

**CALIFORNIA COASTAL COMMISSION**

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 49th Day: February 7, 2003  
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 Staff: SFR-LB  
 Staff Report: March 20, 2003  
 Hearing Date: April 8-11, 2003  
 Commission Action:

**Tu9b****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-02-120**APPLICANT:** CPH Monarch Golf, LLC

RECORD PACKET COPY

**AGENT:** Culbertson, Adams, and Associates**PROJECT LOCATION:** Monarch Beach, "The Links" Golf Course, Dana Point, Orange County.

**PROJECT DESCRIPTION:** Request for after-the-fact approval of a tram service to carry passengers between the St. Regis Hotel and the Monarch Bay Club. Associated new development includes a 14 foot high retaining wall on the seaward side of the paved path and a 130 foot long maximum, 8 foot high retaining wall on the landward side to provide a level paved path to accommodate the tram and landscaping. Grading totals 800 cubic yards of cut and 800 cubic yards of fill, which balances on site, to provide a bench for the 12 foot wide by 200 foot long paved path. Only the 80 foot portion of the retaining walls and path within Tract No. 12119 are within the Commission's coastal development permit jurisdiction.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the proposed development with ten (10) special conditions requiring the submission of a revised signage plan, the development of a brochure, conformance to tram operational stipulations, conformance with geotechnical recommendations, construction best management practices, the submission of a revised landscaping plan, assumption of risk, that future improvements be submitted to the Commission, a deed restriction referencing all the special conditions, and that all the special conditions be met within one-hundred and twenty days (120).

The proposed development raises two principal concerns for the Commission to evaluate. First, the proposed operation of the tram potentially interferes with pedestrian and bicycle use of a public trail and raises a concern relative to the public's ability to use the tram. The applicant seeks, after the fact, approval for the operation of a tram to ferry hotel guests between the St. Regis Hotel and the Monarch Bay Club, a private beach club located on the seaward side of Pacific Coast Highway. As originally proposed, the public would not have been able to ride the tram. For a portion of its route, the tram initially operated on the Salt Creek Regional Trail, which is a major public pedestrian/bike path leading to Salt Creek Beach. The golf course surrounds the trail. The tram would operate

at a frequency of up to eight trips per hour. Considering both the frequency of operation and the physical presence of a motorized vehicle on a public pedestrian trail, public use, enjoyment, and safety could be adversely affected. The applicant has subsequently modified the proposed tram route to utilize existing golf cart paths to minimize the use of the public trail system and is willing to allow the public to ride the hotel tram to the seaward side of the Pacific Coast Highway portion of the Salt Creek Regional Trail.

The second significant concern for the Commission to evaluate is the proposed new construction of retaining walls on the existing constructed slope which would be visible from the beach. Approximately 1,600 cubic yards of grading will be necessary. Grading will consist of 800 cubic yards of cut and 800 cubic yards of fill, which will balance on-site, to "raise" the existing base elevation by approximately 14 feet to establish a level bench on which to construct a 200 foot long by 12 foot wide paved path for the tram. The proposed retaining walls and paved path have not been constructed.

**LOCAL APPROVALS RECEIVED:** City of Dana Point Resolution No. 02-02-12-05, City of Dana Point Coastal Development Permit 96-26(I), Site Development Permit 01-32M.

**OTHER AGENCY APPROVALS RECEIVED:** Caltrans Encroachment Permit No. 1202-6MC-0508, County of Orange Encroachment Permits Nos. 2002-01020, 2002-01028, and 2002-01899.

**SUBSTANTIVE FILE DOCUMENTS:** City of Dana Point Local Coastal Program; Monarch Beach Resort Specific Plan; Coastal Development Permit Applications P-79-5539, 5-92-158, 5-92-168, 5-92-188, 5-96-006, 5-97-222, 5-02-120, and A-5-DPT-01-137; City of Dana Point Resolution No. 02-02-12-05, City of Dana Point Coastal Development Permit 96-26(I), Site Development Permit 01-32M, "Grading Plan Review Proposed Tramway at Monarch Resort Hotel Southeast of Monarch Beach resort Parking Lot, City of Dana Point, California" (March 4, 2002) by Zesier Kling Consultants, Inc., "Verduara 40 Wall Design Monarch Beach Resort, Tram Access Connection 33103 Niguel Road, Dana Point, California, for Soil Retention Systems, Inc." (April 10, 2002) by Southern California Geotechnical.

**EXHIBITS:**

1. Vicinity Map
2. Monarch Beach Resort Access/Trail Plan
3. Applicant's Project Description, Culbertson Adams & Associates (March 13, 2003)
4. Picture of Hotel Tram Near Golf Clubhouse
5. Photo of Tram
6. Photo of View From the Beach Looking Inland
7. Simulation of View of Retaining Wall From the Beach
8. Zeiser Kling letter of March 14, 2003

**PROCEDURAL NOTES:****1. Commission and City Of Dana Point Jurisdiction for Coastal Development Permits Relative to Coastal Development Permit P-79-5539**

Through Coastal Development Permit P-79-5539 (AVCO), the Commission conceptually approved (July 23, 1979) development for the Monarch Beach area. Over the intervening years, the development has been modified through a series of permits and permit amendments. Coastal Development Permit 5-92-158 (August 11, 1992) approved modifications to the golf course into its current configuration. Coastal Development Permit 5-92-168 (August 11, 1992) approved the construction of a 400 key resort hotel (St. Regis), and eighty-six (86) residential units surrounding the hotel. Both the St. Regis and the golf course have since been constructed. In 1997, the Monarch Beach area was incorporated into the City's certified LCP.

Now, through this permit application, the applicant proposes to implement a tram to ferry passengers between the St. Regis Hotel and the Monarch Bay Club. Normally, pursuant to Section 30519 of the Coastal Act, coastal development permitting authority is delegated to the local government when an area, such as Monarch Beach, becomes certified. However, in this particular case the City's LCP recognized development consistent with the "Master Permit", P-79-5539 issued by the Commission would remain under the jurisdiction of the Commission. Section 9.69.030 of the City's Zoning Code states: *"Development authorized by Coastal Development Permit P-79-5539, including both development approved on condition that an additional coastal development permit be obtained, and development approved on condition of the submission of additional plans for the review and approval of the Executive Director of the Coastal Commission, remains under the jurisdiction of the Coastal Commission for purposes of condition compliance and amendment. Condition compliance includes both obtaining a coastal development permit from the Coastal Commission for development that was approved on condition that a separate coastal development permit be approved, and obtaining approval from the Executive Director of the Coastal Commission for plans for development that was approved on condition of the submission of final plans. Coastal development permits, or approval of plans by the Executive Director to the Coastal Commission, for development authorized by Coastal Development Permit P-79-5539 shall be obtained from the California Coastal Commission."*

Moreover, special conditions attached to Coastal Development Permits 5-92-158, 5-92-168, and 5-96-006 required that public access be maintained and that future development be reviewed by the Commission for potential conflicts. The proposed operation of the tram represents a change to the intensity of use and potentially affects the provision of public access as required by the Commission. Thus, even if the proposed development were not considered to be related to P-79-5539, the proposed development would qualify as an amendment subject to Commission review because of the future development restriction on Coastal Development

Permits 5-92-158, 5-92-168, and 5-96-006. The review of amendments to coastal development permits approved by the Commission is not delegated to the local government after certification of the LCP, pursuant to Section 30519 of the Coastal Act and Section 9.69.030 of the City's Zoning Code.

2. **Standard of Review**

The local coastal program ("LCP") for this area of the City of Dana Point was effectively certified on November 5, 1997. The project site is within the Monarch Beach Specific Plan area, and the certified local coastal program for this area also incorporates the Monarch Beach Resort Specific Plan. The Commission, in certifying the LCP, found the LCP to be in conformity with and adequate to carry out the Coastal Act. Pursuant to Section 30519 of the Coastal Act, the Standard of review for coastal development permit applications within a certified LCP area is the standards of the certified LCP.

Additionally Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the first public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of the Coastal Act. Portions of this project are seaward of Pacific Coast Highway, which is the first public road for this permit action.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission **APPROVE** the permit application with special conditions:

**MOTION:**

*I move that the Commission approve CDP No. 5-02-120 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

**RESOLUTION:**

I. **APPROVAL WITH CONDITIONS**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as

conditioned will be in conformity with the public access policies of the Coastal Act and the policies of the Dana Point Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS:

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

## III. SPECIAL CONDITIONS

### 1. SIGNAGE PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a revised signage plan for the project area which shows: 1) the location of stop signs placed where the tram enters or crosses the public trail system, and 2) the location of signs displaying the tram route, stops, and frequency of operation, that inform the public that the tram is available for public use, and how to obtain help in utilizing the tram. The signage plan shall also include the dimensions, wording, and layout of each sign.

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

**2. HOTEL TRAM BROCHURE**

The applicant shall prepare brochures, for the review and approval of the Executive Director, describing the tram operation and its availability for public use. These brochures shall be available, at a minimum, at the existing required public information center located in the hotel lobby.

**3. OPERATIONAL STIPULATIONS**

- A. By acceptance of this permit, the applicant agrees to the following terms:
1. The public shall have the right to ride the tram while it is operating within the area of the Monarch Beach Specific Plan, consistent with Section 2.2.6 of the Monarch Beach Specific Plan.
  2. The tram operator may charge the public a fare which does not exceed the tram fare established under Coastal Development Permit 5-92-168.
  3. The public shall be allowed to carry beach gear onto the tram consistent with Section 2.2.5 of the Monarch Beach Specific Plan.
  4. The tram shall come to a complete and full stop before entering or crossing a public trail and shall give the right-of-way to users of the public trail.
  5. The permittee shall provide the tram driver, golf clubhouse staff, and affected hotel staff with training regarding the operational stipulations cited above in this section and shall assure that the hotel staff, golf clubhouse staff, and tram driver comply with the operational stipulations.
- B. The permittee shall undertake development in accordance with the operational stipulations cited above. Any proposed changes to the operational stipulations shall be reported to the Executive Director. No changes to the operational stipulations shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. **CONFORMANCE WITH THE GEOTECHNICAL RECOMMENDATIONS**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations: *"Grading Plan Review Proposed Tramway at Monarch Beach Resort Hotel Southeast of Monarch Beach Resort Parking Lot, City of Dana Point, California"* (March 4, 2002) by Zeiser Kling Consultants, Inc., and *"Vendura 40 Wall Design Monarch Beach Resort Tram Access Connection 33103 Niguel Road Dana Point California"* (April 10, 2002) by Southern California Geotechnical.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

5. **CONSTRUCTION BEST MANAGEMENT PRACTICES**

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

- A. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction.
- B. Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery or construction equipment or power tools into areas subject to runoff into the storm drains. The applicant and applicant's contractors shall have adequate equipment available to contain any such spill immediately.
- C. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drains, and shall not be stored in contact with the soil.
- D. All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- E. All storm drain inlets and catch basin shall be protected by sand bags and/or straw waddles during construction.

**6. LANDSCAPING AND SCENIC RESOURCES**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a landscaping plan (including the plans for the loffel retaining walls) for the area within the grading limits of the retaining wall that utilizes only native vegetation that is common to the local area for purposes of erosion control and to promote the use of native plants common to coastal Orange County.
- B. The loffel retaining wall plans shall document that the wall will be treated to be compatible and blend into the color and texture of the adjacent terrain to create a naturalized appearance.
- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**7. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY**

By acceptance of this permit, the applicant acknowledge and agrees (i) that the site may be subject to hazards due to potential slope instability; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**8. FUTURE IMPROVEMENTS**

This permit is only for the development described in Coastal Development Permit No. 5-02-120. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-02-120. Accordingly, any future improvements authorized by this permit, including but not limited to change in use and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-02-120 from the Commission or shall require an additional coastal



development permit from the Commission or from the applicable certified local government.

