of the

public golf course. The entire retaining wall as approved by the City of Dana Point is within the Commission's appeal zone since the retaining wall is seaward of Pacific Coast Highway, which in this area constitutes the first public road.

Though the entire retaining wall is within the Commission's appeal zone and the appellant has appealed the entire project; the project as approved by the City needs to be divided into two components for purposes of analysis (see FIGURE 1 on 7). The first component is the approximate 50 feet of retaining wall in Tract #4472. This portion of the development constitutes new development approved by the City, which can be appealed to the Commission. The second component consists of the 80 feet of the retaining wall in Tract #12119. This second component is located within "The Links", which is a public golf course approved by the Commission in 1979 through coastal permit P-79-5539 (AVCO). The Commission retains jurisdiction, through the amendment process, over modifications to projects it has approved.

The proposed retaining wall and tram constitute an amendment to P-79-5539 (AVCO) as it is modification to the public access plan approved by the Commission (see page 18 for a discussion on the relationship of the proposed project, as approved by the City, to the Commission's prior approvals). An amendment application (5-02-120 CDP (Monarch Golf, LLC)) was submitted to the Commission by Monarch Golf, LLC on April 19, 2002 for the 80-foot portion of the proposed retaining wall in Tract #12119. This amendment application was reviewed by Commission staff and determined to be incomplete on May 17, 2002 and remains incomplete. Accordingly, based on the Commission retaining jurisdiction over modifications to projects it has approved, the City lacked permitting authority over the second component of the project. Thus, the City's permit is invalid to the extent that it authorizes construction of the 80 feet of retaining wall to be constructed in Tract #12119, leaving no local permit from which to appeal. Thus, this appeal is limited to the City's authorization of the part of the project within Tract #4472.

Though the portion of the retaining wall within Tract #4472 constitutes new development within the confines of a private lock gated community, construction of the retaining wall also facilitates the operation of the proposed private tram on public trails located in Tract #12119. The operation of the tram potentially adversely affects the public's ability to use public trails through increased intensity of use<sup>1</sup> which could displace existing public pedestrian use. The private tram, through its physical presence and frequency of operation on the trail, potentially displaces the public's ability to use the public trail by converting it into a private motorized trail. Accordingly, the Commission must evaluate the entire project's implications on public access. The standard of review for this appeal is the Dana Point Local Coastal Program and the public access policies of the Coastal Act. The substantial issue before the Commission is:

- 1). Does construction of the 50 foot portion of the retaining wall within Tract #4472, which allows the operation of a private tram both over those 50 feet and through Tract #12119, adversely affect the public's ability to use and enjoy the existing public trail system?

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<sup>1</sup> Section 9.75.040 of the City's Zoning Code defines "development" consistent with Section 30106 of the Coastal Act. Under Section 9.77.040 a "change in the density or intensity of use of land" qualifies as development. The proposed tram will affect the intensity of use of land mandating that the proposed tram be reviewed and approved through the coastal development review process before it can operate.

Commission staff recommends that the Commission find that the appeal raises a substantial issue regarding consistency with the LCP and the public access policies of Chapter 3 of the Coastal Act. At this time, all that is before the Commission is the question of whether the appeal raises a substantial issue. If the Commission determines that a substantial issue exists, a de novo hearing will be held at a subsequent meeting.

**SUBSTANTIVE FILE DOCUMENTS:**

- City of Dana Point Local Coastal Program (LCP)
- Monarch Beach Specific Plan
- City of Dana Point file for City coastal development permit CDP96-26(I)
- Commission CDP P-79-5539 (AVCO)
- Commission CDP 5-92-158 (Monarch bay Resort, Inc.)
- Commission CDP 5-92-168 (Monarch bay Resort, Inc.)

**LIST OF EXHIBITS:**

1. Location Map
2. Monarch Beach Specific Plan Area
3. Monarch Beach Access Plan
4. Proposed Tram Route
5. Retaining Wall Location
6. Appeal by the Monarch Bay Association
7. City Resolution #02-02-02-12-05 approving the tram
8. Culbertson, Adams & Associates letter of May 15, 2002

**APPEAL PROCEDURAL NOTES:**

**A. APPEALABLE DEVELOPMENT**

Section 30603 of the Coastal Act states:

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

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

**B. GROUNDS FOR APPEAL**

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

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

The grounds for the current appeal include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding public safety, expansion of the golf course, and public access.

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

### C. QUALIFICATIONS TO TESTIFY BEFORE THE COMMISSION

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The Chair will set the time limit for public testimony at the time of the hearing. As noted in Section 13117 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

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

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

### I. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:

#### MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE WITH REGARD TO APPEAL NO. A-5-DPT-02-137

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

**Motion:** *I move that the Commission determine that Appeal No. A-5-DPT-02-137 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

#### **Staff Recommendation:**

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

**Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal No. **A-5-DPT-02-137** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. LOCAL GOVERNMENT ACTION**

**CDP No. 96-26(I)**

On February 12, 2002, the City Council for the City of Dana Point held a public hearing on the proposed project. At the conclusion of the public hearing, the City Council adopted Resolution No. 02-02-12-05, which approved with conditions local Coastal Development Permit CDP No. 96-26(I) and Site Development Plan SDP 01-32M *“...to authorize the installation of landscape and hardscape improvements at the Monarch Bay Club and to provide a paved access pathway for private tram use connecting the golf course and St. Regis resort hotel to the parking lot of the Bay Club with retaining wall ...”* (Exhibit 7)

The action by the City Council resulted from the Planning Commission’s decision of November 21, 2001 being appealed to the City Council by the Monarch Bay Association. Based on the City Council action of February 12, 2002 the City’s action was final for purposes of local procedures. The Commission received the City’s Notice of Final Action on April 19, 2002. On May 2, 2002, during the Coastal Commission’s ten (10) working day appeal period, the Monarch Bay Association filed an appeal.

**B. PROCEDURAL HISTORY OF APPEAL AND APPELLANTS’ CONTENTIONS**

The Commission received a Notice Of Final Local Action on CDP 96-26(I) on April 19, 2002. On May 2, 2002, within ten working days of receipt of the Notice Of Final Action the Monarch Bay Association appealed that local action on the grounds that the approved project does not conform to the requirements of the certified LCP or with the public access policies of Chapter 3 of the Coastal Act. A copy of the appellant’s contention is attached as Exhibit 6.

The appellants, in summary, contend that the City’s approval results in: 1) a safety hazard, 2) an unlawful expansion of the golf course, and 3) conversion of a public principally pedestrian trail to a private motorized trail.

**C. SUBSTANTIAL ISSUE ANALYSIS**

**1. Project Location, Description and Background**

The subject site is located within the locked gate community of Monarch Bay in the City of Dana Point, Orange County (Exhibits 1-5 and FIGURE 1). The project site of the proposed retaining wall is located between the first public road and the sea.

Of special note is the location of the project site as it has significant implications on what is before the Commission. This appeal is limited to the area that was not the subject of a prior permit issued by the Commission. FIGURE 1, below, shows the location of proposed retaining wall. Though the entire proposed retaining wall is within the Commission's appeal zone and the appellant has appealed the entire project; the project as approved by the City needs to be divided into two components for purpose of analysis.

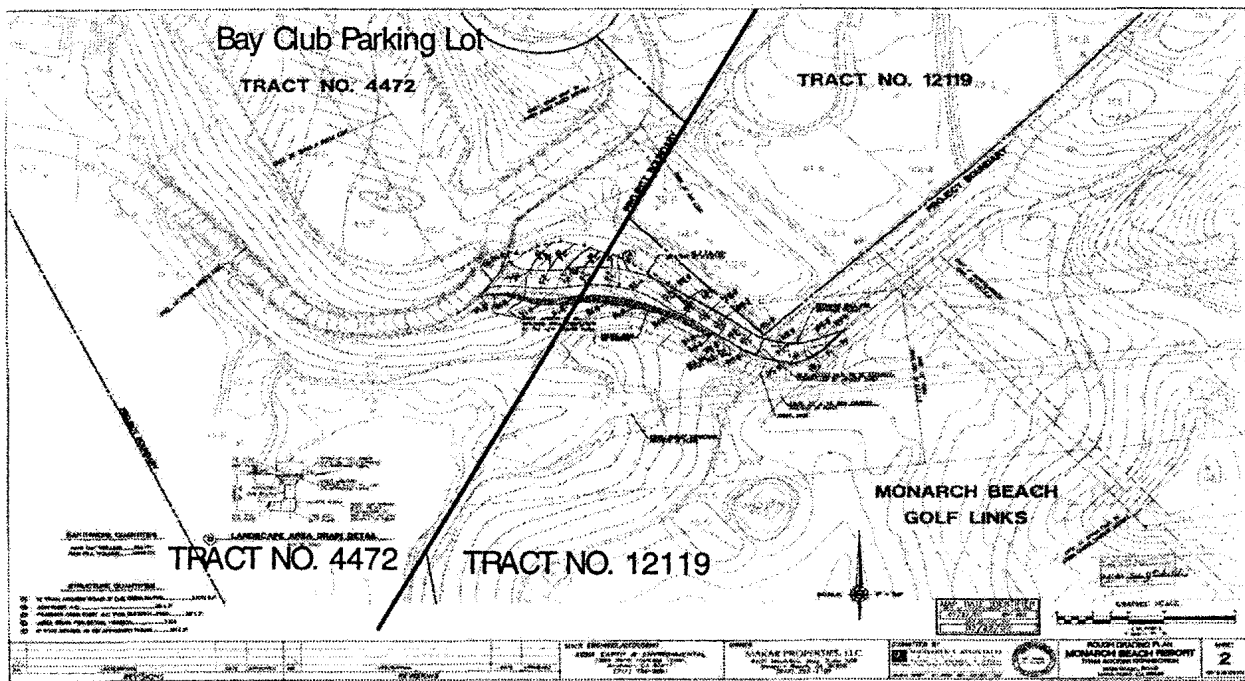


FIGURE 1

The first component is the approximate 50 feet of retaining wall in Tract #4472 within the locked gate private community of Monarch Bay. This portion of the development constitutes new development, which can be appealed to the Commission. The second component consists of the 80 feet of the retaining wall that is in Tract #12119. This second component is located within "The Links" which is a public golf course approved through coastal permit P-79-5539 and subsequently amended through several Commission actions, one of which was 5-92-158 (Monarch Bay Resort, Inc.). The Commission retains jurisdiction, through the amendment process, over modifications to projects it has approved (Section 9.69.030<sup>2</sup> of the City's Zoning Code). The proposed retaining wall and tram constitute and amendment to P-79-5539 (AVCO) and its derivative permits since it is a modification to the public access plan approved by the Commission (see Page 18). An amendment application (5-02-120 CDP (Monarch Golf, LLC))

<sup>2</sup> In regards to P-79-5539, Section 9.69.030 of the City's Zoning Code acknowledges that the Commission retains jurisdiction for purposes of amendment and condition compliance.

was submitted to the Commission by Monarch Golf, LLC on April 19, 2002 for the 80-foot portion of the proposed retaining wall in Tract #12119. This amendment application was reviewed by Commission staff and determined to be incomplete on May 17, 2002 and remains incomplete. Furthermore, Commission staff discussed with the Monarch Golf, LLC agent, on several occasions, the signing of a 49-day waiver as provided by Public Resources Code Section 30621. Had the waiver been signed the applicant would have had time to complete the amendment request which would have permitted the entire tram operation to be reviewed by the Commission at one time.

The local government's administrative record indicates that the proposed project is the installation of hardscape and landscaping at the Monarch Bay Club and the construction of a maximum seventeen-foot high retaining wall (shown in the center of FIGURE 1 above) to accommodate a paved pathway for a private tram connecting the golf course and St. Regis Hotel to the Bay Club. The termination of the trail at the Bay Club parking lot is shown in the upper left corner of FIGURE 1 and on page 10 of Exhibit 10. However, due to the scale of the map, the St. Regis Hotel is not shown. The location of the St. Regis Hotel is shown on Exhibit 4 and Figure 2 on page 15. The tram on its way to or from the St. Regis enters/leaves FIGURE 1 from the upper right corner.

## **2. Local Coastal Program Certification**

The Dana Point General Plan and Zoning Code serve as the LCP for this area<sup>3</sup>. In addition development within Tract #12119 (FIGURE 1 and Exhibit 2) is under the Monarch Beach Specific Plan, which is an additional LCP component. The Monarch Beach Specific Plan covers 225 acres and is synonymous with much of the area covered by P-79-5539 (AVCO). The St. Regis Hotel and the golf course are within the Monarch Beach Specific Plan area and these developments were approved by the Commission. The private Monarch Bay lock gate community is in Tract #4472 which is not covered by the Monarch Beach Specific Plan.

On September 13, 1989, the Commission approved the City's post-incorporation LCP which included most of the City. One area not included, at that time, was the Monarch Beach area. Since initial certification of the City's LCP, the City has taken steps to incorporate into the LCP areas which had been left out. Certification of a Monarch Beach area was carried out under LCP Amendment 1-96.

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

Pursuant Section 30603 of the Coastal Act, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. The appeal at issue raises both grounds. Thus, the Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the access policies of the Coastal Act.

<sup>3</sup> Both Tracts #12119 and #4472 fall under the City's LCP. However, the Monarch Beach Specific Plan(a part of the City's LCP) applies only to Tract #12119.



In making the substantial issue assessment, the Commission typically considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the Coastal Act raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance (A-5-LGB-98-141 (Trudeau)).

In the current appeal of the project as approved by the City, the appellant's contend that the City's approval of the project does not conform to various provisions of the certified LCP and the public access requirements set forth in the Coastal Act. In summary the appellant broadly contends that the City's approval of the tram operation results in: 1) a safety hazard, 2) an unlawful expansion of the golf course, and 3) conversion of a public principally pedestrian trail to a private motorized trail. The application of the City's LCP policies and the public access polices of the Coastal Act on the project as approved by the City are evaluated below.

In analyzing the issue of substantial issue two important considerations must be taken into deliberation in analyzing the project as approved by the City of Dana Point. First is the fact that impacts of the proposed development which is the subject of this appeal goes beyond the retaining wall itself. The retaining wall is an essential component to the operation of the tram and would not be constructed if it were not for the proposed tram. Therefore, the entire tram system must be evaluated by the Commission. The Commission recognizes that the retaining wall in of itself (including its presence in a private lock gate community), does not have an impact on public access; it is the operation of the tram on a public trail which generates the public access impact demanding evaluation by the Commission.

The second consideration that is important to analyzing substantial issue is the nature of hotel guests. The St. Regis Hotel is a "public" hotel in that any member of the public is entitled to rent a room there. However, once a hotel guest is registered, the hotel guest becomes entitled to the exclusive use of resort facilities (such as the pool) which are not available to the general public. Consequently the tram, which is the subject of this appeal, is a "private" tram since it provides mechanized transportation to the beach for the sole benefit of the hotel guests. This "private" tram, as conditioned by the City, is not available to the general public for purposes of facilitating their access to the beach. Commission approval of the St. Regis Hotel under 5-92-168 recognized that the tram system would operate for the benefit of both the hotel guests and the general public seeking access to the beach<sup>4</sup>.

**a. Safety Hazard**

The first issue raised by the appellant is that of safety. The appellant asserts that the project is unsafe for two reasons. First, that it routes carts through a golf fairway, and second, that the carts may force public pedestrians off the trail. This assertion is supported by a reference to Conservation and Open Space Policy 2.8, which requires that the development minimize risks to life and property.

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<sup>4</sup> The public access implications of 5-92-168 (Monarch Bay Resort, Inc) is discussed beginning on Page 18.

Policy 2.8 of the Conservation and Open Space Element states;

*Discourage development in areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential.*

While errant flying golf balls clearly present a hazard, the application of Policy 2.8 in this instance is inappropriate as this policy is meant for the purpose of designing and siting development, such as houses away from potentially hazardous land forms such as bluff. Furthermore, except for the new retaining wall, the tram will be operating on existing trails within the golf course. In approving the golf course and the public access plans contained therein beginning in 1979 and through various amendments, the Commission recognized that, at times, the operation of the golf course and public use of the trails may have safety implications (5-92-158<sup>5</sup> (Monarch Bay Resort, Inc.)). Consequently, the assertion that the tram will be subject to additional hazard is not an issue that warrants further consideration. However, the potential of the tram forcing pedestrians off the paved public trail and potentially into the path of errant golf balls warrants further review under the public access evaluation which starts on page 12.

**b. An Unlawful Expansion of the Golf Course**

The second issue raised by the appellant is the assertion that the "... *trail will function as an enhancement and de facto expansion of the golf course ...*" This assertion is supported through references to Land Use Policy 8.9, Policy 8.13, and Policy 8.14.

Policy 8.9 states:

*Avoid expansion of the golf course or any other land use that occurs at the expense of public park area.*

Based on Land Use Policy 8.9, the Commission finds that the tram operation, as approved by the City of Dana Point, is not an expansion of the golf course but rather an intensification of use for the benefit of the St. Regis Hotel. This intensification of use, which has the potential to adversely affect public use of a public trail, will be evaluated in the public access section below. The proposed tram system does not qualify as an expansion of the golf course in violation of Policy 8.9 since it does not result in increased acreage to the golf course at the expense of public park area.

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<sup>5</sup> This finding is contained on Page 9 of the staff report which states "*However, providing these access opportunities does create the potential for conflict between the public access and the danger to the public from golf balls. In order to ensure that the proposed public trail and view opportunities are not reduced, it is necessary for the Commission to require the applicant to agree that if such conflicts should arise between public use and safety, that they shall be resolved without diminishing access*". This finding was carried out through a "Future Development" deed restriction as Special Condition #3 of 5-92-158 (Monarch Bay Resort, Inc.).

Policy 8.13 of the Land Use Plan states:

*The existing public trails and public recreational facilities within the Monarch Beach Resort Specific Plan area shall be preserved and maintained. Signs shall be posted at conspicuous locations within the Specific Plan area, and a manned information center established in the Monarch Beach Resort hotel, to inform the general public of the public access and public recreational opportunities available within the Specific Plan area.*

The appellant asserts, based on Policy 8.13, that an amendment to the specific plan and LCP should have been obtained since the proposed trail is not specifically shown on the Monarch Beach Access/Trails Plan<sup>6</sup> (Exhibit 3) to allow the trail for the tram. This assertion carries weight for the portion of the trail that actually falls within the Monarch Beach Specific Plan area. The predicament with the appellant's assertion is that Policy 8.13 applies to the public trails. The Monarch Beach Access/Trails Plan does show existing "private" trails in the form of golf cart paths and public utility access ways, which have been "incorporated" into the applicant's tram trail. Additionally, Section 2.6.9 of the Monarch Beach Specific Plan in discussing the golf cart pathways notes, "As with other non-public accessways outlined elsewhere herein, this pathway system is shown for **reference only**." (Emphasis added) and that the "precise location may be determined as a part of the golf course redesign". Section 2.6.8 of the Monarch Beach Specific Plan notes, "A number of public utility easements are also included within the plan. Although not strictly a circulation route, they are referenced in the plan in order to clarify that these easements are for authorized use only by the public utility agencies which have beneficial rights in such easements." The Monarch Beach Specific Plan, therefore, acknowledges that minor alterations to the trail plan can occur without triggering the requirement for an LCP amendment.

The Commission therefore finds that the proposed eighty feet of retaining wall in Tract #12119 for purposes of constructing a "private" tram trail does not rise to the level of significance to require an LCP amendment since it is not a major revision to the Monarch Beach Access/Trails Plan (Exhibit 2.6 in the Monarch Beach Specific Plan and attached as Exhibit 3 to this report). Although the Commission is finding that an LCP amendment is not triggered, the proposed operation of the private tram on the trail clearly constitutes development mandating an amendment to Commission issued coastal development permits (Page 18). Furthermore, this project raises a substantial issue with the public access policies of the certified LCP and the Coastal Act, which will be discussed below in the public access section.

Policy 8.14 of the Land Use Plan states:

*Visitor-serving facilities within the Monarch Beach Resort Specific Plan area, including but not limited to the recreation time slots of the golf course and the parking lots of the hotel and golf course, shall be open to the public.*

The appellant asserts "Policy 8.14 guarantees the public's access to parking lots for the hotel and golf course, this project is intended to transport people from those parking area to the beach club, creating the possibility of more private guests at the beach club and less public parking in the golf course and hotel parking lots." The purpose of Policy 8.14 is to assure that

<sup>6</sup> The Monarch Beach Specific Plan Access/Trails plan is derived from coastal development permit P-79-5539 (AVCO). The coastal access plan of P-79-5539 (AVCO) is shown on Exhibit 14 of the Laguna Niguel Coastal Development Plan (not attached).

visitor serving facilities are available for public use. Condition #26 of the City's approval allows a maximum of three (3) guests per hotel guest (key holder). The guests of the hotel guests would use the hotel's public parking and would also be entitled to utilize the tram to get to the Bay Club. Use of the hotel public parking by guests of hotel guests is to be expected with the operation of any hotel. The concern with the Commission is the effect of the tram operation on the public's use and enjoyment of the existing public trails, which as approved by the City is inconsistent with the City's LCP, and not the public's ability to park on-site. The hotel guests, in combination with their guests, would use an exclusive tram which would operate at frequency that potentially adversely impacts public access. The effect of the tram operation on public access is evaluated below. However, in terms of Policy 8.14 of the Land Use Plan, the Commission finds that the appellant's assertion is not a valid contention.

**c. Public Access Policies of the Local LCP and the Coastal Act**

One of the basic goals of the Coastal Act and the City's LCP is the maximization of public access to and along the coast to promote public recreational opportunities. The Monarch Beach Specific Plan was developed for purposes of guiding development over 225 acres relative to the construction of a five-star resort hotel and spa, up to 238 single family residences, expansion of the public golf course, golf clubhouse, beach house, community park and an extensive public trail network (including beach access).

Policy 4.3 of the Land Use Element states:

*Provide and protect public access and recreational opportunities to the coastal area.*

Policy 8.5 of the Land Use Element states:

*Require that the pedestrian and bike trail systems be extended throughout Monarch Beach and connected with the existing and planned citywide trail system.*

Policy 8.6 of the Land Use Element states:

*Provide extensive public trail and transit loop systems within the Monarch Beach area. The systems shall include access to the beach and to the visitor serving and public places within Monarch Beach.*

Section 2.2.5 of the Monarch Beach Specific Plan states:

*A for-fare public resort vehicle system is planned to link the hotel, golf clubhouse, and parking with the resort community as well as the Salt Creek beach and parking lot. The fare will be modest to encourage public use. The operation plans of the resort vehicle system must be approved by the public agency having jurisdiction over the public trails (including Salt Creek Trail and the Pacific Coast Highway underpasses) which are part of the resort vehicle system's route, the City of Dana Point, and the Executive Director of the Coastal Commission. The inclusion of an alternate off-street transportation system linking the various sites in Monarch Beach has been included to improve coastal access (see Exhibit 2.26).*

*The resort vehicle system will originate at the resort hotel and travel to the clubhouse, Salt Creek Beach (by the existing beach access point between the Ritz Carlton hotel and the Ritz Cove residential community) Sea Terrace Community Park, and return to and terminate at the hotel. The resort vehicle system shall pick up and drop off passengers at the destination identified above. The vehicle is proposed to utilize the Salt Creek and Beach Trails and the Coast Highway underpasses. Pathways will be striped, as required by the County of Orange, to insure that pedestrian and bicycle traffic will be separated from the resort vehicle traffic. If a beach house is constructed, it may be served by the resort vehicle system.*

*Priority may be given to hotel guests. All users of the resort vehicle system, including the general public, shall be allowed to carry with them beach gear. The resort vehicle system shall operate at sufficient intervals to meet demand by the general public. The resort vehicle system shall be operational concurrent with the commencement of operation of the hotel.*

Section 2.6.2 of the Monarch Beach Specific Plan states:

*The Salt Creek Trail exists throughout the entire reach between Camino Del Avion and the Salt Creek Beach Park. The plan incorporates resort vehicle uses in portions of the trail (shown as Type "R-2") in the vicinity of the Hillside Village South through the Salt Creek underpass (Underpass "U-1"). Other aspects of the resort vehicle system are outlined below in the section entitled "Resort Vehicle System". Salt Creek Trail, which is located on the westerly side of Salt Creek, shall be connected to the Golf Clubhouse on the easterly side of Salt Creek via a Type "W-2" public off-road walkway, as shown on Exhibit 2.26.*

Section 2.6.6 of the Monarch Beach Specific Plan, which discusses the Resort Vehicle System, in part states:

*A resort vehicle system, which shall be open to the public on a for-fare basis, will operate between the Salt Creek Beach Park and the Beach House above and adjacent to Salt Creek Beach. The system will provide controlled vehicular resort guest and public access to Open Space and Visitor Recreation Commercial uses in the Specific Plan Area. The resort beach route will begin at a location in Salt Creek Beach Park (to be determined by Orange County Harbors, Beaches and Parks at a future date) and will enter and traverse Sea Terrace Community Park via the Pacific Coast Highway Underpass, known as the Niguel Shores Underpass ("U-2"). The resort vehicle will merge with the pedestrian bikeway and walkway midway through the Sea Terrace Park and continue along the western frontage of the Hotel and across Salt Creek by way of a bridge crossing to the Golf Clubhouse. At the Golf Clubhouse, the resort vehicle will merge with the Salt Creek regional corridor trail and continue south through the Salt Creek/Pacific Coast Highway Underpass ("U-1"). The resort vehicle route then continues along the Salt Creek Corridor trail alignment to the Beach House, its final destination.*

*The resort vehicle system will be operated during daylight hours and at a frequency to be determined in the future, which will vary with the season, day, time of day, and demand, regulatory restrictions and other relevant factors.*

Section 30211 of the Coastal Act states:

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

In raising the public access issues, the appellant asserts that the proposed tram system violates the City's LCP and the public access policies of the Coastal Act. The appellant specifically alleges that the "private" tram will affect the public's ability to utilize public trails. The public would be adversely affected as the tram would discourage use and may force the public to leave the trail and be possibly hit by errant golf balls. The appellant states "... Section 30211 specifically prohibits development projects that interfere with the public's right of access to the sea. The CDP approved by the City of Dana Point will allow private vehicles to overrun pedestrians using the Monarch Bay Trail system, interfering with their access to coastal resources." As a consequence the operation of the "private" tram will discourage the public from utilizing the public trail. This would essentially "privatize" the trail for the sole benefit of the hotel guests. Privatization of a public trail would be contrary to the public access policies of the City's LCP and the Coastal Act.