9. **DEED RESTRICTION**

**PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcels governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. **CONDITION COMPLIANCE**

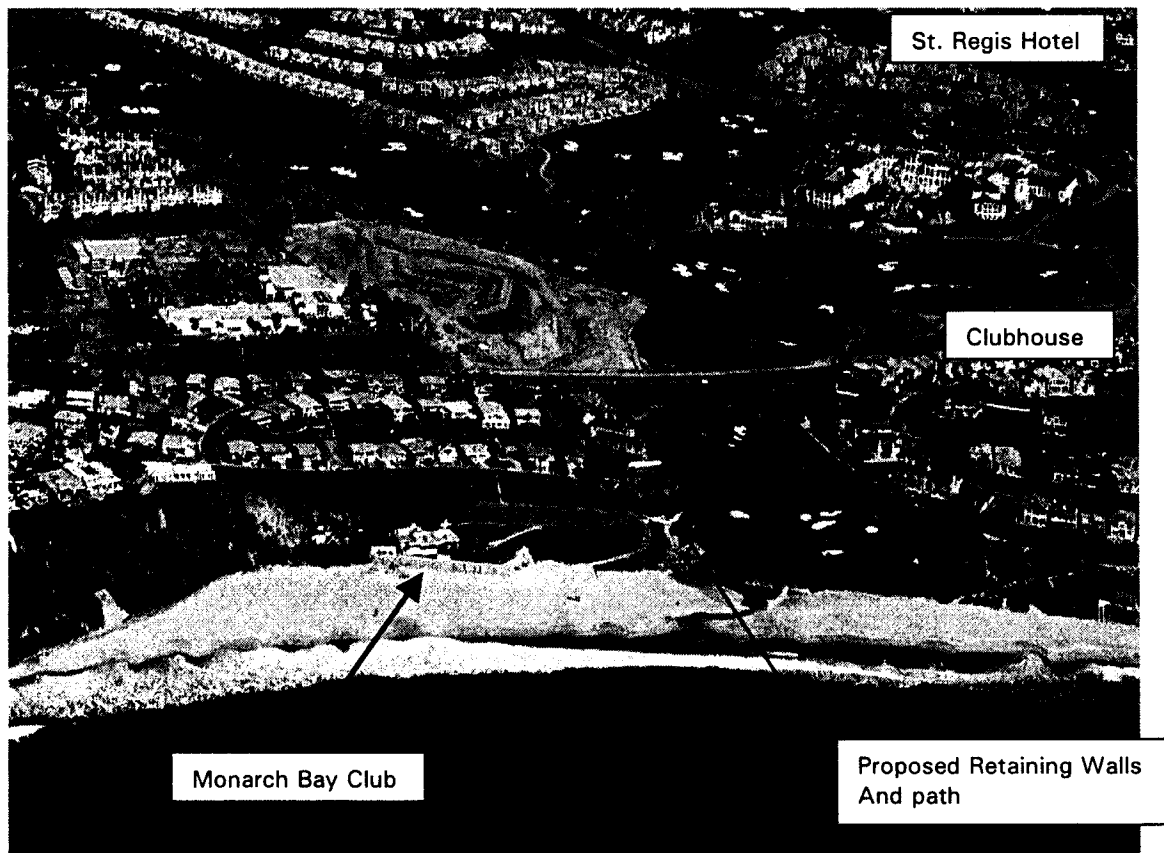
Within 120 days of Commission action on this coastal development permit application, or within such time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

##### **A. PROJECT DESCRIPTION AND LOCATION**

The applicant is requesting, after-the-fact, approval to implement a passenger tram (Exhibits 4 and 5) which will ferry hotel guests between the St. Regis Hotel, golf clubhouse, and the Monarch Bay Club. The proposed development is located within the Monarch Beach Specific Plan area of the City of Dana Point, Orange County (Exhibits 1 and 2). Portions of the project site are between the first public road and the sea. Figure 1, below, identifies the major landmarks associated with the tram operation. Exhibit 3 describes the project description in greater detail.



**Figure 1<sup>1</sup> PROJECT LOCATION**

Associated work related to implementing the tram operation includes the construction of retaining walls, a paved path, and landscaping. The first proposed retaining wall, shown

<sup>1</sup> Photo Courtesy of: California Coastal Records Project, [www.californiacoastline.org](http://www.californiacoastline.org)  
<<http://www.californiacoastline.org>>. Copyright (C) 2002 Kenneth Adelman.

on Page 5 of Exhibit 3, will be on the seaward (south) side of the path, will be 130 feet in length, and will have a maximum height of 14 feet. The second proposed retaining wall will be at the same location as the first retaining wall, but on the landward side of the 12 foot wide path and will be approximately 130 feet long with a maximum height of 8 feet. A simulation of the proposed retaining wall is shown in Exhibit 7. A total of 1,600 cubic yards of grading, which will balance onsite, will be required. The retaining walls are necessary to establish a level 12 foot wide by 200 foot long paved path for the benefit of the tram<sup>2</sup>.

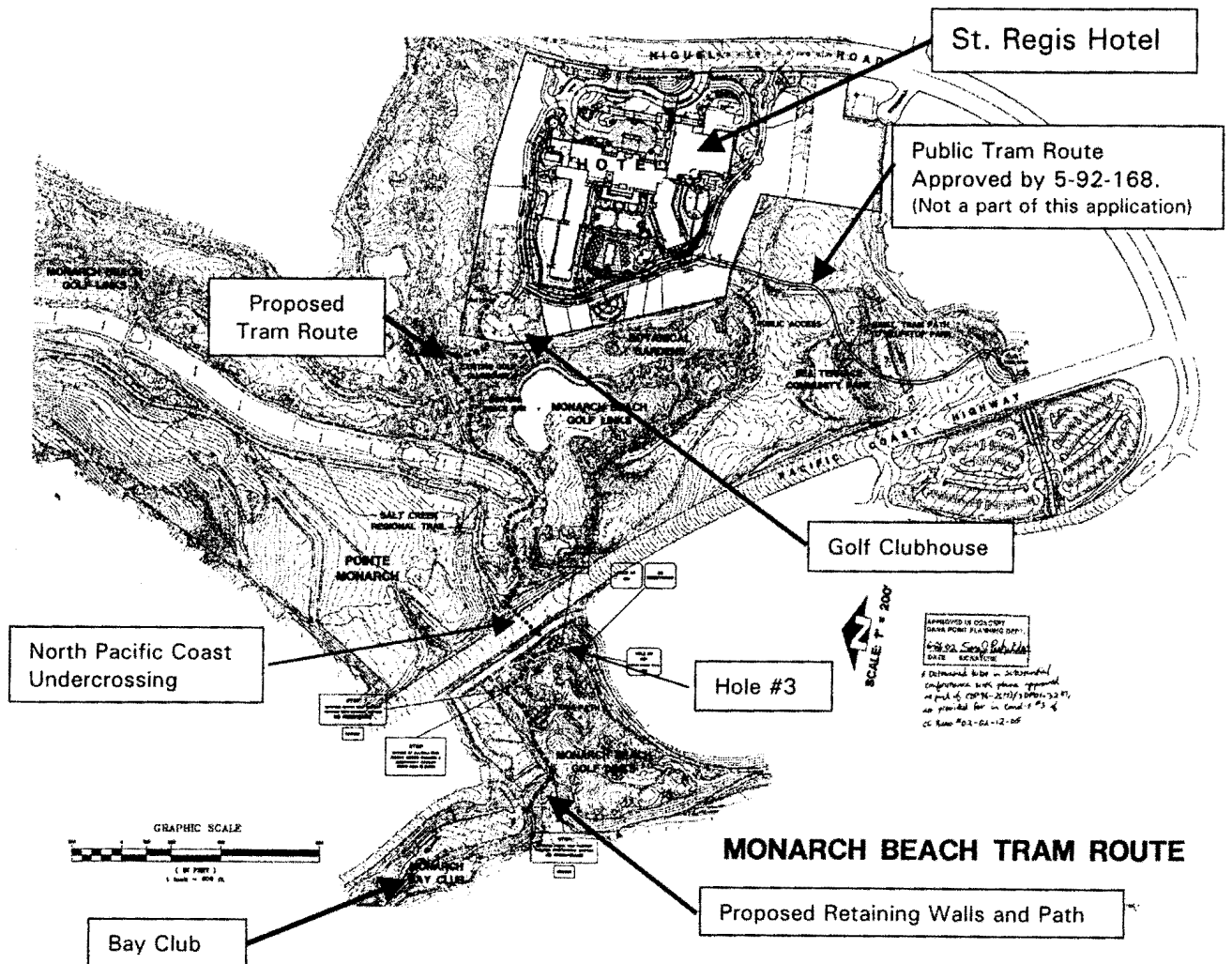


Figure 2 Tram Site Plan

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The site of the proposed retaining walls is the bottom of the partially filled Salt Creek drainage course resulting from the conversion of Salt Creek to an improved storm drain channel. Exhibit 8 explains the geomorphology of the project location for the proposed retaining walls.

The retaining walls, paved path, and landscaping components of the project have not been implemented. Thus, these components of the overall project are not after-the-fact. Figure 2 on the previous page illustrates the proposed tram route and shows the location of the proposed retaining walls.

A portion of the retaining walls are within the coastal development permit jurisdiction of the City of Dana Point. Figure 3 below details which components of the proposed tram development fall under Commission jurisdiction (for purposes of compliance with previously issued Commission coastal development permits) and which fall under City jurisdiction (as new development). Development associated with the St. Regis Hotel (approved under CDP 5-92-168) and the golf course (approved under CDP 5-92-158) occurring on Tract No. 12119 falls under the Commission's jurisdiction. Approximately 80 feet of the proposed 130 foot long retaining walls are within Tract No. 12119.

Development occurring on Tract No. 4472 falls under the coastal development permit jurisdiction of the City of Dana Point. Approximately 50 feet of the retaining walls and path are within Tract No. 4472. The City of Dana Point approved the tram operation and retaining walls through City Coastal Development Permit 96-26(I) on February 12, 2002. Following the withdrawal of the Coastal Commission appeal by the Monarch Bay Association on March 14, 2003 this City permit became final for the portion of the development within Tract No. 4472.

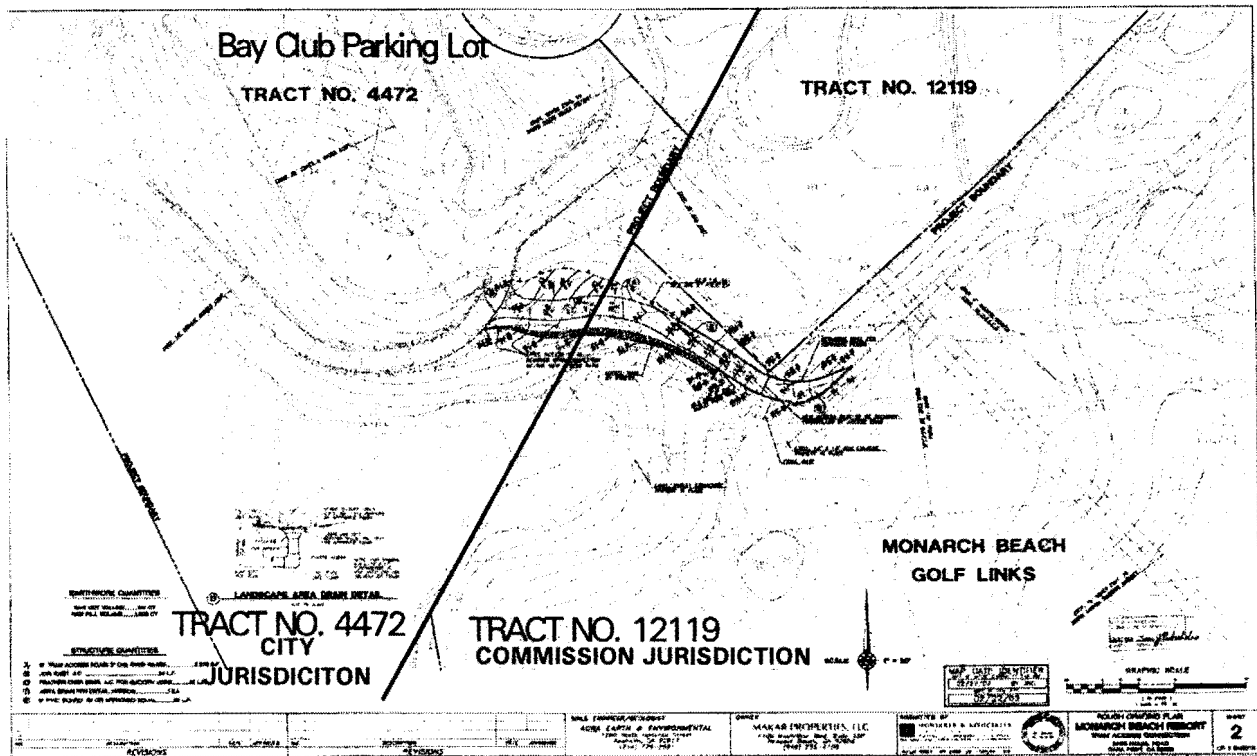


Figure 3 CDP Jurisdiction Graphic

**B. PREVIOUS COMMISSION COASTAL DEVELOPMENT PERMITS**

The Monarch Beach area has been subject to numerous permit actions. The permits most relevant to the proposed project currently before the Commission under this application (5-02-120) are cited below.

**Coastal development permit P-79-5539** was approved on July 23, 1979 and is commonly referred to as the "Master Permit" since it approved development of the golf course and conceptually approved visitor serving and residential development (subject to approval through subsequent coastal development permits) for the Monarch Beach area. Relative to this permit (5-02-120) action, coastal development permit P-79-5539 recognized that the public would have access to the open space areas of Monarch Beach, that the trails would be available for public use, and that the public would be encouraged to visit the recreational amenities.

The Laguna Niguel Coastal Development Plan, approved through P-79-5539 states that the development plan: *"... is a comprehensively designed, closely interrelated set of visitor-serving and residential land uses that will create an exciting new setting for use by both the public and local community. Access to the coast is enhanced by a resort hotel, a recreation/conference center, an 18-hole regulation golf course, a community commercial center, and an impressive open space system that includes a coastal park, an inland community park, and pedestrian/bicycle trails with community and region-wide linkage. A full range of residential styles are proposed including those that provide for lower and moderate income families. Major existing view corridors to the ocean and distant areas are preserved by predominantly park uses along Pacific Coast Highway, allowing for an open space feeling unique among Southern California developments."*

The narrative of the Laguna Niguel Coastal Development Plan discusses that a trail system linking all the elements of the proposed development will be constructed. Additionally the plan notes the establishment of a regional trail along Salt Creek for pedestrian and bike access and that the Pacific Coast Highway undercrossings would be "grade separated". There is also a notation for "golf cart trails". However, the plan is silent on the implementation of a motorized tram system.

The staff report for P-79-5539 notes: *"The proposed trail system links most of the project elements together. One major deficiency in the system, however, is the lack of provision for a transit system utilizing some (not necessarily all) of those pathways. The value of a small-scale transit system, especially one linking the residential areas with the commercial center, on minimizing resident use of Coast Highway and Niguel Road should be investigated. Preventing resident use of the roadways around the project would help lessen the substantial impact of this project on coastal access, in partial consistency with Section 30252 of the Coastal Act."*

Though the potential for a transit system was recognized, a proposed system was not put forward, instead the Commission imposed a special condition to create a fund that would be used to pay for a future transit program. The Commission and the City of Dana Point

have developed a proposed program, which will provide a summer bus service. The Memorandum of Understanding to implement this program was completed on October 23, 2002.

**Coastal development permit 5-92-168** was approved on August 11, 1992 for a 400 key resort hotel (now the St. Regis) and 86 residential units<sup>3</sup>. Relative to this permit (5-02-120) action, coastal development permit 5-92-168 reiterated that the public would have access to the open space areas of Monarch Beach and that the trails be available for public use. Additionally, the hotel permit (5-92-168) required that a public tram be implemented to take hotel guests and the general public from the hotel and golf clubhouse to the beach. Moreover, 5-92-168 contained a future development deed restriction which required that the land owner obtain a coastal development permit amendment before proceeding with any additional development.

Special Condition #4 of 5-92-168 requires the implementation of a public tram system that would transport people between the hotel, golf clubhouse, Sea Terrace Community Park, the beach access point (Bluff Park). The public tram approved by this permit utilizes the southern Pacific Coast Highway undercrossing. Additionally this special condition allowed members of the public to carry beach gear with them while riding the tram.

The staff report for 5-92-168 notes: *"The tram system was not part of the "Master Permit". The first Commission approval of the tram system was with the Stein-Brief proposal (5-86-503). The Commission approved the tram system again as part of the Hemmeter proposal (5-87-978) for the Beach House. The Commission also imposed the condition that the Hemmeter project would guarantee public use of the tram. To meet the goals of the Coastal Act for improving public access, the applicants have proposed implementing the tram system as part of their public amenities plan. Therefore the Commission finds that the Hotel Village tram system, as conditioned, is consistent with Sections 30212.5 and 30252 of the Coastal Act."*

The *"Resort Tram Vehicle – Operation Plan"* (January 27, 1994), submitted and approved by the Executive Director in compliance with Special Condition #4 of 5-92-168 establishes the hours of operation, the fare that may be charged (\$2.00 charge for the general public valid for the entire day), and the route of operation. The route of operation was essentially a semi-circle with the Golf Clubhouse being one terminating point and Salt Creek Beach Parking lot being the other terminating point, with the hotel in the "center". Additionally, as proposed by the applicant, the tram was to serve a "Beach House" facility, but the Commission denied the "Beach House" facility (5-92-189) on August 11, 1992.

The tram, as approved by the Commission on August 11, 1992, did not go through the northern Pacific Coast Highway undercrossing. Figure 2 on Page 11 shows the route of the tram approved under 5-92-168. Since the Commission's original approval of

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<sup>3</sup> Through subsequent amendments, the number of proposed residential units has declined from 86 to 70. The residential development has not yet been constructed.

5-92-168, the proposed location of golf clubhouse was modified through a CDP application and amendment to construct it at its current location. Figure 1 on Page 10 shows where the golf clubhouse was subsequently constructed. The proposal for the hotel tram currently before the Commission proposes to utilize the northern Pacific Coast Highway undercrossing. Additionally, the proposed operation of a tram to take hotel guests to the Monarch Bay Club was not before the Commission when it acted on 5-92-168.

**Coastal development permit 5-92-158** was approved on August 11, 1992 for modifications to the golf course. Relative to this permit (5-02-120) action, coastal development permit 5-92-158 reiterated that the public would have access to the open space areas of Monarch Beach and that the trails be available for public use. Moreover, 5-92-158 contained a future development deed restriction which required that the land owner obtain a coastal development permit amendment before proceeding with any additional development on the golf course.

**Coastal development permit 5-96-006** was approved on March 14, 1996 to relocate the golf clubhouse to its current location. Relative to this permit (5-02-120) action, coastal development permit 5-96-006 reiterated that the public would have access to the common use areas of golf clubhouse facility. Moreover, 5-96-006 contained a future development deed restriction which required that the land owner obtain a coastal development permit amendment before proceeding with any additional development on the golf clubhouse facility.

#### **C. CITY OF DANA POINT COASTAL DEVELOPMENT PERMIT**

The City of Dana Point made a determination in October 2001 that the proposed tram operation qualified as development and would require a coastal development permit. In its letter of October 9, 2001 the City noted that the implementation of the tram was an intensification of use based on Section 9.75.040 of the Zoning Code and that the tram operation required that a coastal development permit be obtained. Specific concerns mentioned in the letter included the potential that the tram operation would conflict with public use of the public trails and the necessity develop guidelines for ensuring the safety of pedestrians and bicycles in areas of joint use. The City of Dana Point subsequently issued Coastal Development Permit No. 96-26(I) on February 12, 2002 for the operation of the tram and construction of the retaining wall.

This City permit came to the attention of Commission staff as a result of the Monarch Bay Association contemplating the filing of an appeal of the City's coastal development permit. Upon review of the City's administrative record it became clear that a portion of the development (as shown in Figure 3 on Page 12) was actually within the Commission's permit jurisdiction pursuant to Section 9.69.030 of the City's Zoning Code since development was conceptually approved by Commission under CDP P-79-5539 and then approved in greater detail under coastal Development Permits 5-92-158 and 5-92-168. The applicant subsequently submitted an application for a Coastal Development Permit on

April 23, 2002 for the components of the project within the Commission's jurisdiction. This is the application currently before the Commission<sup>4</sup>. An appeal (A-5-DPT-02-137) of the City's CDP was filed by the Monarch Bay Association with the Commission on May 2, 2002.

To facilitate having the entire project (both the appeal and the CDP) before the Commission at one time, the applicant (at the Commission's July 8, 2002 hearing) offered to provide a 49-day waiver pursuant to Section 30625 of the Coastal Act. The 49-day waiver was received on July 9, 2002. The applicant subsequently amended their project proposal in July 2002 to utilize the golf cart trails and to minimize their usage of the public trails system. The appellants, Monarch Bay Association, subsequently withdrew their appeal on March 14, 2003. Consequently, all that is before the Commission, at this time, are the portions of the tram operation and proposed retaining wall that are not within Tract No. 4472 (Figure 3 on Page 12)

#### **D. MAINTENANCE OF PUBLIC ACCESS**

The public access and recreational policies of the Coastal Act encourage that development, such as the Monarch Beach Resort, be designed to promote public access and public recreational opportunities. In approving what is now the St. Regis Hotel in 1992, prior to LCP certification, the Commission found that, as conditioned, the project complied with the public access and recreational policies of the Coastal Act. The public access and recreational amenities provided by this project include public access to the common areas of the hotel and golf clubhouse, public parking, public use of the golf course, and public access to the Salt Creek Regional Trail (which is a major pedestrian/bike path to Salt Creek Beach<sup>5</sup>).