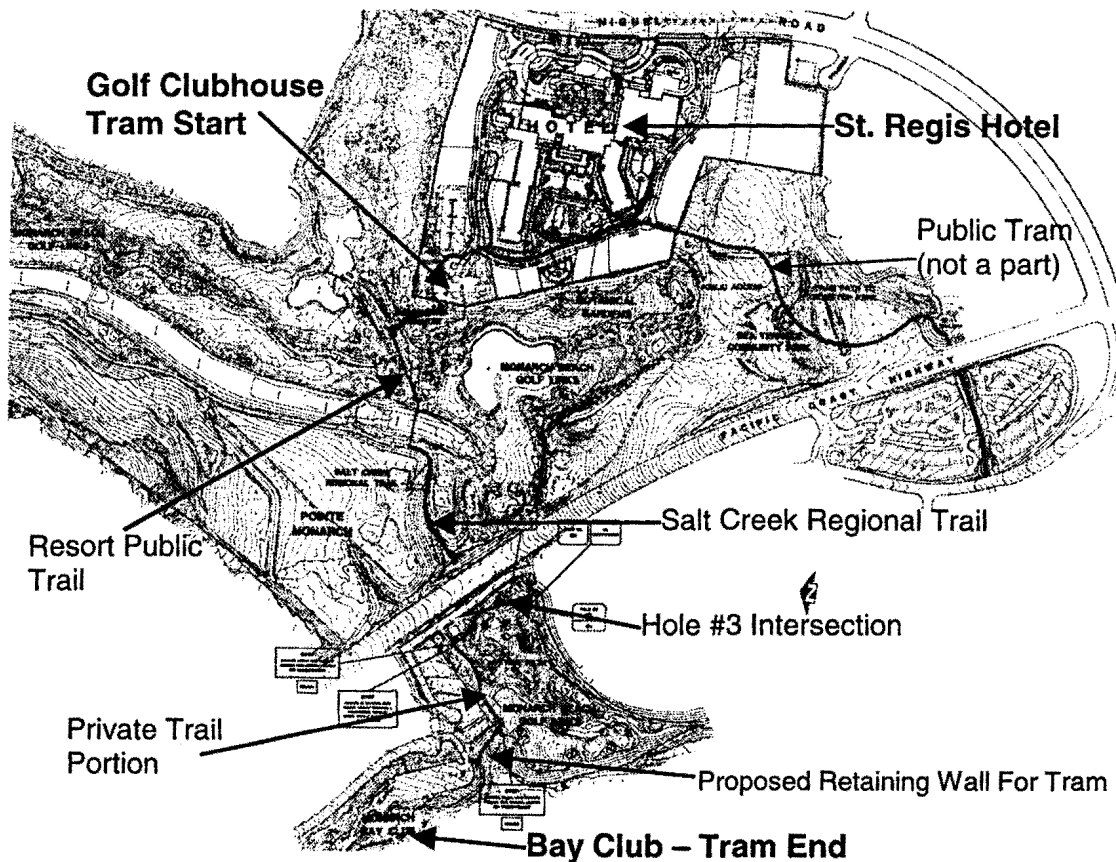


Figure 2

Based on the project plans provided to the Commission, the one way distance of the tram from the golf clubhouse to the Bay Club will be approximately 2,650 feet. The tram route can be divided into three segments (see Figure 2). The first segment runs from the golf clubhouse to the Salt Creek Regional trail. This first segment is a public pedestrian trail associated with the St. Regis Hotel and the golf course which was approved by coastal development permit 5-92-168 (Monarch Bay Resort, Inc.) plus the golf course permit 5-92-158 (Monarch Bay Resort, Inc.). This first segment is approximately 930 feet long (Figure 2). The second segment is the Salt Creek regional trail which is a heavily used public trail for providing public access within the Salt Creek corridor and to the beach. This trail provides public access under Pacific Coast Highway and is approximately 750 feet long and was approved by the Commission when it acted on P-79-5539 (AVCO). The final (third) segment of trail that the tram operates on is the private trail which diverges from the Salt Creek trail at the hole #3 intersection (Figure 2). This portion of the trail is approximately 970 feet long. The portion of the private trail within Tract #12119 was permitted by the Commission when it acted on P-79-5539 (AVCO). Based on the foregoing, the tram will be operating on 1,680 feet of public trail which amounts to 63% of the entire tram route.

The tram will be operating on approximately 750 feet of the Salt Creek Regional Trail (Figure 2). The trail is approximately 10 feet wide. Which means that each direction of travel on the trail is approximately 5 feet in width. The tram itself is approximately 4 feet wide and would consequently take-up the directional width of the trail in the direction the tram is operating. However, the tunnel under Pacific Coast Highway is approximately 18 feet wide and is designed to separate motorized traffic from pedestrian traffic. The tunnel is approximately 265 feet long.

Based on the City's approval of CDP96-26(l) (condition #11, Exhibit 7) the tram is authorized to make up to eight roundtrips per hour. According to the applicant's agent (Exhibit 8) the tram will operate at a speed of 3-4 miles per hour. Assuming a speed of 3.5 MPH and a round trip distance of 5,300 feet, the tram would take just over 17 minutes to make one round trip not including passenger loading/unloading times. Based on this data, it would take a minimum of three trams operating continuously to meet the 8 trip maximum allowed by the City. This frequency of operation clearly affects the public's ability to utilize the public trails, especially in situations where trams in opposing directions must pass and consequently take up the entire public trail width.

A review of the City's Resolution #02-02-12-05 disclosed that the City's findings of approval and conditions of approval were silent on the operational implications of operating the private tram on a public trail and the potential conflict between public use of the public trail and the "private" tram. Specifically, neither the City's findings or conditions of approval acknowledge the potential conflict between public and "private" use of the public trail. For example, as a general matter of principal, pedestrians have the right-of-way over motorized vehicles and the City's findings and conditions of approval are silent in this regard.

Section 2.2.5 of the Monarch Beach Specific Plan establishes that pedestrian and motorized use of the public trail system shall be separated. However, as approved by the City the tram will not conform to the requirements of Section 2.2.5 nor the City's findings as pedestrian and motorized use would not be separated. Nonetheless finding #6 of the City's resolution of approval for CDP92-26(l) made the finding that the "*proposed development will not encroach upon any existing physical accessway legally utilized by the public ...*". This finding is flawed



as, the tram will occupy the same space that will be used by pedestrians and will operate at a frequency which will discourage public utilization of the public trails. Additionally there is the possibility that pedestrians could be forced off the trail which could be dangerous due to flying golf balls.

The tram operation plan (January 2002) is inconsistent with the Monarch Beach Specific Plan, which is part of the City's LCP. The operation plan states that it is "... the plan for the operation of the a tram service between the St. Regis Monarch Beach Resort & Spa (The "Hotel") and the Monarch Bay Club (the "Bay Club"). The plan states "*pedestrian use of the path will be prohibited;*". This prohibition of pedestrian use is reflected by City condition #24 which states "*The paved pathway may be utilized by authorized maintenance vehicles or passenger trams ...*", which is silent on pedestrian rights. The concern, in terms of public pedestrian use, is the ambiguity of what constitutes the portion of the trail closed to public pedestrian use. Does the prohibition on public pedestrian use only apply to the portion of the trail from the hole #3 trail offshoot to the Bay Club or could it be construed to prohibit public pedestrian use over any trail that the tram operates on? The wording contained in the Operation Plan clearly states that it applies to the entire length which means that public access would be prohibited over the entire length. The trail plan submitted with the City administrative record, however, implies that pedestrian use would be prohibited only on the limited portion of the trail from the hole #3 trail offshoot to the Bay Club. Nevertheless, the ambiguity of the City's approval results in the potential that the right of public pedestrian use is not guaranteed. Potentially, this language could be used, in the future, to assert that no public pedestrian uses should be allowed on tram trails. Therefore, the Commission finds substantial issue with the City's approval of CDP96-26(I) in order to clarify and protect public pedestrian use.

Finally, Section 2.2.5 of the Monarch Beach Specific Plan notes that the operation plan of the tram system must be approved by the public agency having jurisdiction over the trail. Furthermore, Section 9.69.050 of the City's Zoning Code requires that an application for a coastal development permit include documentation of the applicant's legal right, interest or other entitlement to use the property for the proposed development. The trail is managed by the County of Orange, but no formal approval by the County of Orange was included in the City's administrative record. This trail is heavily used by the public and the County may have concerns regarding the operation of a private tram on a public trail which the County is responsible for maintaining. Thus there exists an issue as to conformance of the City's approval of its CDP with its LCP.

City condition #11 allows the "private" tram to operate at night, yet Section 2.6.6 of the Monarch Beach Specific Plan restricts the operation of any tram to daylight hours. Additionally Section 2.6.6 of the Monarch Beach Specific Plan states that the resort vehicle system shall be open to the public. Thus there exists an issue as to conformance of the City's approval of its CDP with its LCP.

City condition #24 states that the "private" tram is for the exclusive use of the guests of the St. Regis Hotel and that there is "*a concern about permitting unlimited use of this private tram*" by the public for access to the beach. This preceding City finding, related to condition #24, clearly does not conform to the narrative of Sections 2.2.5 and 2.6.6 of the Monarch Beach Specific Plan, the City's LCP, and the coastal access policies of the Coastal Act. The Monarch Beach Specific Plan clearly contemplates a tram system, which the general public can utilize and not a "private" tram for the exclusive use of the hotel guests. Thus there exists an issue as to

conformance of the City's approval of its CDP with its LCP and the public access policies of the Coastal Act.

City condition #26 states, "*Prior to commencement of the private tram service, the applicant shall submit to the Community Development Department a revised Trail Plan for the Monarch Beach Resort to identify the location of the private tram route. In addition, the signs, landscaping and mirrors shall be installed per the approved plan, prior to commencement of the private tram service.*" Though the location of the trail has been identified, the signage shown appears inadequate. For example, the signage plan does not show any signage where the tram merges with the public trail advising pedestrians of the potential that motorized equipment could be entering the public pedestrian/bicycle trail. Also, as previously noted, pedestrians and bicyclists would have the right-of-way on the public trail and this issue is not reflected in the signage plan. Furthermore, the City's condition for a signage plan affects the signage plan approved by the Commission through Commission permits 5-92-158 (Monarch Bay Resort, Inc.) and 5-92-168 (Monarch Bay Resort, Inc.). Based on the ambiguity of the tram's signage plan to recognize the right to use the public trail and the impact of the signage plan on the Commission's approved signage plan, the Commission must review the nature of the signage plan to assure its conformance with the City's LCP, the public access policies of the Coastal Act, and the Commission's prior decisions for this area. Thus there exists an issue as to conformance of the City's approval of its CDP with its LCP and the public access policies of the Coastal Act.

Therefore, the Commission concludes, for the reasons cited above, that the appeal of the proposed development raises a substantial issue with respect to its consistency with the City's LCP and the public access policies of the Coastal Act. As discussed in the "Analysis of Consistency with Certified LCP and Public Access Policies of the Coastal Act" section (Page 9) the Commission found that the impacts of the project that is the subject of this appeal go beyond the simple construction of 50 feet of retaining wall in Tract 4472. The retaining wall is an essential component to the operation of the private tram and would not be constructed if it were not for the proposed tram. Therefore, the entire tram system has been evaluated by the Commission for its impacts on coastal resources and its consistency with applicable policies of the LCP and the Coastal Act. The Commission recognizes that the retaining wall in of itself (including its presence in a private lock gate community), does not have an impact on public access; it is the operation of the tram on a public trail which generates the public access impact demanding evaluation by the Commission. The resolution of the public access impacts will be evaluated by the Commission through both the de novo review of the current project and the CDP amendment process, ideally simultaneously, which will facilitate a comprehensive review of the entire project at one time.

**d. Effect of the Proposed Tram on Prior Commission Approvals Related to Coastal Development Permit P-79-5539**

Moreover, the Commission notes that proposed development as approved by the City affects the special conditions for Commission coastal development permits 5-92-158 (Monarch Bay Resort, Inc.) and 5-92-168 (Monarch Bay Resort, Inc.) that specifically require that changes to the operation of the public access plan be submitted to the Commission for evaluation. These two permits are derivative permits to Commission CDP P-79-5539 (AVCO) which constitutes the "Master Permit" for much of the Monarch Beach Specific Plan area. Section 9.69.030 of the

City's Zoning Code acknowledges that the Commission retains jurisdiction for purposes of amendment and condition compliance relative to P-79-5539 (AVCO). The following narrative is for background information and context between the appealable development and the necessity for a Commission CDP amendment. To assure that the entire project is evaluated as a whole, a finding of substantial issue will permit the Commission to address the entire proposed development through the de novo and CDP amendment process.

Much of the proposed project, as approved by the City, will operate on the trail system within the area of the golf course. One of the Commission's most recent permits for work on the golf course was 5-92-158 (Monarch Bay Resort, Inc.). This permit was for the addition of five acres to the existing 134 acre golf course and various improvements including public amenities such as trail improvements, restrooms, and snack bar. In approving 5-92-158 (Monarch Bay Resort, Inc.) the Commission imposed two special conditions related to public access and future development. Special condition #1 required that the applicant submit a written agreement stating that the public trails shall be maintained in substantial conformance with the plans as approved by the Commission. This special condition mandated that if any conflict were to arise between public use of the trails and public safety, the resolution of the conflict would not result in any diminution of public access. Furthermore, special condition #1 acknowledges that any modification to the trail system will require a coastal development permit amendment. Special condition #2 requires the recordation of a deed restriction acknowledging that any future improvements or changes to the development plan will require a coastal development permit amendment.

The proposed "private" tram will operate for the sole benefit of the St. Regis Hotel guests. The St. Regis Hotel was constructed pursuant to the requirements of coastal development permit 5-92-168 (Monarch Bay Resort, Inc.). In approving the hotel, the Commission imposed special conditions related to public access and future development. Special condition #2 required the submission of a signage plan and the submission of an operational plan for the tram. Special condition #4 related to the operation of the tram system. And special condition #8 requires that any changes in use or operation of the property be approved through a coastal development permit amendment or a new coastal development permit.