Subsequently, this area became certified in 1997 under the City of Dana Point Local Coastal Program, which (for this area) incorporates the Monarch Beach Specific Plan. Though, the area is certified, portions of the project (such as the retaining wall) are seaward of the first public road (Pacific Coast Highway). Section 30604(c) of the Coastal Act requires that a Chapter 3 Coastal Act public access finding be made for every coastal development permit issued for any development between the nearest public road and the shoreline. Sections 30210, 30212, and 30213 of the Coastal Act encourage that new development promote public access and lower cost visitor serving recreational facilities. The following City LCP polices relate to public access and are applicable to evaluating the proposed tram operation.

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<sup>4</sup> On March 14, 2003 the Commission received an updated project description which has been attached to this staff report as Exhibit 3.

<sup>5</sup> Salt Creek Beach is a popular 18 acre public beach. The long sandy beach is a popular surfing spot. According to Orange County (March 14, 2003) there are 593 parking spaces. Additionally beach facilities include restrooms, and a beach concession.



- Policy 3.5: Land Use Element: *Public facilities must be distributed throughout the coastal area to eliminate overcrowding and overuse in one single area.*
- Policy 3.7: Land Use Element: *Encourage safe and convenient bicycle and pedestrian access throughout the community.*
- Policy 4.3 Land Use Element: *Provide and protect public access and recreational opportunities to the coastal area.*
- Policy 1.13 Circulation Element: *Minimize pedestrian and vehicular conflicts.*
- Policy 5.1 Circulation Element: *Promote the safety of pedestrians and bicyclists by adhering to uniform standards and practices.*
- Policy 5.7 Conservation/Open Space Element: *Consider the development of shuttle systems, train or transit facilities, to help reduce vehicular trips and air pollution.*

Without benefit of a coastal development permit, the applicant initiated the operation of a tram (hotel tram) to carry hotel guests between the St. Regis Hotel and the Monarch Bay Club.<sup>6&7</sup> As previously noted, the City of Dana Point asserted in October 1991 that the operation of the tram would require a coastal development permit as it constituted "development" as an "intensification of the use of the land" pursuant to Section 9.69.020 of the City's Zoning Code. The City issued a coastal development permit in February 2002. This City issued CDP was subsequently appealed to the Commission and upon review of the City's administrative record, Commission staff concluded that the major portion of the tram operation was under the Commission's jurisdiction. Subsequently, in April 2002 the applicant applied to the Commission to obtain a Commission coastal development permit for the operation of the hotel tram.

Prior to July 2002, the subject hotel tram operated on portions of the public trail system within Monarch Beach. The operation of the motorized hotel tram on the public trail system had the potential to conflict with and discourage public pedestrian and bicycle use, which would be an adverse effect on public use and enjoyment of the public trails guaranteed by the public access policies of the Coastal Act, the Monarch Beach Specific

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<sup>6</sup> The Commission recognizes that hotel guests are members of the public and in that sense the operation of the hotel tram would serve one segment of the public. Further, as originally proposed, the hotel tram was to operate for the exclusive benefit of the hotel guests and in this sense the tram could be considered "private" since it would not be available to the general public on a casual basis.

<sup>7</sup> Condition #24 of the City's permit states that "Only overnight St. Regis Hotel guests (key-holders), a maximum of 3 guest per key-holder, Hotel personnel, Bay Club personnel, and Bay Club members, all of whom shall have appropriate identification, will be allowed to use the this private tram system."

Plan, and the permits issued by the Commission for this area. In July 2002 the applicant modified the hotel tram route to minimize use of the public trail system consistent with Policy 1.13 of the City's LCP. The July 2002 modifications have been reiterated in a March 13, 2003 letter to the Commission which has been attached as Exhibit 3. The proposed hotel tram route is shown in Figure 2, on Page 11. This is the route currently before the Commission at this time.

Though the hotel tram route has been revised in a beneficial manner, two principal operational issues remain which must be evaluated. These operational concerns relate to the general public's ability to ride the hotel tram, and the frequency of operation. These concerns area analyzed below.

**Hotel Tram Ridership:** The hotel tram was initiated to facilitate transportation of the hotel guests to the Monarch Bay Club, a private facility within the locked gate community of Monarch Bay.<sup>8</sup> As originally proposed by the applicant, the public would not have the ability to utilize the hotel tram. Additionally, Condition #24 of the City's coastal development permit limited the tram to carrying hotel guests, their guests, hotel personnel, and Bay Club Members. The applicant has subsequently amended their project description (Exhibit 3) on March 13, 2003 to allow the public to ride the tram on a for-fare bases as far as the Hole #3 (which is on the seaward side of Pacific Coast Highway) intersection where the hotel tram leaves the Salt Creek Regional Trail and goes on the golf cart path into the locked gate community of Monarch Bay (see Figure 2 on Page 11).

Prior to certification of the Monarch Beach Specific Plan as part of the City's LCP, the Commission, through coastal development permit 5-92-168 (for the construction of what is now the St. Regis) required by means of Special Condition #4, that the applicant submit to the Executive Director a written agreement which guaranteed that the public would have reasonable use of the tram system.<sup>9</sup> The Monarch Beach Specific Plan, now a part of the City's certified LCP, incorporated the public access provisions of 5-92-168 by requiring that a public tram system be implemented to promote off-road circulation within the Monarch Beach Specific Plan area. Sections 2.2.5 and 2.6.6 discuss the operation of the Resort Vehicle System. Section 2.2.5 notes, in relevant part, that "*A for-fare public resort vehicle system is planned to link the hotel, golf clubhouse, and park within the resort community as well as the Salt Creek beach parking lot. ... 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.*" Additionally, Section 2.6.6, in

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<sup>8</sup> Monarch Bay is a private residential neighborhood outside of the Monarch Beach Specific Plan area. Though out of the Monarch Beach Specific Plan area it is covered by the City's certified LCP.

<sup>9</sup> It should be noted that the applicant's current proposal for a hotel tram system is in addition to the tram system that was contemplated under coastal development permit 5-92-168 back in 1992. The applicant's proposal represents a new tram operation that was not previously approved by the Commission. Though the proposed hotel tram system currently before the Commission was not previously contemplated, there is no prohibition against instituting this new service through the coastal development review process.

relevant part, states: *"Avoidance of public perception of a resort vehicle utilizing public lands or rights-of-way primarily to serve the resort facilities."* The Monarch Beach Specific Plan clearly envisioned the operation of any tram as providing transportation for both hotel guests and the general public, not simply for the exclusive use of the hotel guests. Therefore, the Commission finds that the proposed hotel tram must be available for public use consistent with the public access policies of the Coastal Act, Sections 2.2.5 and 2.6.6 of the Monarch Beach Specific Plans, and with the Commissions prior approvals of development in Monarch Beach.

To assure that the public has the ability to utilize the hotel tram from the St. Regis to the portion of the Salt Creek Trail that lies on the seaward side of Pacific Coast Highway (in the vicinity of the golf course's Hole #3 shown on Figure 2 on Page 11) the Commission imposes three special conditions. One, to require the submission of a revised signage plan, for the review and approval of the Executive Director, to inform the public about the availability of this tram; the second, a special condition outlining operational stipulations which assures that the; public will have a right to ride the tram, to carry beach gear, and the that the permittee provide training to the affected hotel staff, golf clubhouse staff, and the tram driver on the ability of the public to utilize the tram; and third for obtaining an amendment when future improvement are proposed. Only as conditioned, does the Commission find that the proposed tram operation would be consistent with the public access policies of the Coastal Act and the City's certified LCP.

**Frequency of Operation:** Based on the applicant's project description of March 13, 2003 (Exhibit 3) the tram will operate at a frequency of up to eight (8) trips per hour at about 6 to 7 miles per hour. Potentially, the operation of a mechanized vehicle, on a public pedestrian trail could discourage pedestrian use thereby diminishing the public's ability to use the public trail system for coastal access. Policies 1.13, and 5.1 of the City's certified LCP recognize the need to minimize pedestrian and vehicular conflicts and to promote the safety of pedestrians. Additionally, Section 2.6.6, of the Monarch Beach Specific Plan in relevant part, states: *"Avoidance of public perception of a resort vehicle utilizing public lands or rights-of-way primarily to serve the resort facilities. ... Addressing the need for traffic control, signage, and adequate safety measures in the operation of the resort vehicle system."*

To alleviate some of the concern over the potential adverse impact of the hotel tram operation on public use and enjoyment of the public trails, the applicant (July 2002) modified the project to eliminate, to the maximum extent feasible, the use of public trails. Figure 2 on Page 11 shows the applicant's proposed tram route as modified to minimize the use of the public trail system. Additionally on March 13, 2003 the applicant provided an updated project description which has been attached as Exhibit 3. Only two areas of potential conflict appear to remain based on the current proposed route. One is at the Pacific Coast Highway undercrossing and the other is near the golf clubhouse. Additionally, based on the revised hotel tram route, there is a potential that even though the hotel tram has been substantially removed from operating on the public trail, that its operation on the golf cart trail could nevertheless have an adverse effect on public use where the two trails are in close proximity (Exhibit 3 Page 7).

The Pacific Coast Highway undercrossing has been designed to accommodate both vehicles and pedestrians. Consequently, there will not be an adverse interaction between public use of the Salt Creek Trail and the hotel tram in the undercrossing. Though the undercrossing tunnel has been designed to accommodate both vehicle use and pedestrian use, where the hotel tram enters and leaves the Salt Creek Trail there is a significant potential that the tram could interfere with public users and would create an un-safe situation if the tram is not regulated to stop and give the right-of-way to pedestrians and bicyclists currently on the trail.

At the golf clubhouse the tram passes through the golf cart staging area. The golf cart staging area is an approximately 20 feet wide paved area and coincidentally an informal and unregulated "intersection" with the public trail system. Exhibit 3 Page 6 shows the Golf Cart Staging Area and references Exhibit 4 which is a picture showing the trail, hotel tram vehicles, and a person. When passing through this area, if the tram is not regulated to stop and give the right-of-way to pedestrians an un-safe condition would exist.

In response to of the potential that use of the golf cart trails by the hotel tram could nevertheless have an adverse impact on adjacent public trails, the applicant states (Exhibit 3) that the golf cart trail and public trails are approximately 15' to 40' apart at their closest points and are separated by vegetative screening (Exhibit 3 Page 6). Thus, the potential for an adverse effect on public use and enjoyment of the public trails has been minimized for the majority of the trail.

As currently proposed (March 13, 2003) to utilize the existing golf cart trail system the potential interaction with the public has been narrowed to where the hotel tram crosses the public trail system. Though the potential for conflict between the hotel tram and pedestrian use has been minimized through the applicant's revised route, operational questions remain regarding how the hotel tram will cross or enter public use areas in such a manner that public use and enjoyment will not be jeopardized.

For example, the tram route plan does not show signage requiring that the hotel tram stop before crossing/entering public trails. Additionally, the applicant's project description, though it has been modified to allow the public to use the hotel tram, does not discuss how the public would be informed of the tram's availability and where to board it. To further minimize potential adverse interactions between the operation of the hotel tram and public use the Commission imposes the following special conditions. First, the Commission requires the submission of a signage plan for the route, for the review and approval of the Executive Director, which places stop signs for the tram where it crosses or enters a public trail and provides appropriate tram information signage and brochures informing the public of their ability to use the tram. Only as conditioned does the Commission find that the tram operation is consistent with the public access policies of the Coastal Act and the City's certified LCP.

**E. LOFFEL (RETAINING) WALL CONSTRUCTION**

The proposed tram system requires the construction of new retaining walls on a constructed slope inland of the beach above the Salt Creek outlet to the ocean. The purpose of the proposed retaining walls will be to "raise" the existing base elevation by approximately 14 feet to provide a level roadbed for a paved 200 foot long by 12 foot wide path across Salt Creek<sup>10</sup> drainage. Approximately 1,600 cubic yards of grading, which will balance onsite, will be necessary to construct the new paved path at the higher elevation. Exhibit 7 is an aerial simulation of the proposed path.

Development on slopes is inherently risky, especially on slopes subject to marine process such as wave activity, wind, and rain. The location of the proposed retaining wall is not subject to wave activity and also does not qualify for as a coastal bluff for reasons discussed below. Due to the potential risk of failure, the site of the retaining wall must be evaluated to assure that the proposed retaining wall would minimize risks to life and property; and to assure stability and structural integrity, and neither contribute significantly to geologic instability. The City of Dana Point LCP has two policies similar to Section 30253 of the Coastal Act:

Policy 4.2: Land Use Element: *Consider the constraints of natural and man-made hazards in determining the location, type, and intensities of new development.*

Policy 2.1: Conservation/Open Space Element: *Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas.*

First, in evaluating the proposed retaining wall with the City's LCP, the project site does not qualify as a coastal bluff. The manufactured slope was created within what was formally the Salt Creek drainage when Salt Creek was "buried". According to the applicant's geotechnical consultant, *"the proposed tram alignment is located within the dissection formed by the mouth area of Salt Creek, which has been subsequently modified by grading and development. It is located in an area geomorphically controlled by Salt Creek and coastal plain processes, and is both landward and geometrically essentially orthogonal to the actual sea bluff and general shoreline."* (Exhibit 8). The applicant's geotechnical consultant also concluded that the positioning of the proposed tram path and walls would not be subject to wave attack. The base of the constructed slope does not appear to be subject to wave action since it is approximately 50 feet landward and approximately 14 feet above the Salt Creek outlet structure and existing Orange County Flood Control District's paved maintenance path which are both protected by rip-rap.

<sup>10</sup> Salt Creek, at the project site, has been converted to a buried "storm drain".

Next, though this report will be discussing the retaining walls in its entirety below, the reader should be aware that of the 130 foot total length, the Commission only has coastal development permit jurisdiction over eighty (80) feet as shown in Figure 3 on Page 12.

Finally, to evaluate the proposed retaining walls design to assure stability and structural integrity a site specific geotechnical investigation was performed. The geotechnical evaluation is summarized in the report "*Grading Plan Review Proposed Tramway at Monarch Beach Resort Hotel Southeast of Monarch Beach Resort Parking Lot, City of Dana Point, California*" (March 4, 2002) by Zeiser Kling. The report notes that samples of the near-surface soils were obtained and that the observed material consisted of artificial fill, slopewash, terrace deposits and bedrock of the San Onofre formation. This material was then tested in the laboratory for suitability within the context of the proposed retaining wall. Based on the results of the laboratory testing Zeiser Kling concluded that, "*our opinion is that the proposed tramway is suitable for its intended purpose from a geotechnical perspective.*"

Though the geotechnical investigation concluded that the site would be suitable, the geotechnical consultants also made recommendations concerning the type of cement that should be used, the necessity to remove vegetation and organic soils, the necessity for over-excavation, material to be used for backfill, compaction, drainage, and keyways. In order to assure that risks are minimized, the geotechnical consultant's recommendations must be incorporated into the design of the project. As a condition of approval the applicant shall submit grading and construction plans indicating that the recommendations contained in "*Grading Plan Review Proposed Tramway at Monarch Beach Resort Hotel Southeast of Monarch Beach Resort Parking Lot, City of Dana Point, California*" (March 4, 2002) by Zeiser Kling, have been incorporated into the design of the proposed project.

In addition, the Commission imposes a special conditions which makes the applicant and any future owners aware of the inherent risk involved with constructing development on a slope and that any proposed future development be considered through the coastal development permit amendment process.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with the City's certified LCP which requires that risks be minimized and geologic stability be assured.

## F. SCENIC RESOURCES AND NATIVE VEGETATION

The proposed retaining walls will be immediately inland from the beach and will be visible from the beach (Exhibit 6). Exhibit 7 is a simulation of the future appearance of the completed wall. Additionally, the proposed retaining walls will be adjacent to the Salt Creek outfall where Salt Creek drains into the Pacific Ocean. Policy 8.14 of the City's Land Use Element calls for the preservation, and where feasible, the restoration of riparian habitat, coastal sage scrub habitat, and other environmentally sensitive habitat areas along Salt Creek. Policy 1.2 of the Public Facilities/Growth Management Element encourages the use of drought resistant landscaping to reduce overall water use. Policy 1.8 of the Public Safety Element encourages the use of natural vegetation. Policies 2.1, 2.2, and 2.3 of the Conservation/Open Space Element encourages minimizing grading and visual impacts, and controlling erosion through a variety of means such as vegetative planting. Policy 6.4 of the Conservation/Open Space Element recognizes that scenic and visual resources are to be protected. Considering the project's location, just inland of the beach, the proposed retaining wall must be designed to minimize its visual impact and, where feasible, to restore native vegetation.

To evaluate the biological resources at the site of the retaining wall a biological assessment was prepared by Bonterra Consulting in May 2002. The biological assessment found that the dominant vegetation consists of non-native and ornamental species. These species included hottentot fig (*Carpobrotus edulis*), Sallow's pampas grass (*Cortaderia sellona*), and Myoporum (*Myoporum laetum*).

To minimize the retaining walls visual presence, the applicant is proposing to use loffel style retaining walls which contain planting pockets and also supplied a landscaping plan. Additionally the applicant has also proposed to tint and texture the walls (Exhibit 3). Nevertheless, a review of the loffel wall design plans and the landscaping plan (Exhibit 3 Page 7 and 7a) revealed several deficiencies which need to be addressed to make the project consistent with the City's certified LCP. First, the plans themselves for the loffel wall do not specify any tinting or texturing of the wall to minimize its visual impact when viewed from the beach. Second, the landscaping plan (Exhibit 3 Pages 7 and 7a) contains invasive species or species which are not drought tolerant. Examples of unacceptable species include Orchid Rockrose (*Cistus purpurea*)<sup>11</sup>, and Halls Honeysuckle (*Lonicera japonica*)<sup>12</sup>. None of the species identified appear to be native to coastal Orange County. Additionally none of the plants listed in the "Recommended List of Native Plants for Landscaping in the Santa Monica Mountains" (California Native Plant Society, 1992), which is used as guidance, were included in the plant palette. Additionally, some existing vegetation is listed within the invasive wildland pest plant category by the California Exotic Pest Plant Council such as: Pampas grass (*Cortaderia selloana*) and Myoporum (*Myoporum laetum*).

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<sup>11</sup> A prohibited invasive ornamental plant in the Commission's Ocean Trails plant list.

<sup>12</sup> A prohibited invasive ornamental plant in the Commission's Ocean Trails plant list.

Considering that the retaining wall, if unmitigated, would have an adverse visual impact and the necessity to enhance the visual character by augmenting the natural appearance of the slope, the Commission finds it necessary to impose a landscaping special condition, for the review and approval of the Executive Director, which requires that the loffel wall be tinted and textured to match the adjacent terrain and that a revised landscaping plan be submitted which utilizes only native vegetation common to coastal Orange County within the area graded for the retaining wall. Only as conditioned does the Commission find the project in conformity with the City's certified LCP.

#### **G. WATER QUALITY**

The location of the proposed loffel retaining wall is immediately inland and above the beach where Salt Creek discharges into the Pacific Ocean. Given the projects location next to the water there is a potential for construction activity to adversely affect water quality. Storage or placement of construction materials, debris, or waste in a location which drains to the ocean via storm water runoff would result in adverse impacts upon water quality. In addition, the use of machinery in areas that drain into the ocean may result in the release of lubricants or oils that adversely impact water quality. In addition, discharges of sediment laden water from construction activities would also decrease water quality.

Policy 1.7 of the Conservation/Open Space Element of the City's LCP reiterates Section 30231 of the Coastal Act and requires that the biological productivity of coastal waters be protected. Additionally, Policy 4.4 of the Land Use Element reiterate the necessity to protect marine resources. Policy 4.5 of the Land Use Element requires that the environmental impacts of development decisions be considered.

To minimize the impact of construction activity on coastal waters, construction related BMPs are available which would reduce adverse impacts on water quality during construction. These include: timely removal of construction debris, prevention of fuel or oily waste discharge from heavy machinery, enclosure of construction materials, storage of construction materials away from drain inlets, and trash and debris collection at the end of each work day. These measures must be incorporated into the proposed project's construction methods to assure that water quality protection is maximized. Only as conditioned above does the Commission find the proposed development consistent with the City's LCP concerning the protection of water quality.



## H. UNPERMITTED DEVELOPMENT

Development has occurred on site without benefit of the required coastal development permit. Specifically, the implementation of the tram operation from the St. Regis Hotel to the entry gate of the Monarch Bay Club and return.<sup>13</sup> The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application. In order to ensure that the matter of unpermitted development is resolved in a timely manner, the Commission imposes a special condition to require that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although implementation of the tram operation has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the public access policies of the Coastal Act and the City's certified LCP. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

## I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the LCP for the City of Dana Point to conform to CEQA.

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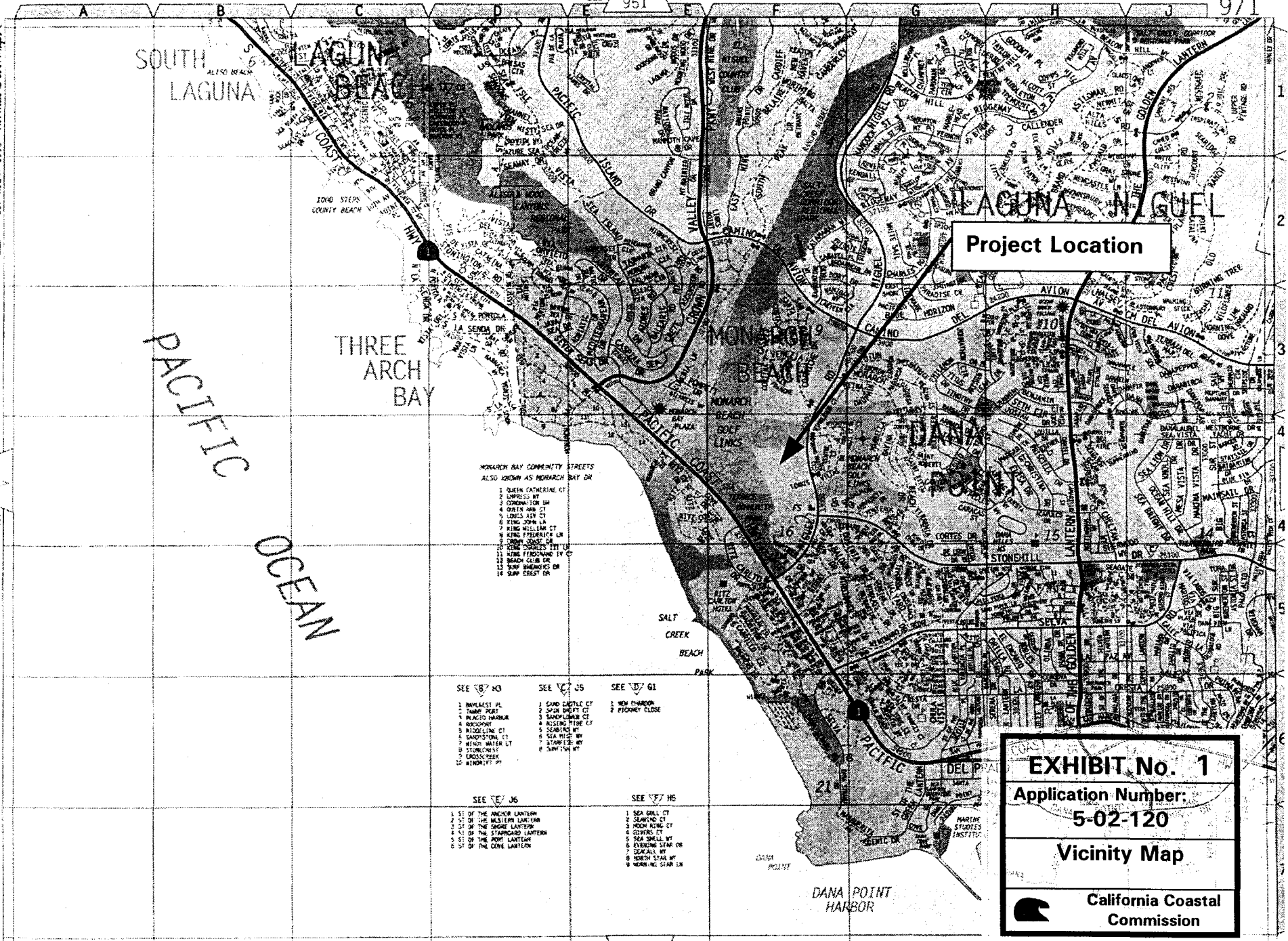
<sup>13</sup> Based on an Orange County Register (Oct. 19, 2001) article, the hotel tram has apparently been operating since October 2001. Commission staff has not received any adverse comments from the public concerning the hotel tram operation. Commission staff also checked with City staff, and no complaints from the public have been received by the City.