Of special note relative to the tram; Special condition #4a of Commission CDP 5-92-168 (Monarch Bay Resort, Inc.) states: "*The applicant shall guarantee implementation of the tram system and reasonable use of the tram system by the general public. Priority may be given to hotel guests and all users of the tram will be allowed to carry with them beach gear. The tram shall operate at sufficient interval to meet demand by the general public. ...*" The Resort Tram Vehicle – Operation Plan (January 27, 1994) notes "*This tram is planned to serve both patrons of the resort facilities and the general public on a for-fare basis.*" Additionally, the operation plan notes, in terms of operation, "*Winter season (October 1 through May 31): Initially, the tram will run daily at least 4 times per day beginning no earlier than 9:00 am and ending no later than 3:00 pm. Service may be interrupted due to inclement weather. During the summer season (June 1 through September 30, barring unforeseen circumstances, the tram will run daily at least 8 times per day beginning at 9:00 am and ending at 6:00 pm. Actual tram stop times will be posted at each tram stop and at the visitor information center. Operating hours shall be consistent with all applicable City and County local ordinances. Should ridership demand vary from the above schedule, the Executive Director shall be consulted regarding altering the Tram Operation Plan.*" The proposed "private" tram, as approved by the City, is not in conformance with the existing tram plan since it proposes to exclude the general public and not operate

consistent with the approved operational plan. Therefore, the Commission finds that the proposed “private” tram, as approved, by the City, is not consistent with the Commission’s prior decisions regarding public access at Monarch Beach.

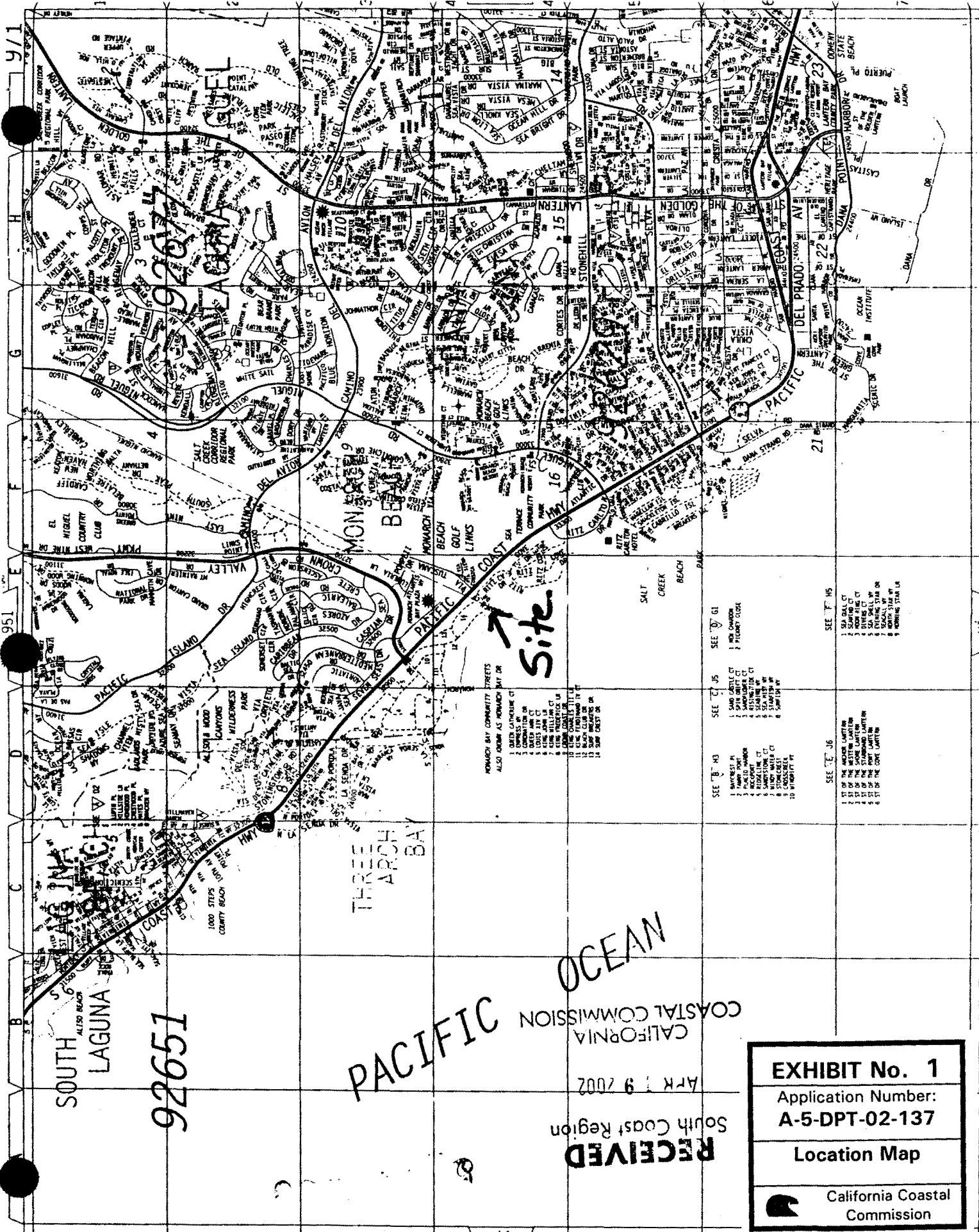
The proposed “private” tram will affect public use and enjoyment of the public trails, will involve new construction, and will involve revisions to the Commission approved signage plan to incorporate the proposed tram. Consequently, the portion of the proposed tram within the area of P-79-5539 (AVCO) constitutes development that must be evaluated through the Commission’s CDP amendment process. Furthermore, the Commission notes that a finding of substantial issue (on the portion of the development within Tract #4472) will result in the Commission reviewing the entire project through the de novo and amendment processes.

**e. Significance of Issues Raised by Appeal**

The appellant’s contentions in regards to public access raise significant concerns in terms of the project being precedent setting, that a significant coastal resource would be adversely affected, and that the appeal has statewide significance. If not challenged, the City’s decision would encourage future applications for development on public access easements to serve specific private and/or exclusive uses that would discourage, if not entirely eliminate, the public’s ability to utilize a public easement. Over time, the incremental nature of these “small” losses would result in a cumulative significant adverse impact to public coastal access. To minimize the potential that the public would loose access to the coast, this right of access must be protected.

**f. Conclusion**

For the reasons stated above, the appeal raises a substantial issue of consistency with the regulations and standards set forth in the certified City of Dana Point LCP and the public access policies of the Coastal Act. Moreover, had the 80 foot segment of the retaining wall that is within Tract #12119 been within the city’s permitting authority (and thus directly subject to this appeal), it too would raise a substantial issue of consistency with the regulations and standards set forth in the certified City of Dana Point LCP and the public access policies of the Coastal Act.




92677

92651

Site

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APR 19 2002

<b>EXHIBIT No. 1</b>	
Application Number: <b>A-5-DPT-02-137</b>	
<b>Location Map</b>	
	California Coastal Commission

- MONARCH BAY COMMUNITY STREETS  
ALSO COMM AS MONARCH BAY DR
- 1 OBER LAURENCE CT
  - 2 CONSTITUTION DR
  - 3 OBER LAURENCE CT
  - 4 OBER LAURENCE CT
  - 5 OBER LAURENCE CT
  - 6 OBER LAURENCE CT
  - 7 OBER LAURENCE CT
  - 8 OBER LAURENCE CT
  - 9 OBER LAURENCE CT
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  - 11 OBER LAURENCE CT
  - 12 OBER LAURENCE CT
  - 13 OBER LAURENCE CT
  - 14 OBER LAURENCE CT

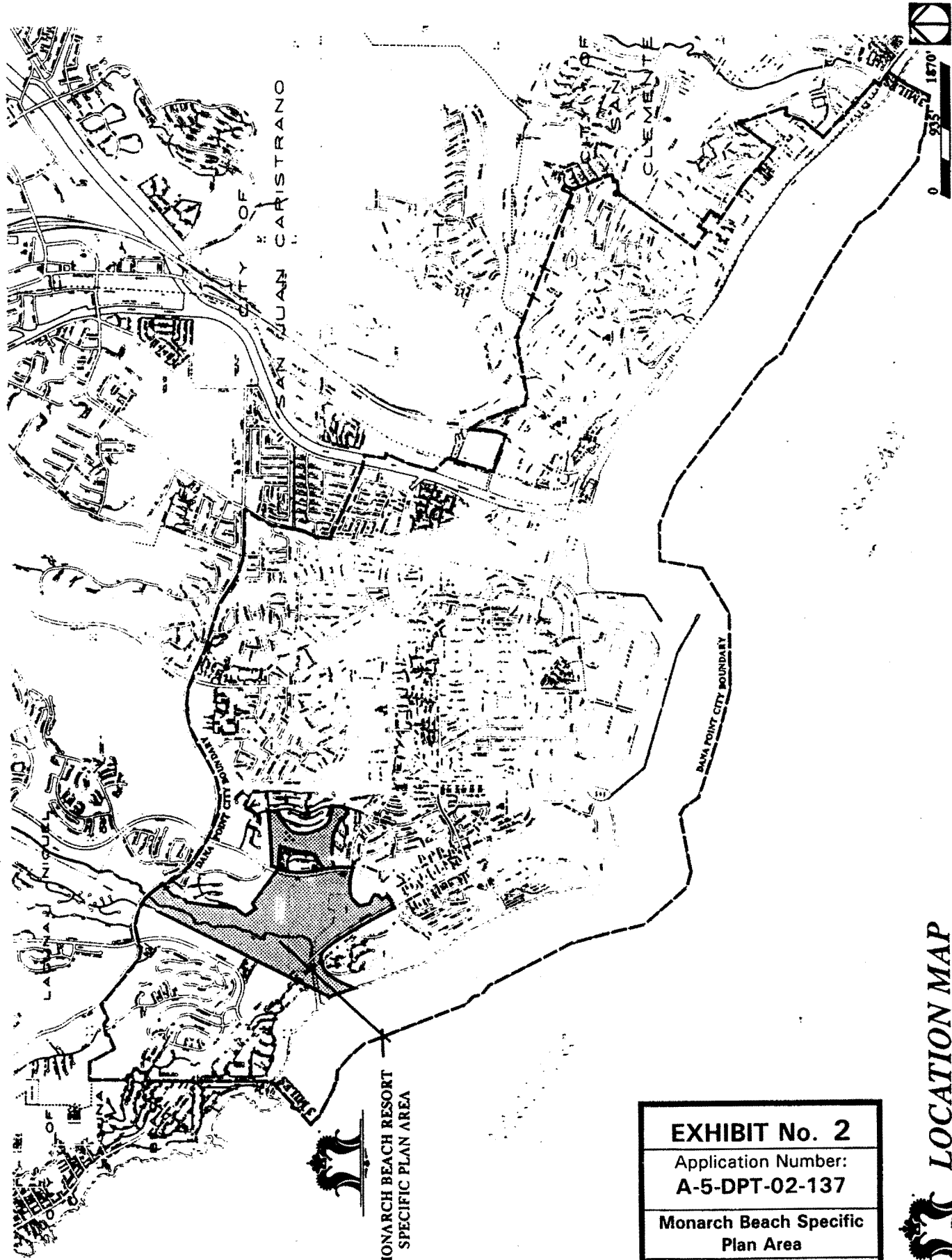
- SEE 'B' H3
- 1 MONARCH BAY
  - 2 MONARCH BAY
  - 3 MONARCH BAY
  - 4 MONARCH BAY
  - 5 MONARCH BAY
  - 6 MONARCH BAY
  - 7 MONARCH BAY
  - 8 MONARCH BAY
  - 9 MONARCH BAY
  - 10 MONARCH BAY

- SEE 'C' J5
- 1 SAND CASTLE CT
  - 2 SAND CASTLE CT
  - 3 SAND CASTLE CT
  - 4 SAND CASTLE CT
  - 5 SAND CASTLE CT
  - 6 SAND CASTLE CT
  - 7 SAND CASTLE CT
  - 8 SAND CASTLE CT
  - 9 SAND CASTLE CT
  - 10 SAND CASTLE CT


- SEE 'D' G1
- 1 MONARCH BAY
  - 2 MONARCH BAY
  - 3 MONARCH BAY

- SEE 'E' J6
- 1 ST OF THE MONARCH LANTERN
  - 2 ST OF THE MONARCH LANTERN
  - 3 ST OF THE MONARCH LANTERN
  - 4 ST OF THE MONARCH LANTERN
  - 5 ST OF THE MONARCH LANTERN
  - 6 ST OF THE MONARCH LANTERN

- SEE 'F' H5
- 1 SEA OAK CT
  - 2 SEA OAK CT
  - 3 SEA OAK CT
  - 4 SEA OAK CT
  - 5 SEA OAK CT
  - 6 SEA OAK CT
  - 7 SEA OAK CT
  - 8 SEA OAK CT
  - 9 SEA OAK CT
  - 10 SEA OAK CT