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MAP  
SHEET

SEE 951 MAP

971



**Project Location**

MONARCH BAY COMMUNITY STREETS  
ALSO KNOWN AS MONARCH BAY DR

- 1 QUEEN CATHERINE CT
- 2 IMPRESSA WY
- 3 CORONA TOWN DR
- 4 COURT JAM CT
- 5 LINDS JAY CT
- 6 KING JOHN LANE
- 7 KING WILLIAM CT
- 8 KING FREDERICK LN
- 9 COURT JAMES CT
- 10 KING CHARLES III LN
- 11 KING FERNANDO IV CT
- 12 BEACH CLUB DR
- 13 KING HENRIQUEZ DR
- 14 SUN CREST DR

SEE 97 H3

- 1 BAYLEST PL
- 2 TAMM POND
- 3 PLACED MONARCH
- 4 ROCKPORT
- 5 BRIDGEVIEW CT
- 6 SANDSTONE CT
- 7 WINDY WATER CT
- 8 STONECREEK
- 9 CROSSCREEK
- 10 WINDHOLT WY

SEE 97 J6

- 1 SAND CASTLE CT
- 2 SAND DUNE CT
- 3 SANDY LANE CT
- 4 KISSING STRIP CT
- 5 SANDY WY
- 6 SEA WISE WY
- 7 SANDY WY
- 8 SANDY WY

SEE 97 G1

- 1 NEW THARON
- 2 PLYMOUTH CLOSE

SEE 97 J6

- 1 SE OF THE ANCHOR LANTERN
- 2 SE OF THE WESTERN LANTERN
- 3 SE OF THE OREGON LANTERN
- 4 SE OF THE STARGAZER LANTERN
- 5 SE OF THE PORT LANTERN
- 6 SE OF THE COVE LANTERN

SEE 97 H5

- 1 SEA GULL CT
- 2 SEAWIND CT
- 3 SEA KING CT
- 4 SEAWINDS CT
- 5 SEA SWELL WY
- 6 EVENING STAR DR
- 7 CORAL WY
- 8 MORNING STAR WY
- 9 MORNING STAR LN

**EXHIBIT No. 1**














Application Number:  
**5-02-120**

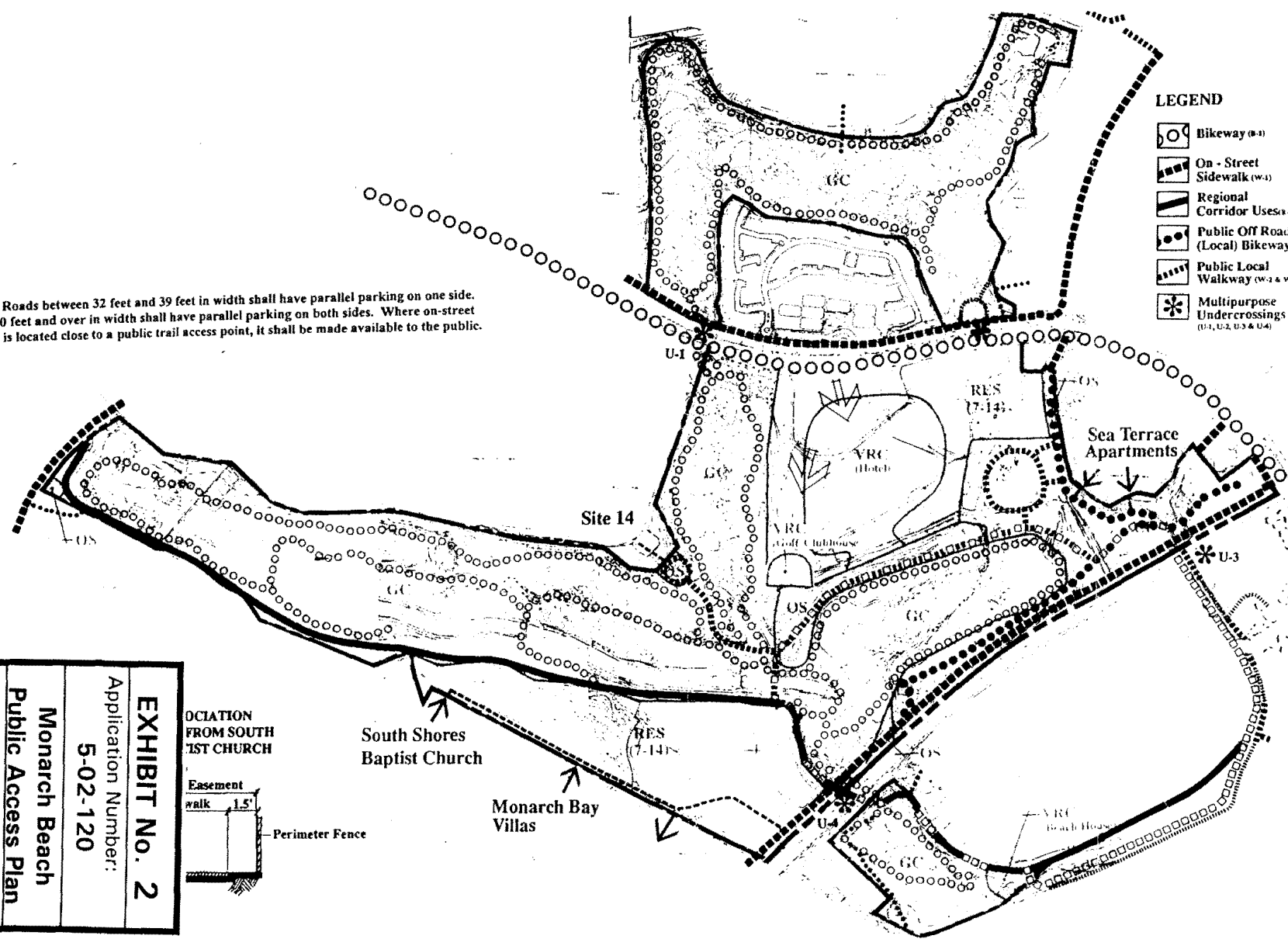
**Vicinity Map**


**California Coastal Commission**

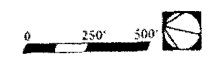
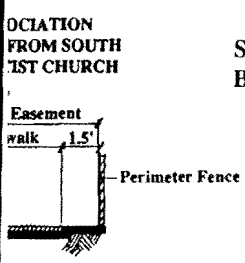
NOTE: Roads between 32 feet and 39 feet in width shall have parallel parking on one side. Roads 40 feet and over in width shall have parallel parking on both sides. Where on-street parking is located close to a public trail access point, it shall be made available to the public.

**LEGEND**

-  Bikeway (B-1)
-  On - Street Sidewalk (W-1)
-  Regional Corridor Uses (R-1 & R-2)
-  Public Off Road (Local) Bikeway (B-2)
-  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-2)
-  Private/ Association Accessway (E-1)
-  Golf Cart Path (G-1)
-  Services/Maintenance (M-1)
-  Off-Site Private/ Association Accessway
-  Public Access Connecting to Hotel Complex and Botanic Garden, Crescent Promenade and Wildflower Trail



 <b>California Coastal Commission</b>	<b>Public Access Plan</b>	<b>Monarch Beach</b>	<b>EXHIBIT No. 2</b>
	Application Number:		
	5-02-120		





CULBERTSON, ADAMS & ASSOCIATES  
PLANNING CONSULTANTS

**RECEIVED**  
South Coast Region

March 13, 2003

MAR 19 2003


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

CALIFORNIA

ON

Re: Coastal Application 5-02-120

Dear Mr. Rynas:

<b>EXHIBIT No. 3</b>	
Application Number:	<b>5-02-120</b>
Applicant's Project Description, Page 1 of 7	
	California Coastal Commission

Per your request, following is the revised project description for the above-referenced application. It includes updated route and construction graphics (Exhibits 1&2) and some new graphics for the staging area (Exhibit 3). The cart path distances have been field measured and updated earthwork volumes provided.

**Project Description**

The project will revise the route of the existing tram system, which provides a tram connection between the St. Regis & Monarch Beach Resort Spa (Hotel) and the Monarch Bay Club (Bay Club), enabling Hotel guests to gain access to the Bay Club and Bay Club members a means of accessing the Hotel, the Monarch Beach Golf Links (Golf Course) and related facilities. That portion of the tram system which carries hotel guests and the general public to Salt Creek Beach is operational and is unaffected by this proposal. The proposed amendment is merely to relocate the routing for the tram to carry guests between the Hotel and the Bay Club, an existing beach facility associated with the Hotel, such that these trips will not be made on public streets.

A tram was required in past Hotel permits and has been accommodated on the Golf Course. The tram was originally envisioned to travel on the Salt Creek Trail, and the northerly tunnel under Pacific Coast Highway, which was constructed with the necessary width for the tram, golf cart maintenance vehicles and pedestrian use. However, in discussions with Staff, it was determined that the tram should be operated on the golf cart paths and maintenance roads only, except where it goes under Pacific Coast Highway, where it travels on the existing area built for the tram and golf carts (Exhibit 1). A small concrete path 200 feet long and 12 feet wide must be built south to connect the existing maintenance road with the Bay Club. The path will be situated on an existing slope adjacent to and approximately 10 feet below an existing residential lot in Tract 12119. For support, retaining walls will be constructed on either side of the path as it crosses the slope, as described in more detail below (Exhibit 2).