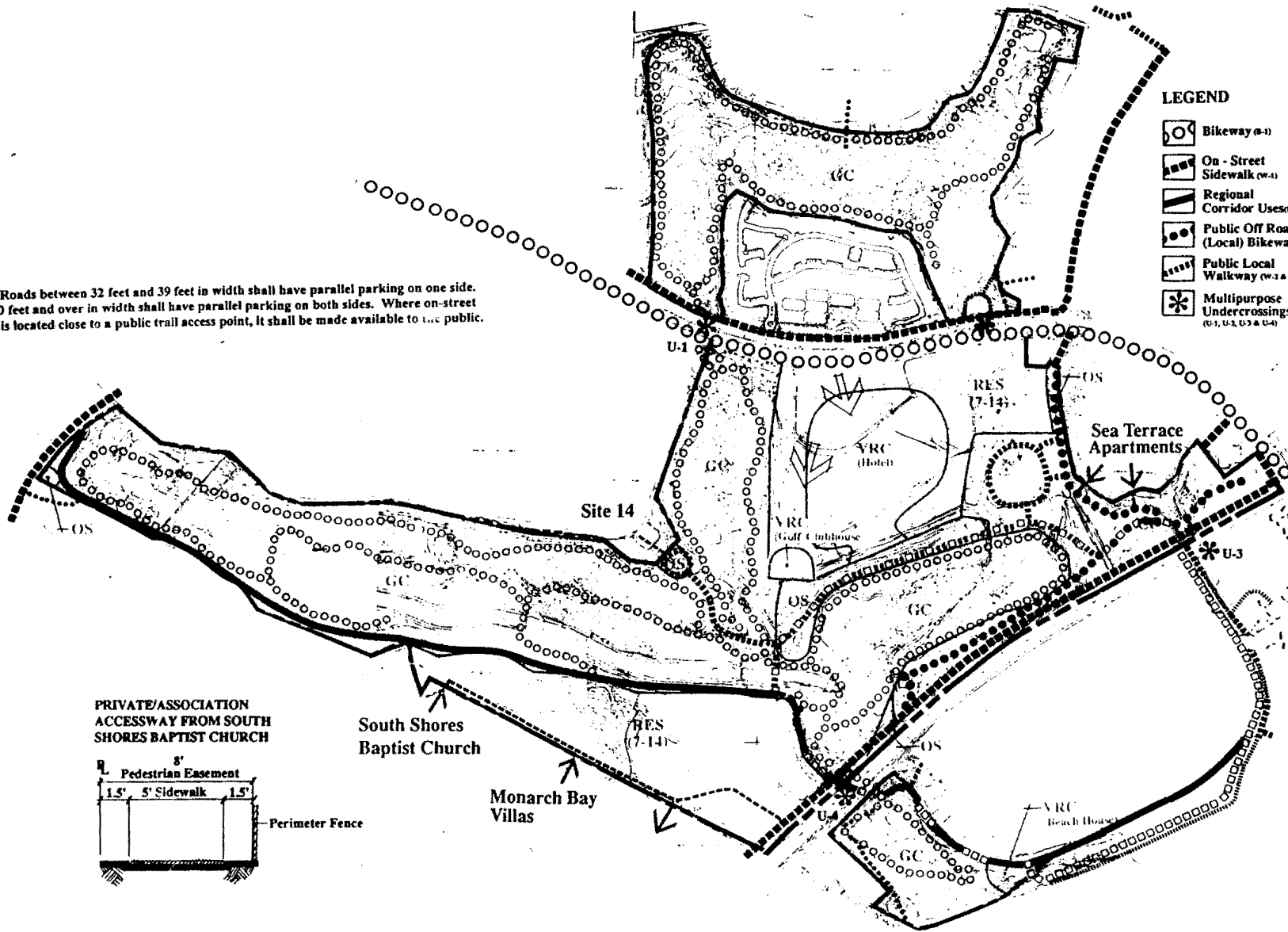
MONARCH BEACH RESORT  
SPECIFIC PLAN AREA

<b>EXHIBIT No. 2</b>	
Application Number: <b>A-5-DPT-02-137</b>	
Monarch Beach Specific Plan Area	
	California Coastal Commission

 **LOCATION MAP**

MONARCH BEACH RESORT

NOTE: Roads between 32 feet and 39 feet in width shall have parallel parking on one side. Roads 40 feet and over in width shall have parallel parking on both sides. Where on-street parking is located close to a public trail access point, it shall be made available to the public.

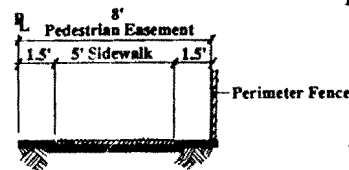


**LEGEND**

- Bikeway (a-1)
- On - Street Sidewalk (w-1)
- Regional Corridor Uses (a-1 & a-2)
- Public Off Road (Local) Bikeway (b-1)
- Public Local Walkway (w-2 & w-3)
- Multipurpose Undercrossings (U-1, U-2, U-3 & U-4)
- Tram Vehicle (T-1, T-2 & T-3)
- Public Utility Uses/Accessway (e-1)
- Private/ Association Accessway (e-1)
- Golf Cart Path (c-1)
- Services/Maintenance (M-1)
- Off-Site Private/ Association Accessway
- Public Access Connecting to Hotel Complex and Botanic Garden, Crescent Promenade and Wildflower Trail

	California Coastal Commission
Monarch Beach Access Plan	Monarch Beach Access Plan
Application Number: A-5-DPT-02-137	Application Number: A-5-DPT-02-137
<b>EXHIBIT No. 3</b>	<b>EXHIBIT No. 3</b>

PRIVATE/ASSOCIATION ACCESSWAY FROM SOUTH SHORES BAPTIST CHURCH



South Shores Baptist Church

Monarch Bay Villas

Sea Terrace Apartments

VRC (Hotel)

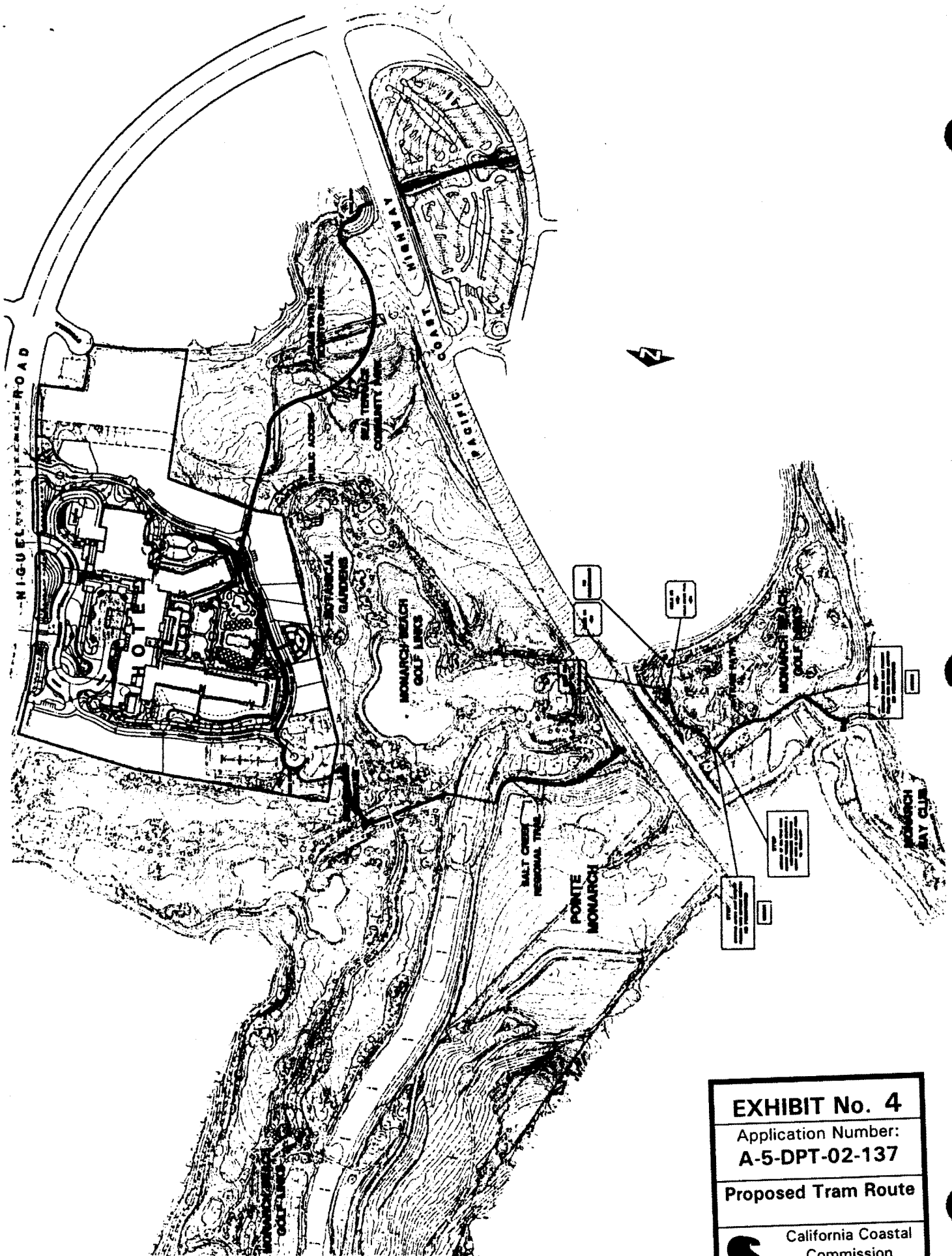
VRC (Golf Clubhouse)


VRC Beach House

**ACCESS/TRAILS PLAN**

MONARCH BEACH RESORT SPECIFIC PLAN



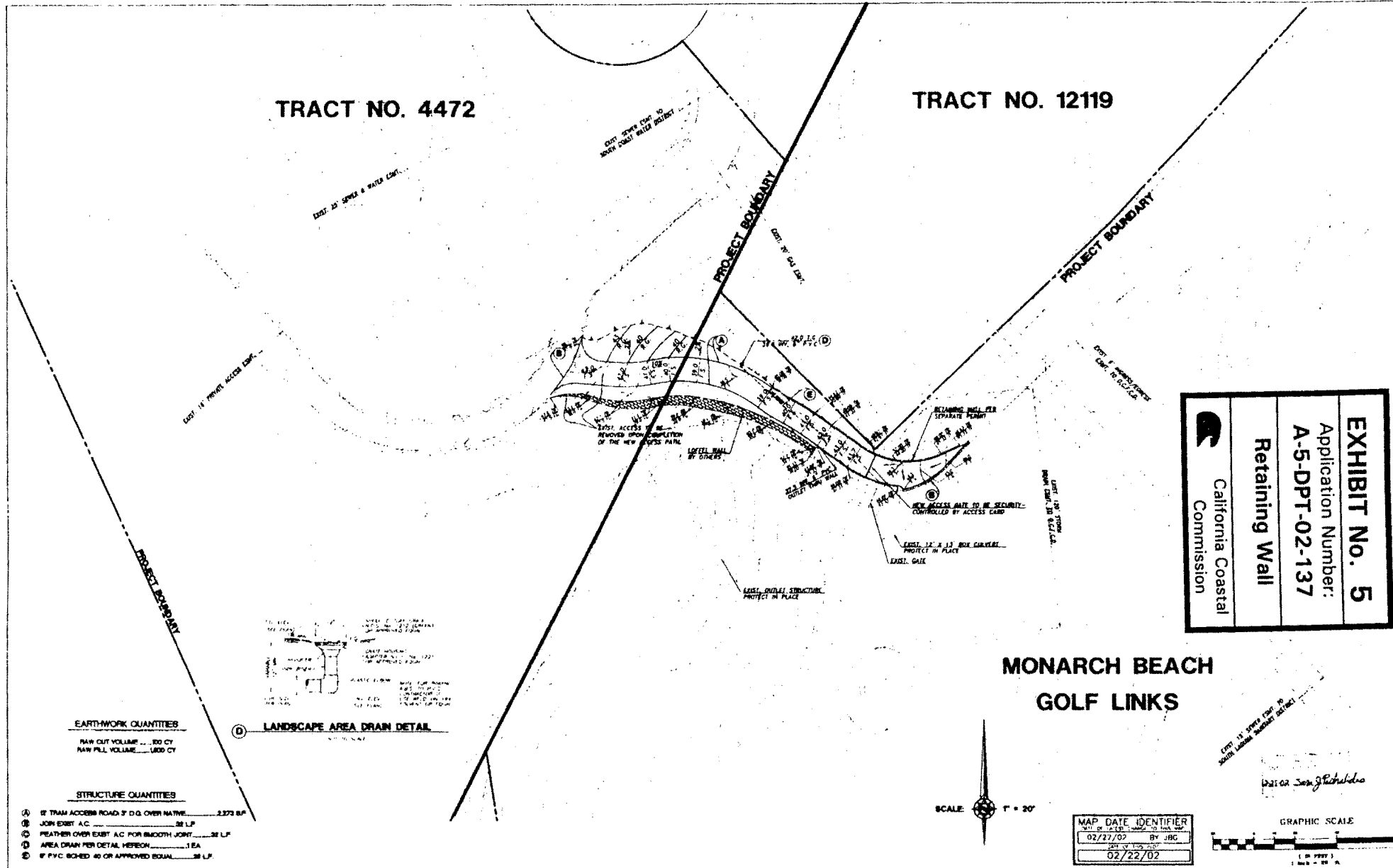


**EXHIBIT No. 4**  
Application Number:  
**A-5-DPT-02-137**  
**Proposed Tram Route**  
 California Coastal  
Commission



TRACT NO. 4472

TRACT NO. 12119



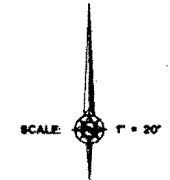
<p>California Coastal Commission</p>	<p><b>EXHIBIT No. 5</b></p>
	<p>Application Number: <b>A-5-DPT-02-137</b></p>
	<p><b>Retaining Wall</b></p>

**MONARCH BEACH GOLF LINKS**

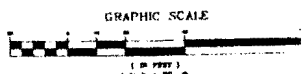
**EARTHWORK QUANTITIES**  
 RAW CUT VOLUME ... 80 CY  
 RAW FILL VOLUME ... 1800 CY

**LANDSCAPE AREA DRAIN DETAIL**

- STRUCTURE QUANTITIES**
- ① IF TRAM ACCESS ROAD 3' D.G. OVER NATIVE ... 2,373 SF
  - ② JOIN EXIST. AC. ... 28 LF
  - ③ PEATHER OVER EXIST. AC. FOR SMOOTH JOINT ... 28 LF
  - ④ AREA DRAIN PER DETAIL HEREON ... 1 EA
  - ⑤ IF PVC SCHED 40 OR APPROVED EQUAL ... 28 LF



**MAP DATE IDENTIFIER**  
 DATE OF LAST CHANGE TO THIS MAP: 02/21/02  
 BY: JRC  
 DATE OF THIS PRINT: 02/22/02



DATE: *San J. Richards*

NO.	DESCRIPTION	DATE	APPROVED	NO.	DESCRIPTION	DATE	APPROVED
	REVISIONS				REVISIONS		

SOILS ENGINEER/GEOLOGIST  
**AGRA EARTH & ENVIRONMENTAL**  
 1280 North Hancock Street  
 Anaheim, CA 92817  
 (714) 779-2591

OWNER  
**MAKAR PROPERTIES, LLC**  
 4100 MacArthur Blvd, Suite 150  
 Newport Beach, CA 92658  
 (949) 755-1100

SUBMITTED BY  
**HUNYARIK & ASSOCIATES**



ROUGH GRADING PLAN  
**MONARCH BEACH REBORT**  
 TRAM ACCESS CONNECTION  
 3300 NOLAN ROAD  
 DIANA POINT, CA 90629

# CALIFORNIA COASTAL COMMISSION

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

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Commission Form D)

**RECEIVED**  
South Coast Region

MAY 2 2002



CALIFORNIA  
COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

### SECTION I. Appellant(s)

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

See Attachment 1

Zip ( ) Area Code Phone No.