The cart path begins at the front of the Hotel and proceeds in a westerly direction for approximately 2,929 feet to where Salt Creek Regional Trail passes under PCH. A small portion of the tram route is the golf cart staging area and a secondary public trail. The staging area is quite wide at 19'6" and can easily accommodate the 12-passenger tram and pedestrians (Exhibit 3). At the PCH undercrossing, the tram passes under Pacific Coast Highway on an existing section, approximately 310 feet in length, provided exclusively for golf carts and the tram. After leaving the tunnel, the tram travels on an existing golf cart path and an existing maintenance road for approximately 611 feet, before finally crossing the new section (also on private property), approximately 200 feet in length, to the Monarch Bay Club. With respect to the potential for conflicts between public use and enjoyment of the public trails and the Hotel tram at junctions between the public trail and the golf cart path, it should be noted that the two trails are 15' to 40' feet apart and vegetation is present between the trails. Therefore, conflicts should not be present.

The new 200-foot section of cart path will be constructed by grading a minor "bench" on an existing manufactured fill slope. The actual construction will consist of grading approximately 800 cubic yards of excavation and embankment of approximately 800 cubic yards. A Loffel wall and small retaining wall, both earth tones in color, will create the cart path embankment. The Loffel wall is approximately 130 feet long and ranges from 1 foot to 14 feet in height (Exhibit 2). The wall pockets are to be landscaped to match the existing vegetation and screen the appearance of the wall. There is also an up-slope retaining wall proposed approximately 130 feet long to support the cart path excavation, ranging from 1 foot to 8 feet in height. Once the grading, wall construction and paving is complete the site landscaping will be completed in accordance with the plant palette (Attachment A). The City of Dana Point, in approving the project, has required that a landscape plan be provided, "...to soften and screen views of the retaining walls..." Also, a condition was imposed requiring that the Loffel wall and retaining walls be designed and also stained to blend into the surrounding landscaping.

The tram system at the Hotel has long been planned as a facility to serve the general public and Hotel guests. In this case, the tram route enters private land (the Bay Club parking lot) leased by a homeowners association (Monarch Bay Association) to an affiliate of the Applicant. The Bay Club, established more than 40 years ago, is a private club, and does not permit members of the general public to enter property. Therefore, if the general, fee-paying public wishes to ride this particular tram route, they will have to disembark (or embark) in the vicinity of Hole #3. This will still provide an enjoyable stroll back to the hotel along the loop trail, if desired.

The tram path and operational plan submitted to the Commission have been approved by the City of Dana Point, the Homeowner's Association of the Estate of Monarch Cove (EMC) whose homes abut the last Bay club portion of the path, and is now supported by the Monarch Bay Association (Attachment B). The plan incorporates specific requests by EMC regarding hours of operation and lighting to minimize the impact on homes in

Mr. Stephen Rynas  
March 17, 2003  
Page 3

that community. Daytime operational frequency is up to eight round trips per hour. All affected parties desire limited (4 round trips per hour) post-sundown operation for dinner use of the Bay Club. Nighttime use presents no safety hazard, as the tram, which operates at a speed of approximately 6 to 7 miles per hour, runs on the golf course trails, and through the lighted tunnel on its previously constructed right of way.

We sincerely appreciate your efforts in this matter. If you have any comments regarding the new project description or graphics or if you need additional information, please call.

Sincerely,


CULBERTSON, ADAMS & ASSOCIATES

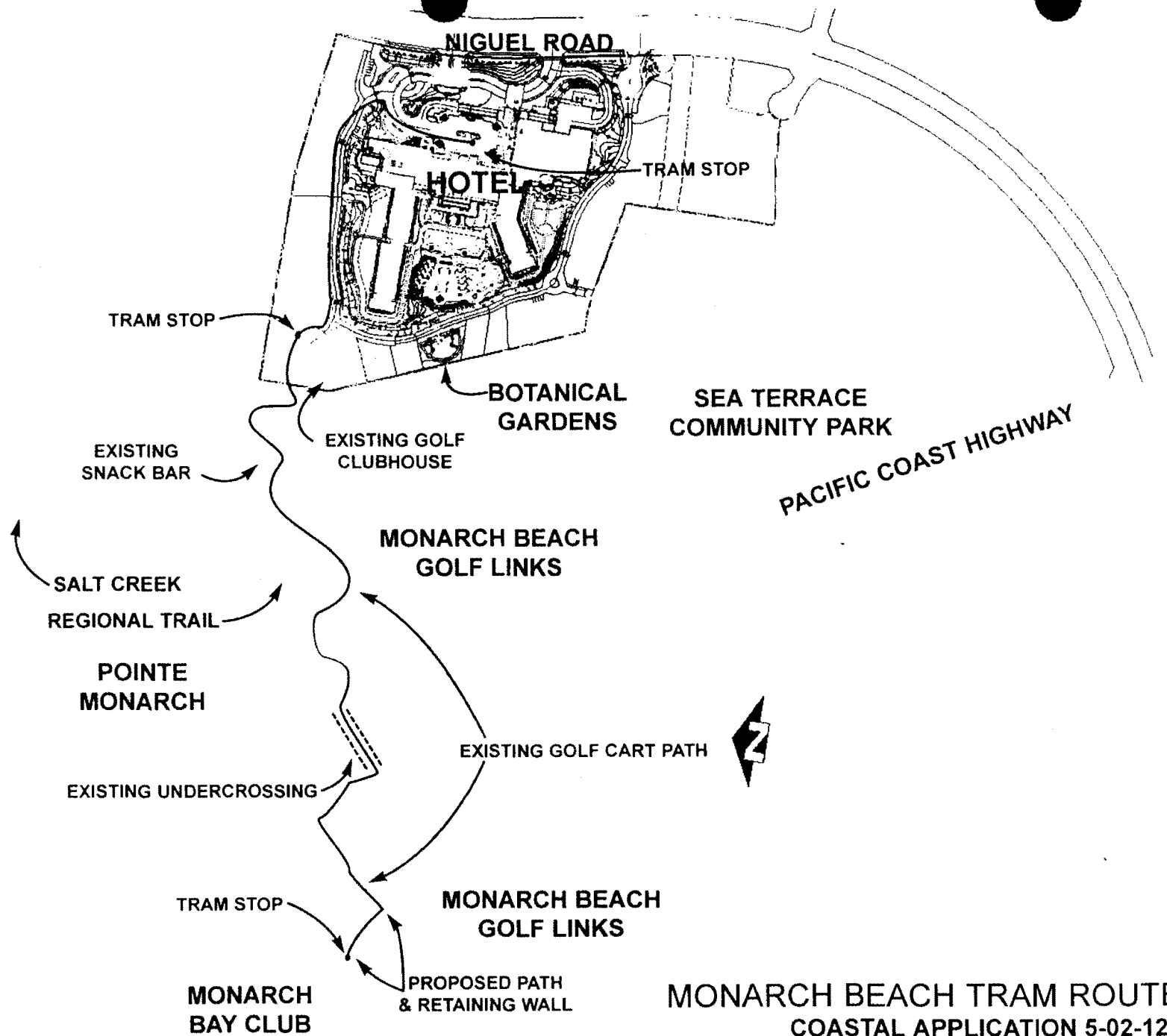


Paul Shaver  
Manager, Environmental Planning

cc:

Michael Gagnet – Makar Properties  
Andi Culbertson – CAA  
Dave Neish - CAA

<b>EXHIBIT No. 3</b>
Application Number: <b>5-02-120</b>
<b>Applicant's Project Description, Page 3 of 7</b>
 California Coastal Commission



MONARCH BEACH  
GOLF LINKS

TRAM STOP

NIGUEL ROAD

HOTEL

TRAM STOP

BOTANICAL  
GARDENS

SEA TERRACE  
COMMUNITY PARK

EXISTING  
SNACK BAR

EXISTING GOLF  
CLUBHOUSE

PACIFIC COAST HIGHWAY

MONARCH BEACH  
GOLF LINKS

SALT CREEK  
REGIONAL TRAIL

POINTE  
MONARCH

EXISTING GOLF CART PATH

EXISTING UNDERCROSSING



TRAM STOP

MONARCH BEACH  
GOLF LINKS

PROPOSED PATH  
& RETAINING WALL

MONARCH  
BAY CLUB

MONARCH BEACH TRAM ROUTE  
COASTAL APPLICATION 5-02-120

EXHIBIT 1

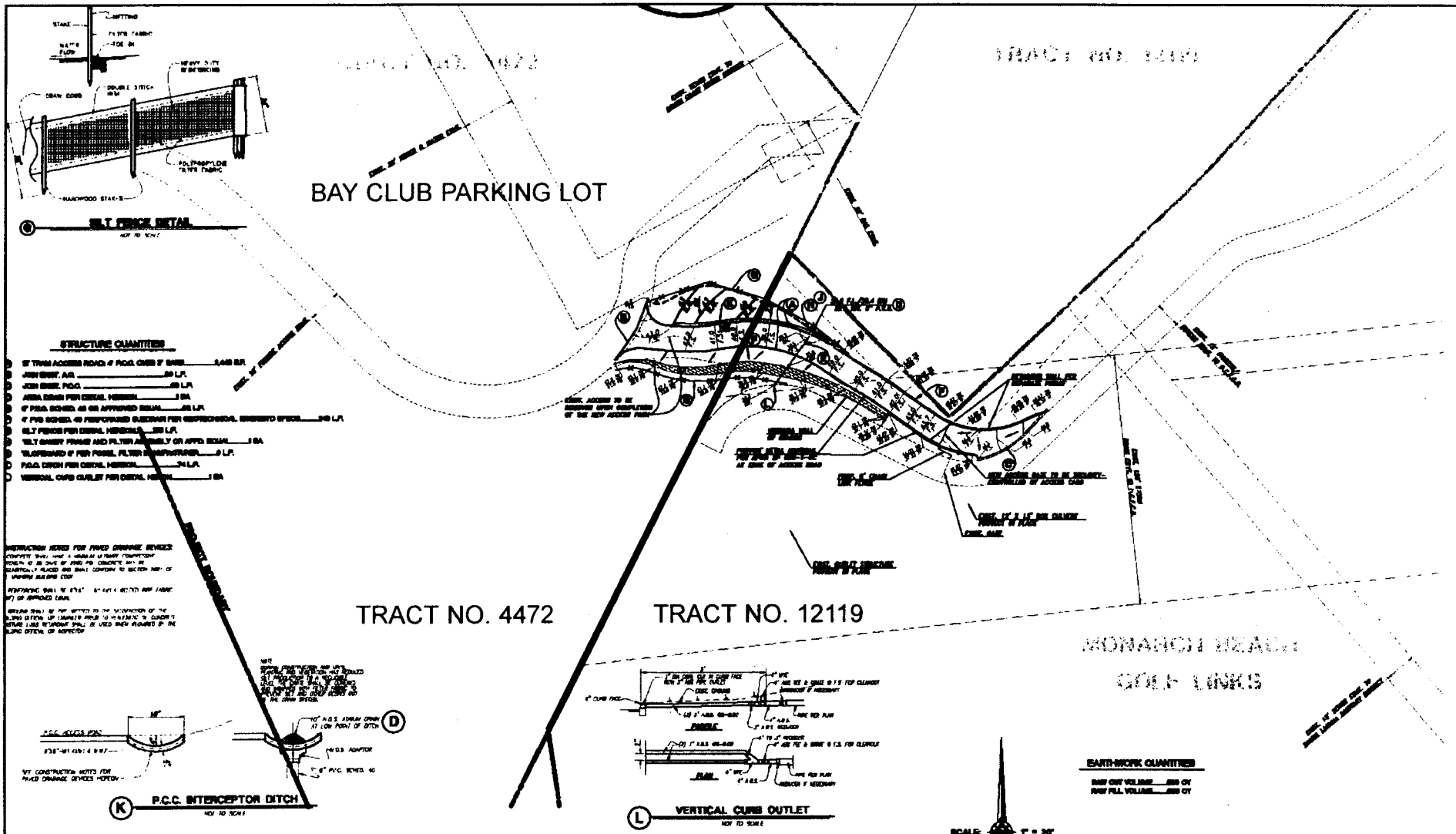
**EXHIBIT No. 3**

Application Number:  
**5-02-120**

Applicant's Project  
Description, Page 4 of 7



California Coastal  
Commission



**EXHIBIT No. 3**

Application Number:  
**5-02-120**

Applicant's Project  
Description, Page 5 of 7

California Coastal  
Commission

CITY OF DANA POINT	
DATE	COMMUNITY DEVELOPMENT DIRECTOR

**SOIL ENGINEER/GEOLOGIST**  
**ZEMER PLUMB CONSULTANTS, INC.**  
 1281 G. STREET, SUITE 100  
 DANA POINT, CA 92629  
 (714) 798-1288