### SECTION II. Decision Being Appealed

1. Name of local/port government: City of Dana Point

2. Brief description of development being appealed: Paved access pathway for private tram use connecting a golf course and St. Regis Hotel to the Monarch Bay Club.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 500 Monarch Bay, Dana Point  
APN 670-151-55

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: X CDP 96-26(I)
- c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-DPT-02-137

DATE FILED: 5/2/02

DISTRICT: South Coast

H5: 4/88

4

<b>EXHIBIT No. 6</b>
Application Number: <b>A-5-DPT-02-137</b>
Appeal Page 1 of 8
California Coastal Commission

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

SECTION V. Certification

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

\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date \_\_\_\_\_

NOTE: If signed by agent, appellant(s) must also sign below.


Section VI. Agent Authorization

I/we hereby authorize Christopher S. Ortiz to act as my/our representative and to bind me/us in all matters concerning this appeal.

x Michael President MSA  
Signature of Appellant(s).

Date 4/27/02

6

<b>EXHIBIT No. 6</b>
Application Number: <b>A-5-DPT-02-137</b>
Appeal Page 2 of 8
 California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

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

See Attachment 5

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

SECTION V. Certification

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

\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date April 30, 2002


NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Christopher Koentz to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appel

Date 5

<b>EXHIBIT No. 6</b>
Application Number: <b>A-5-DPT-02-137</b>
Appeal, Page 3 of 8
 California Coastal Commission

Appellant:

Monarch Bay Association  
c/o Progressive Community Management  
27405 Puerta Real, Suite 300  
Mission Viejo, CA 92691  
Attn: Norman Powell, President  
(949) 582-7770 Phone  
(949) 582-7796 Fax

Appellant provided testimony against the project on June 20, 2001 before the Dana Point Planning Commission.

After subsequent planning commission meetings on August 15, 2001, September 19, 2001, October 3, 2001, and November 21, 2001, the Appellant appealed to the Dana Point City Council and testified against the project at that February 12, 2002 final hearing.

Appellant is represented in this action by:

Christopher Koontz  
2807 Orchard Avenue  
Los Angeles, CA 90007  
(323) 732-0875 Phone  
(714) 844-9097 Fax

**EXHIBIT No. 6**

Application Number:

**A-5-DPT-02-137**

Appeal, Page 4 of 8



California Coastal  
Commission

Although the City of Dana Point approved this project on February 12, 2002, the completed notice of location action was not received by the Coastal Commission staff until April 19, 2002 (Application 5-DPT-01-264.)

An April 22, 2002 notification of appeal period from Karl Schwing to Sara Pashalides references an appeal deadline of 5:00 PM on May 3, 2002.

**EXHIBIT No. 6**

Application Number:  
**A-5-DPT-02-137**

**Appeal, Page 5 of 8**



California Coastal  
Commission

### The Project Violates the Adopted LCP

Conservation and Open Space Policy 2.8 requires development to minimize the risk to life and property. The project being appealed is unsafe for two substantial reasons: it routes carts through a golf fairway with the potential risk of errant golf ball hits, and the carts running along the proposed trail will come into contact with pedestrians. This trail not only runs along private-rights-of-way, but also interfaces with public-access trails. The potential exists for carts to run pedestrians off the trail and onto dangerous off-trail terrain. Significant dangers also exist from ongoing (and potentially expanding with the construction of this trail) pedestrian use of the golf cart and utility maintenance easements for access to the Monarch Bay Club.

Additionally, this trail will function as an enhancement and de facto expansion of the gold course, but Land Use Policy 8.9 prohibits any expansion of the golf course. Policy 8.14 guarantees the public's access to parking lots for the hotel and golf course, this project is intended to transport people from those parking areas to the beach club, creating the possibility for more private guests at the beach club and less public parking in the golf course and hotel parking lots.

Policy 8.13 states that the "existing public trails and recreational facilities within the Monarch Beach Resort Specific Plan area shall be preserved and maintained." The trail being appealed is in conflict with that specific plan. The Monarch Beach Resort Specific Plan functions as the implementation portion of the City of Dana Point's LCP, and was most recently amended in September 1997 by the City of Dana Point and subsequently by the Coastal Commission. An amendment to the specific plan or LCP was not pursued to facilitate the trail in dispute.

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The City of Dana Point found the project to be in compliance with the specific plan because it felt trail diagrams within that document were purely advisory. While we disagree with this finding, there is also specific language in the specific plan that conflicts with the trail.

Section 2.6.6 of the Specific Plan states:

“A resort vehicle system, which will be open to the public on a for-fee basis, will operate between the Salt Creek Beach Park and the Beach House above and adjacent to Salt Creek Beach. The system will provide controlled vehicular resort guests and public access to open space and visitor recreation commercial uses in the specific plan area. The resort vehicle route will begin at a location in Salt Creek Beach Park (to be determined by Orange County Harbors, Beaches and Parks at a future date) and will enter and traverse Sea Niguel Shores Underpass. The resort vehicle will merge with the pedestrian bikeway and walkway midway through the Sea Terrace Park and continue along the west frontage of the Hotel and across Salt Creek by way of a bridge crossing to the golf clubhouse. At the golf clubhouse the resort vehicle will merge with the Salt Creek Regional Corridor trail and continue through the Salt Creek/Pacific Coast Highway underpass. The resort vehicle route then continues along the Salt Creek Corridor Trail alignment to the Beach House, its final destination.” (Page II-33 of the Specific Plan)

Despite the detailed instructions give above, the trail approved by CDP 96-26(I) simply does not follow the path or the restrictions set forth in the Specific Plan. The Specific Plan goes on to require “[t]he resort vehicle system will be operated during daylight hours,” but the CDP approved by the City of Dana Point allows for nighttime operations. (see Condition of Approval 11) Issues of concern related to the trail are delineated in the Specific Plan, of concerns is (a) “[a]voidance of public perception of a resort vehicle utilizing public lands or rights-of-way primarily to serve the resort facilities,” and (d) “promote public accessibility.” What the CDP approves is a resort vehicle utilizing public lands and rights-of-way exclusively to serve resort facilities at the expense of public accessibility.

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Section 2.6.9 of the Specific Plan further stipulates that “golf pathways will be open for golf related uses,” and “these pathways will be closed to the general public, adjacent associations and other third parties. (II-34 to 35) The CDP allows for third-party carts to carry passengers to and from the hotel and beach club, certainly not a golf related use. Because the CDP is substantially in conflict with the controlling Specific Plan (implementation portion of the LCP) and with the policies found in the LCP, it is not consistent with the adopted LCP and the City of Dana Point’s approval must be held invalid.

### **The Project Violates Chapter 3, Article 2, of the Coastal Act**

Section 30214, a public access provision of the Coastal Act, limits the creation and management of access areas adjacent to residential uses, with special concern for aesthetic values, litter control and privacy. These issues are not addressed by the CDP and beg investigation. The potential exists for unauthorized members of the public to use the trail and become stuck at the entrance to the Beach Club, then littering or infringing upon the adjacent private property.

More importantly, Section 30211 specifically prohibits development projects that interfere with the public’s right of access to the sea. The CDP approved by the City of Dana Point will allow private vehicles to overrun pedestrians using the Monarch Bay trail system, interfering with their access to Coastal resources. This project does not mitigate the loss of public access associated with private vehicle use exclusively for private access to the Beach Club.

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Application Number:  
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Appeal, Page 8 of 8



California Coastal  
Commission

Sara

**RECEIVED**  
South Coast Region

**RESOLUTION NO. 02-02-12-05**

MAY 24 2002

CALIFORNIA  
COASTAL COMMUNITY DEVELOPMENT

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT AND SITE DEVELOPMENT PERMIT TO AUTHORIZE THE INSTALLATION OF LANDSCAPE AND HARDSCAPE IMPROVEMENTS AT THE MONARCH BAY CLUB AND TO PROVIDE A PAVED ACCESS PATHWAY FOR PRIVATE TRAM USE CONNECTING THE GOLF COURSE AND ST. REGIS RESORT HOTEL TO THE PARKING LOT OF THE BAY CLUB WITH RETAINING WALLS AT A SITE LOCATED IN THE COASTAL OVERLAY ZONE AT 500 MONARCH BAY DRIVE.**

Applicant: Monarch Bay Club/ Makar Properties  
Case No.: FF#610-70/CDP96-26(I)/ SDP01-32M/ Monarch Bay, 500

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

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

500 Monarch Bay, (A.P.N. 670-151-55)

WHEREAS, the Applicant has made an application for a Coastal Development Permit and a Site Development Permit to authorize the installation of hardscape and landscaping at the Monarch Bay Club and the construction of a maximum 17-foot tall retaining wall to accommodate a paved pathway for private tram use connecting the golf course and St. Regis hotel to the Bay Club located within the Coastal 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 20<sup>th</sup> day of June, the 15<sup>th</sup> day of August, the 19<sup>th</sup> day of September, the 3<sup>rd</sup> day of October and the 21<sup>st</sup> day of November, 2001, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, the City Council did, on the 12<sup>th</sup> day of February, 2002, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearings, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission and Council considered all factors relating to CDP96-26(I)/SDP01-32M.


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Application Number: <b>A-5-DPT-02-137</b>
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NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council 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 Council adopts the following findings and approves the project, subject to the following conditions;

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 goals and policies to enhance the recreational uses of the community.
2. That the proposed project is consistent with the Dana Point Zoning of Recreation and Monarch Beach Specific Plan and complies with all applicable provisions of the Dana Point Local Coastal Program. Chapters 1 and 2 of the Specific Plan provide the policies statement through plans, programs and guidelines for evaluating detailed development plans. This portion of the Specific Plan was adopted by City Council Resolution No. 92-02-25-3. Section 2.6 is an Access Program that was developed to delineate the variety of trails, public recreational facilities, bikeways and resort vehicle system available to residents, resort visitors and the general public. The non-public access ways outlined in this section are shown for reference only and function as guidelines for future use of the facility.
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 involves new construction of limited number of small structures including retaining walls, tram pathway, landscaping and hardscape improvements.
5. That the proposed project is an enhancement to the neighborhood and City in that it will provide an outdoor amenity for members of the facility and the additional landscaping will enhance the off-site views of the walls.
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; or will it obstruct any existing public views from any public road or from a recreational area to and along the coast.


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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.
12. Adequate conditions have been included in the project approvals to ensure that the walls and private tram use will be compatible with the surrounding area.

Conditions:

**A. General:**

1. Approval of this application is for a Coastal Development Permit and a Site Development Permit that will allow a modification to landscape and hardscape improvements, private tram use within the golf course facility and the construction of a maximum 17-foot tall retaining wall to accommodate a paved pathway for private tram use connecting the golf course and St. Regis hotel to the Bay Club located within the Coastal Overlay Zone. Subsequent submittals for this project shall be in substantial compliance with the plans (Exhibit A) presented to the Planning Commission and City Council, and in compliance with the Dana Point General Plan and Zoning Code. This approval and the findings and conditions contained herein provides for an Approval in Concept, as required by the Coastal Commission.
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.

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 <b>California Coastal Commission</b>

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 applicant's 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 the applicant's 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 applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees.
8. The Applicant shall obtain all necessary building and grading permits for the proposed improvements.
9. The operation of any Special Event, as defined by the DPMC Section 9.39.070, shall meet the requirements of Section 9.39.070.

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10. Monitoring of compliance by the hotel operator and/or the property owner with the requirements of the Operations Plan shall be conducted by the Community Development Department within 6 months of this approval to ensure that the specific site improvements have been installed, as required by the plan. Failure to meet the provisions of the Operations Plan may be grounds for revocation of this Coastal Development Permit resulting in the termination of the private tram shuttle service to the Monarch Bay Club.

The Applicant has, under separate agreement with the Estates At Monarch Cove Homeowners' Association (EMC), agreed that stringent enforcement of the Operations Plan is required for safety of the public, the hotel guests and the quiet enjoyment of the adjoining neighbors. Pursuant to this agreement with EMC, the Applicant agrees to submit all complaints concerning Applicant's alleged non-compliance with the Operations Plan, that are brought and verified by the EMC board of directors, to binding arbitration before JAMS, IVAMS, the American Arbitration Association, or similar third party arbitrator. This may require a separate agreement between the applicant and EMC agreeing to be bound by the decision of the arbitrator and providing that the prevailing party in the arbitration shall recover its reasonable and actual attorney's fees and costs incurred in the matter from the other party and that rules of evidence and procedure applicable in the action shall be those chosen by the arbitrator selected. Applicant agrees that the arbitrator may assess a penalty against Applicant for each separate violation of the Operations Plan found by the arbitrator in the amount of \$500 for the first violation, \$1,000 for the second violation, and \$2000 for each subsequent violation in any given calendar year. All fines shall be paid to the City.

11. The Operations Plan shall be modified regarding use limitations and the frequency for the tram service. The use shall be limited to only overnight St. Regis Hotel guests (key-holders), a maximum of 3 guests per key-holder, Hotel personnel, Bay Club personnel, and Bay Club members. During the daylight hours, the trams can provide a maximum of 8 round trips from the St. Regis hotel to the Bay Club per hour. During the evening hours, after sunset, the frequency will be limited to a maximum of 4 roundtrips per hour.

**B. Prior to Issuance of Grading or Building Permits the applicant shall meet the following conditions:**

Engineering

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

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completed to the satisfaction of the Director of Public Works. All slopes within this project shall be graded no steeper than 2:1, unless otherwise approved by the Director of Public Works.

13. Grading plans shall show and label all existing improvements and existing easements on site and 20 feet around property lines, clearly indicating their location, purpose and width or measurements. A copy of any recorded easements shall be included along with the plan submittal for review by the Director of Public Works.
14. All grading and improvements on the subject property shall be made in accordance with the Grading Ordinance and to the satisfaction of the Director of Public Works. Grading shall be in substantial compliance with the proposed grading that is approved by the Planning Commission. Surety to guarantee the completion of the project grading and drainage improvements, including erosion control, shall be posted to the satisfaction of the Director of Public Works and the City Attorney.
15. The applicant shall submit a grading, drainage and retaining wall plan with a geotechnical soils report for review and approval by the Director of Public Works.
16. The proposed retaining walls require a permit from the Public Works and Engineering Department. Retaining Wall plans shall include a site plan, property lines, existing conditions /improvements and proposed improvements including elevations, dimensions and cross sections to ensure this project does not adversely affect adjacent properties during and after construction.
17. Applicant shall provide to the City of Dana Point with copies of the Retaining Wall calculations for review and approval by the Public Works and Engineering Department. Applicant shall indicate on plans how many cubic yards will be removed and replaced as part of the Retaining Wall construction.

Building

18. The applicant shall submit two (2) sets of construction documents for building plan check, including structural and energy calculations and a drainage plan. Said plans shall clearly delineate the public right-of-way. 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 professional that prepared them.

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19. Conditions of approval shall appear on the drawings as the first or second sheet.
20. 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.
21. Verification of all conditions of approval is required.
22. All approvals from outside departments and agencies are required.
23. The applicant shall pay all applicable plan check and building permit fees.

Planning

24. The paved pathway may be utilized by authorized maintenance vehicles or passenger trams (maximum 12 person in size) at the discretion of the hotel operator on an adjoining site. Only overnight St. Regis Hotel guests (key-holders), a maximum of 3 guests per key-holder, Hotel personnel, Bay Club personnel, and Bay Club members, all of whom shall have appropriate identification, will be allowed to use this private tram system. Parking in the vicinity of the St. Regis hotel and Bay Club is in limited supply and for this reason there is a concern about permitting unlimited use of this private tram. The tram shall be limited to a maximum of 6-feet in height and shall operate on electric energy. The tram shall not operate any type of sound system or paging system while in transport. This tram shall not provide public access to the beach utilizing the proposed paved pathway authorized by this permit since this pathway crosses a golf course fairway and there is alternative public access to the beach.
25. The hours and means of operation of the tram service shall comply with the adopted Operations Plan, as amended by the City Council on February 12, 2002. During the daylight hours, the trams can provide a maximum of 8 round trips from the hotel to the Bay Club per hour. During the evening hours, after sunset, the frequency will be limited to a maximum of 4 roundtrips per hour.
26. Prior to the commencement of the private tram service, the applicant shall submit to the Community Development Department a revised Trail Plan for the Monarch Beach Resort to identify the location of the private tram route. In addition, the signs, landscaping and mirrors shall be installed per the approved plan, prior to commencement of the private tram service.

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27. Prior to issuance of a Building or Grading Permit the applicant shall submit a landscape plan to the Community Development Department for review and approval. The plans shall provide planting to soften and screen views of the retaining walls along the pathway. In addition, the plans shall include the removal of the portion of the existing path that leads to the Bay Club and the area shall be recontoured and landscaped to provide a natural appearance. Said plans shall be in compliance with the provisions of the Zoning Code which encourages the use of drought tolerant species. The landscaping plans for the Bay Club facility shall be modified to eliminate the new palm trees to maintain the integrity of the site. Lower level shrubs or slow growing low palms could be added in this area. Furthermore, the plans shall be modified to note that all shrubs and trees shall be trimmed and maintained at the height, which they are planted, where there is a potential impact to the surrounding area.
28. The retaining walls and loffel walls shall be designed and stained to blend into the surrounding landscape and provide for a consistent appearance. The loffel walls shall create a naturalized appearance. Guardrails shall be provided as required by the UBC adjacent to the retaining walls and shall be of an open design. In addition, secure wrought iron or other type of fencing shall be connected to the new gate to ensure that the pathway and maintenance path to the Salt Creek outfall is secure. Any proposed use of a Lexan-type of screen on top of the retaining walls to shield views of the tram on the pathway shall be reviewed and approved by the Director of Community Development. Said screen shall be of a design, color, shape and size that blends with the natural character of the gully to eliminate visual impacts. Landscaping should also be provided.
29. The gate to the new pathway shall be locked from both sides, with keys provided only to authorized personnel. In addition, the gate design shall include an electronic timing device to prevent unlocking the gate during non-authorized hours of tram shuttle operation. The City of Dana Point staff may inspect the functioning of the gate to verify that the locking device is designed and maintained to meet this condition.
30. The parking area shall be reconfigured and landscape islands modified to allow for a total of 115 parking spaces as shown on the submitted plans.

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**C. Prior to issuance of a Certificate of Occupancy and Operational Conditions:**


- 31. Landscaping and irrigation shall be installed as per the final landscape and Irrigation Plan. Landscaping and irrigation shall be kept in a neat, clean, and thriving condition.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Dana Point, California, held on this 12<sup>th</sup> day of February, 2002.

  
 \_\_\_\_\_  
 JOE SNYDER, MAYOR

ATTEST:

  
 \_\_\_\_\_  
 Cathy Catlett, Interim City Clerk

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STATE OF CALIFORNIA    )  
 COUNTY OF ORANGE     )     ss  
 CITY OF DANA POINT    )

I, CATHY CATLETT, Interim City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 02-02-12-05 adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 12<sup>th</sup> day of February, 2002, by the following vote:

AYES:           Council Members Kaufman and Ossenmacher, and Mayor Snyder

NOES:           Mayor Pro Tem McGuire

ABSENT:        Council Member Rayfield


  
 \_\_\_\_\_  
 CATHY CATLETT, INTERIM CITY CLERK



CULBERTSON, ADAMS & ASSOCIATES  
PLANNING CONSULTANTS

May 15, 2002

Mr. Stephen Rynas  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

<b>EXHIBIT No. 8</b>
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<b>Culbertson letter of May 15, 2002, Page 1 of 10</b>
 California Coastal Commission

RE: Commission Appeal No. A-5-DPT-02-137, Monarch Bay Club

Dear Mr. Rynas

As a follow up to my e-mail and our telephone conversations, I wish to provide you with a more formal response of your request for more information on the tram operation and how it would interface with the public use of Salt Creek Trail, the public portion of the tram route. I will therefore briefly describe the project followed by more detailed information on the public portion of the tram route.

**Project Description**

The proposed tram system will take hotel guests and a limited number of their guests from the St. Regis Hotel to the Monarch Bay Club (MBC). The tram will depart from the golf clubhouse tram stop and travel through the existing golf course and cross Salt Creek using the existing wooden bridge. The tram then turns seaward on to the Salt Creek Trail, the public portion of the tram system, and travels through the Pacific Coast Highway underpass. As the tram leaves the underpass it turns right leaving Salt Creek Trail and travels over an existing golf cart path and maintenance road to the MBC property. At this point the tram will utilize a new embankment being created to replace the existing maintenance road dip crossing. The tram will then travel across the MBC parking lot to deliver the guests. The return route is the same in reverse order.

**Public Tram Route (Salt Creek Trail) Details**

I understand you are concerned about how the tram operation will interface with the public use of Salt Creek Trail. I will therefore describe in more detail the public portion of the tram route, hours and number of tram operations and a description of the tram vehicle and operations.



The Salt Creek Trail portion of the tram route is approximately 750 feet long. The Salt Creek Trail width from where the tram enters the trail (from the hotel) to the Pacific Coast Highway underpass is 10 feet wide with a 3 foot rolled curb and gutter on one side and a graded shoulder of varying width on the other. The PCH underpass has a curb-to-curb dimension of approximately 18 ½ feet with standard curb and gutter. There are 5-foot wide concrete sidewalks on each side of the pavement. A broken yellow strip follows the centerline of the entire length of the tram route to promote two-way traffic. In addition there are areas where the tram can at least pull partially off of the pavement if it would be necessary and as mentioned above sidewalks are provided within the underpass.


The hours of operation of the tram are described as follows:

- 1) Daytime operations to start no earlier than one hour after sunrise, (7 days a week)  
Trips are as needed up to 8 round trips per hour
- 2) Evening Operations to the Bay Club on Sunday and weekdays are until 7:30 p.m., Friday and Saturday until 9:30 p.m.
- 3) Evening Operations to the Hotel on Sunday and weekdays until 10:00 p.m., Friday and Saturday until 11:00 p.m.
- 4) Beginning at sunset, trips are limited to 4 round trips per hour.

Tram vehicles are electric and carry up to a maximum of 12 persons including the driver. The vehicle is approximately 4 feet wide and fitted with electric lights, safety horn and back-up warning signal. The vehicles travel at a maximum speed of approximately 3-4 mph and take approximately 45 seconds to travel the distance on the Salt Creek Trail. Assuming a maximum use during the day light hours this would indicate a tram to be on the trail for a total of 12 minutes per hour. During the evening hours the tram would be on the trail for a maximum of 6 minutes per hour.

It is important to note that the Specific Plan for Monarch Beach Resort included tram travel across the golf course and along this portion of the Salt Creek Trail. The plan was approved for tram to provide access to the Monarch Beach Club and the beach. The Monarch Beach Club has not been developed and there are approvals for this use. You will recall there is a for-fare tram in service, which provides beach access to the hotel guests and the general public. Anyone can access the tram at a number of tram stops, which are located along the route from the hotel through Sea Terrace Park to the Bluff top Park. We would therefore submit that tram operations on Salt Creek Trail would be significantly less than originally approved with the Monarch Beach Resort project.

Also, as previously discussed it is important to note that tram systems were encouraged by the original approval and that providing a tram will reduce traffic impacts to the public streets if it becomes necessary to transport guests over the existing surface streets.

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Culbertson letter of May 15, 2002, Page 2 of 10
 California Coastal Commission

Mr. Stephen Rynas  
May 15, 2002  
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Attached for your review are photographs showing a tram using the existing Salt Creek Trail portion of the tram route. Also, with time being of the essence, I have attached a copy of the exhibit previously submitted with the application for a permit to cross the golf course and an authorization letter to represent the applicant. A more detailed tram route exhibit is being prepared and will be submitted to your office tomorrow.

We sincerely appreciate your efforts in this matter. If I can be of assistance please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellis Delameter".

Ellis Delameter  
Vice President  
Planning and Engineering Coordination

C: Sandy Weissbard, Makar Properties  
Michael Gagnet, Makar Properties

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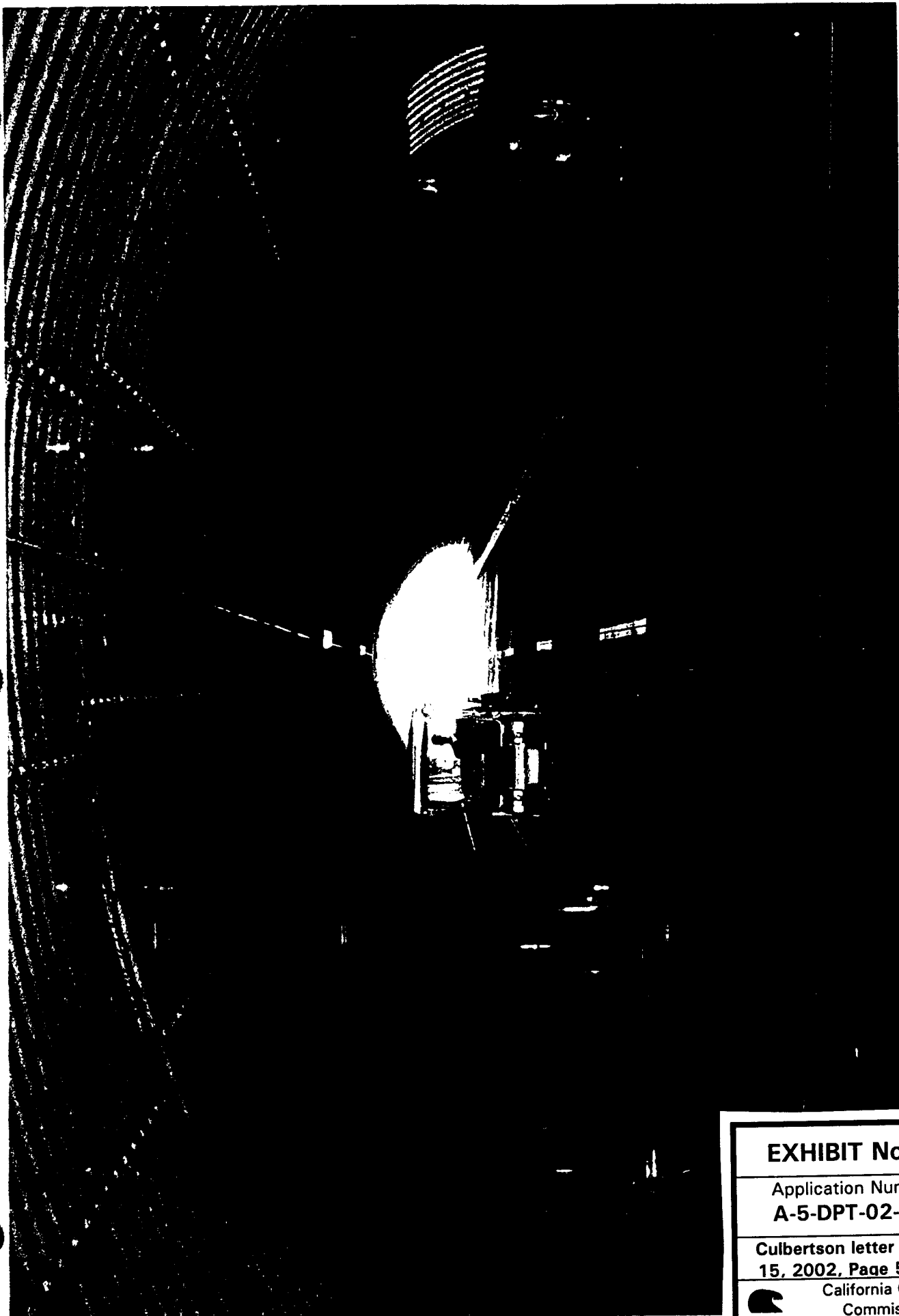


California Coastal  
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5. "T" Intersection at West Entrance/Exit to Tunnel Beneath Pacific Coast Highway

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4. Tram Vehicle Inside Pacific Coast Highway Tunnel

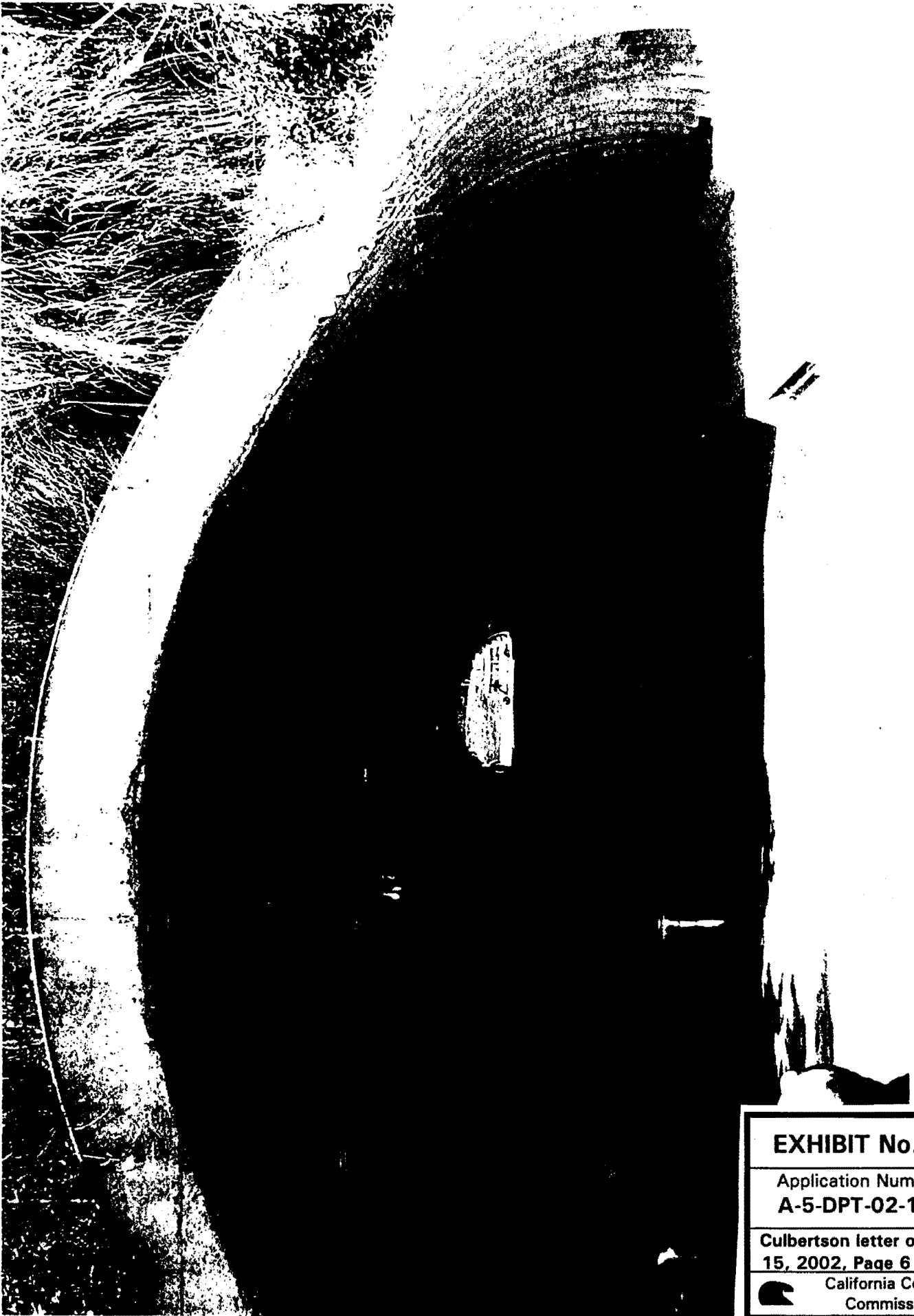
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3. East Entrance/Exit Beneath Pacific Coast Highway

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Culbertson letter of May  
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2. Tram Vehicle on Salt Creek Trail (Typical)

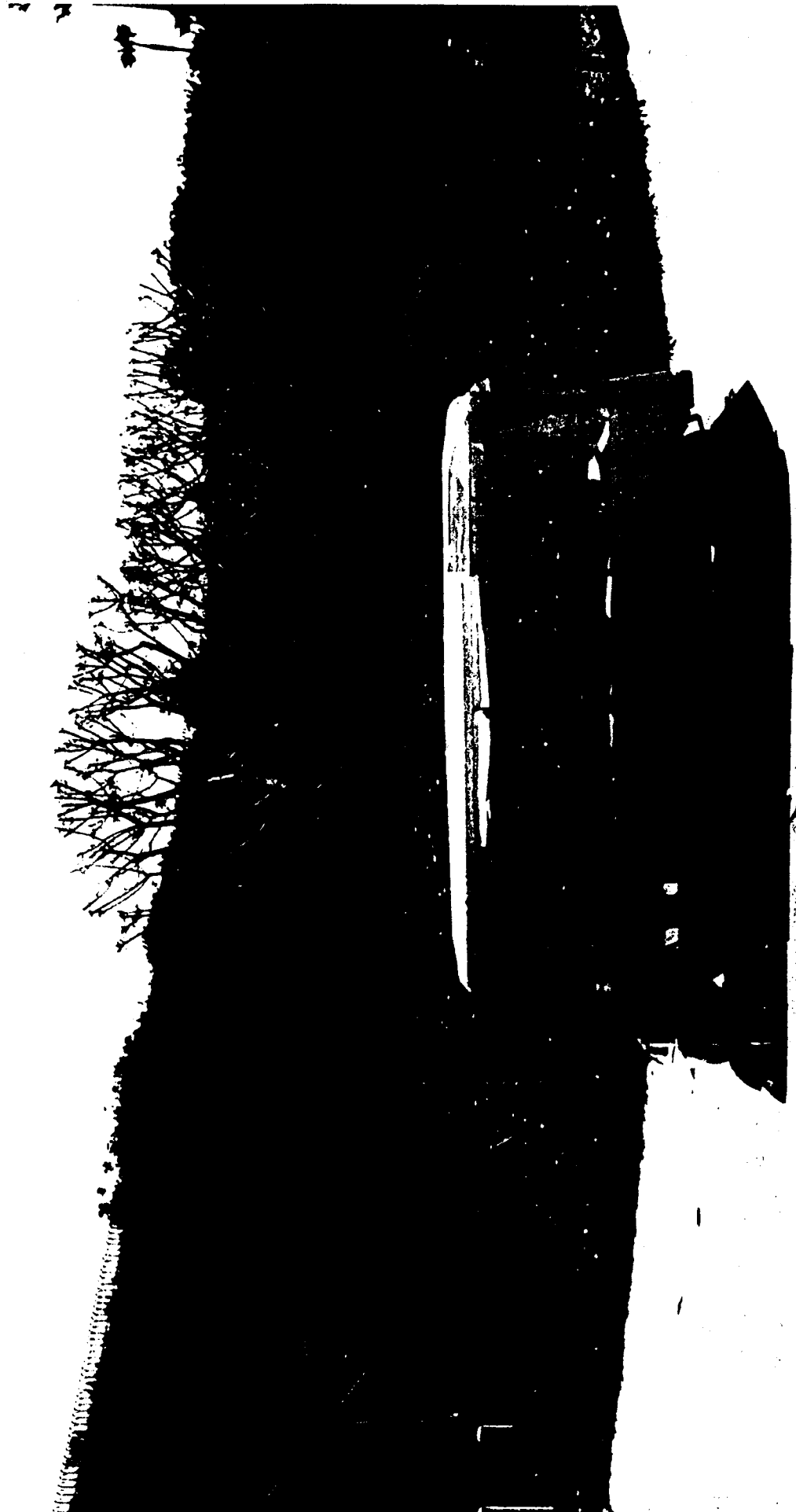
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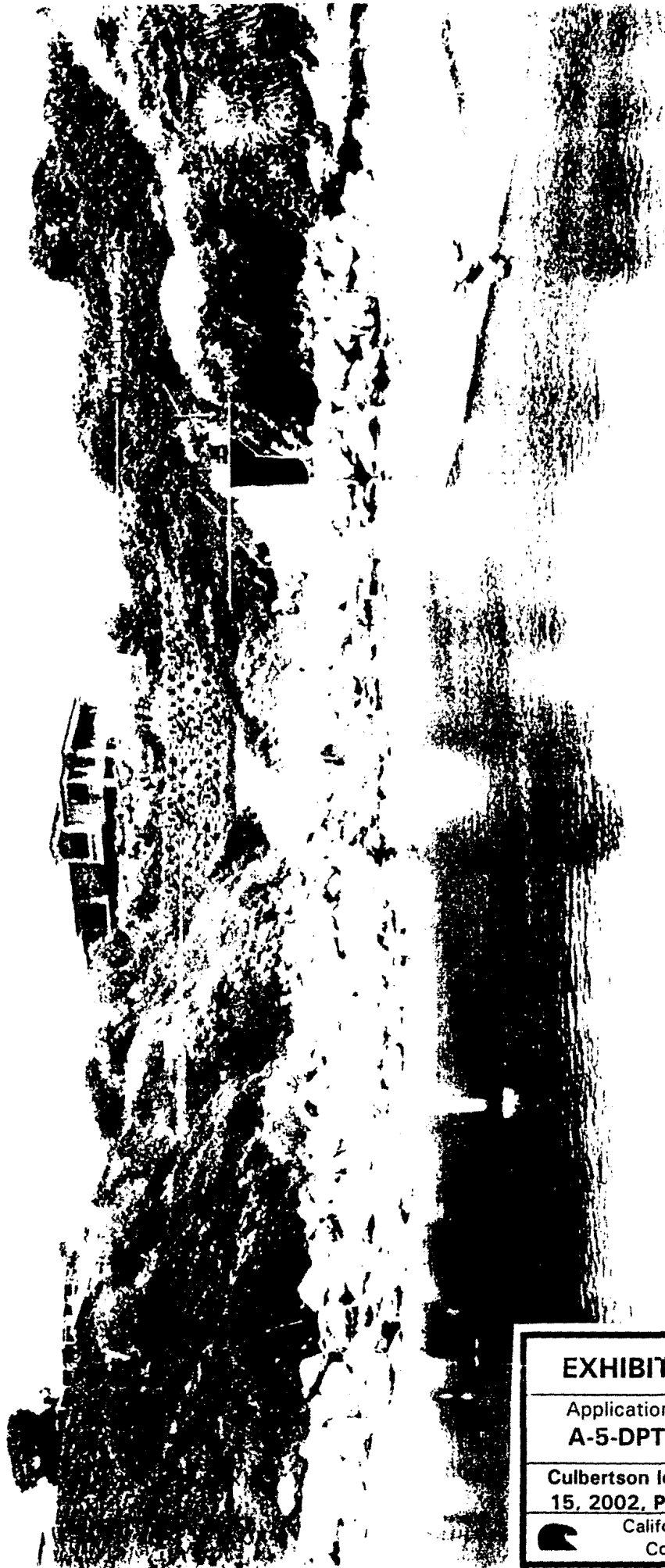


California Coastal  
Commission



1. Actual Tram Vehicle

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PROPOSED VIEW

MONARCH BAY CLARIFICATION  
MONARCH BAY ACQUISITION

VISUAL ASSESSMENT

**LOFFEL WALL EXHIBIT**




TRAM WAY

TRAM WAY EXHIBIT

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