**OWNER**  
**MAKAR PROPERTIES, LLC**  
 4100 BROADWAY, SUITE 100  
 MONARCH BEACH, CA 92553  
 (949) 283-1100

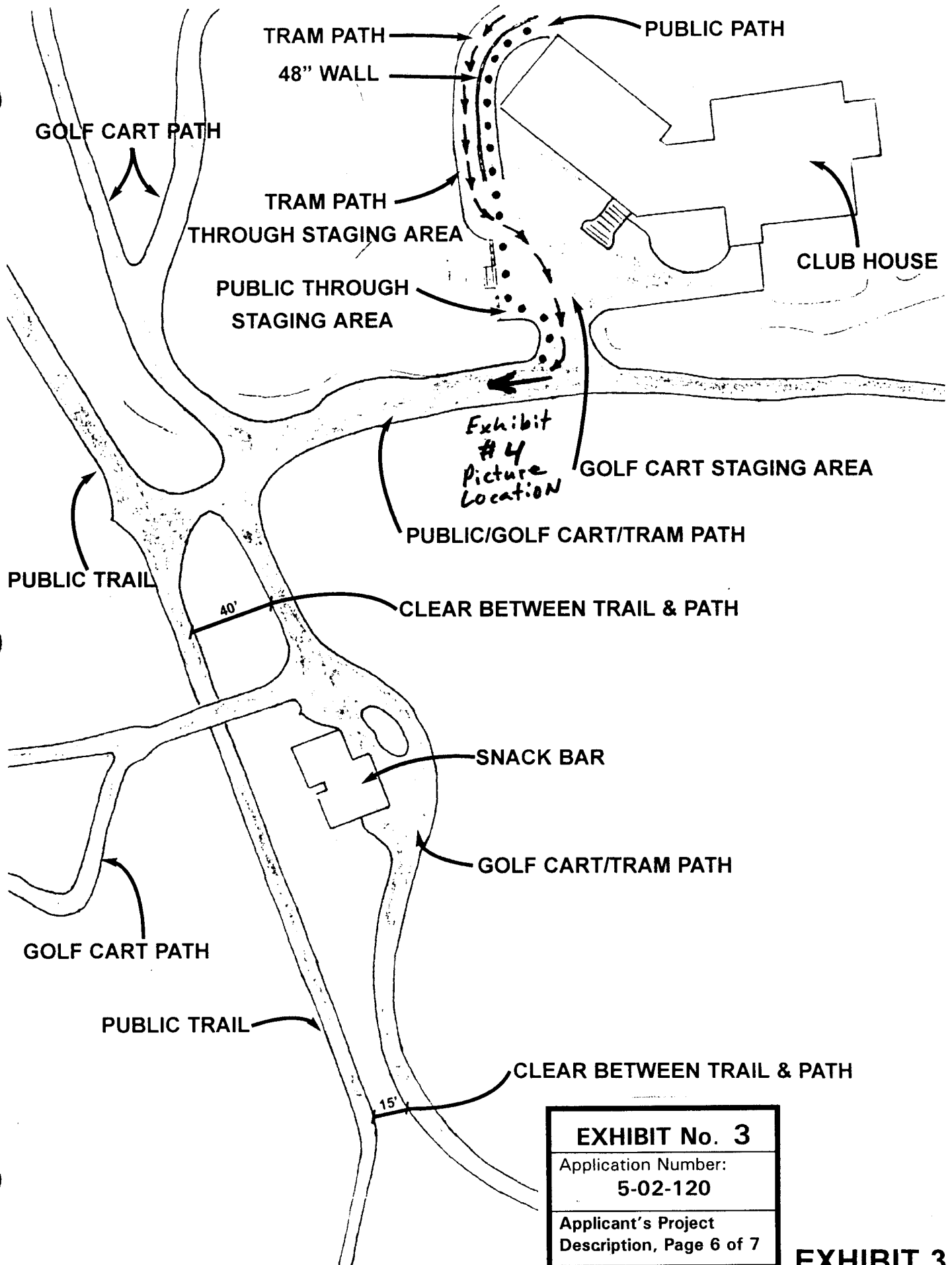
**SUBMITTED BY**  
**THOMAS & ASSOCIATES**  
 11111  
 12/12/02 BY: JSD  
 DATE OF THIS PLAN: 03/08/03


**ROUGH GRADING PLAN**  
**MONARCH BEACH RESORT**  
 TRAIL ACCESS CONNECTION  
 38 MONARCH BEACH RESORT  
 DANA POINT, CA 92629

D-HEET  
**2**  
CP 2 (REVISED)

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<b>EXHIBIT No. 3</b>
Application Number: <b>5-02-120</b>
Applicant's Project Description, Page 6 of 7
 California Coastal Commission


**EXHIBIT 3**



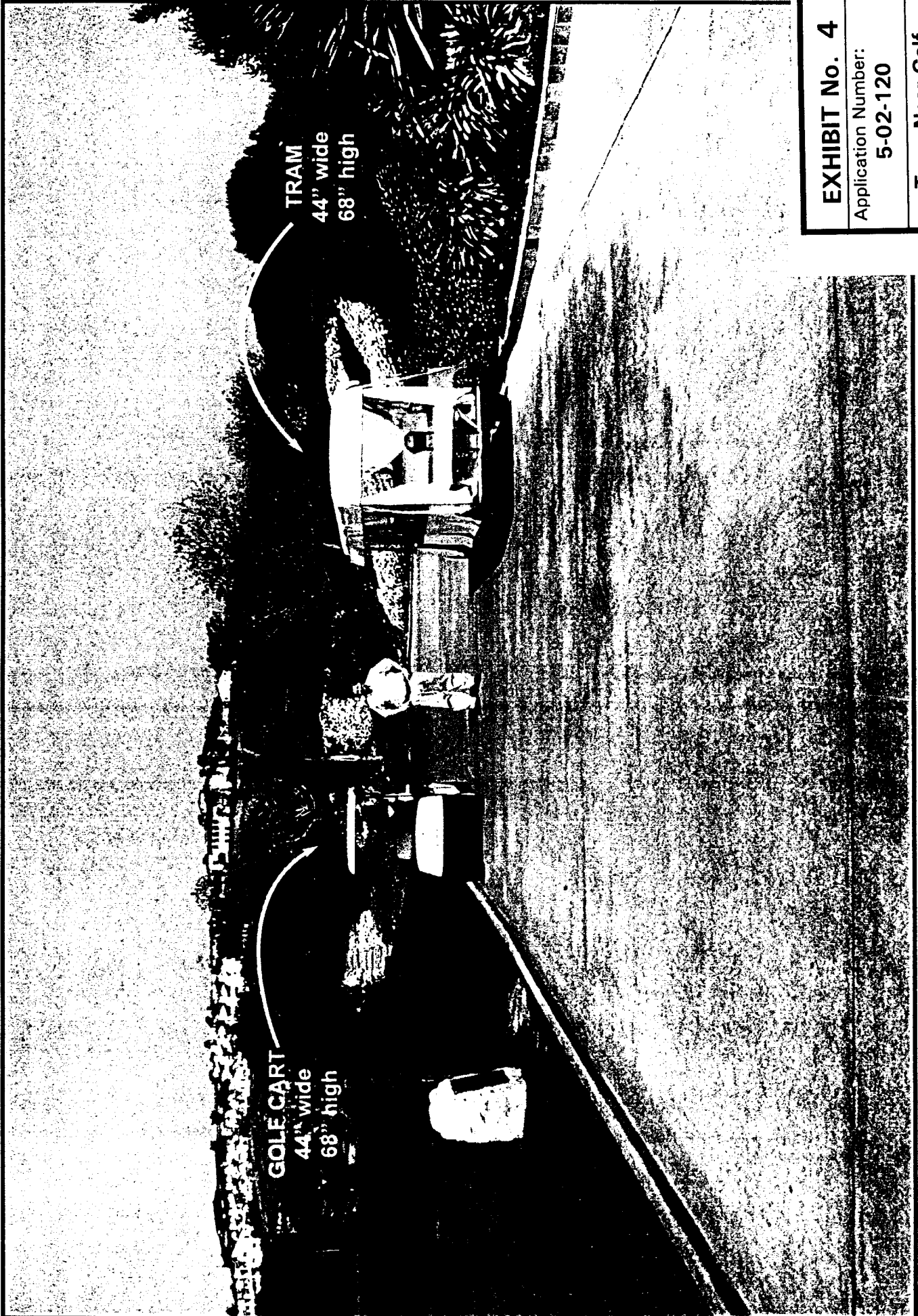
**EXHIBIT No. 3**

Application Number:

**5-02-120**Applicant's Project  
Description, Page 7a of 7California Coastal  
Commission**PLANT PALETTE**

SYM.	BOTANICAL NAME	COMMON NAME
<u>SHRUBS</u>		
○	AGAPANTHUS AFRICANUS 'QUEEN ANNE' HEMEROCALLIS HYBRIDA	Lily of the Nile Daylily
○	CISTUS PURPUREA CEANOTHUS SPP. RAPHIOLEPIS INDICA DIETES BICOLOR	Orchid Rockrose California Lilac Raphiolepis Fortnight Lilly
	PHORMIUM TENAX DIETES BICOLOR KNIPHOFIA UVARIA STRELITZIA REGINAE	Flax Fortnight Lilly Red-hot Poker Bird of Paradise
<u>GROUND COVER</u>		
	PELARGONIUM PELTATUM	
	EXISTING VEGETATION: MYOPORUM PAMPAS GRASS TELEGRAPH WEED SALTBUSH	
	LOFFEL WALL TO BE PLANTED WITH LON CERA JAPONICA 'HALLS HONEYBUCKLE' FROM FLATS	

ALL LANDSCAPE AREAS SHALL BE INSTALLED WITH AUTOMATIC IRRIGATION SYSTEMS AND SHALL EMPHASIZE THE USE OF WATER-CONSERVATION MEASURES (E. ADJUSTABLE SPRAY HEADS, DRIP SYSTEM, CHECK VALVES, 'RAIN SWITCH' VALVING TO RECOGNIZE SUN EXPOSURES, GROUND COVER AREAS AND SLOPE/FLAT AREAS).



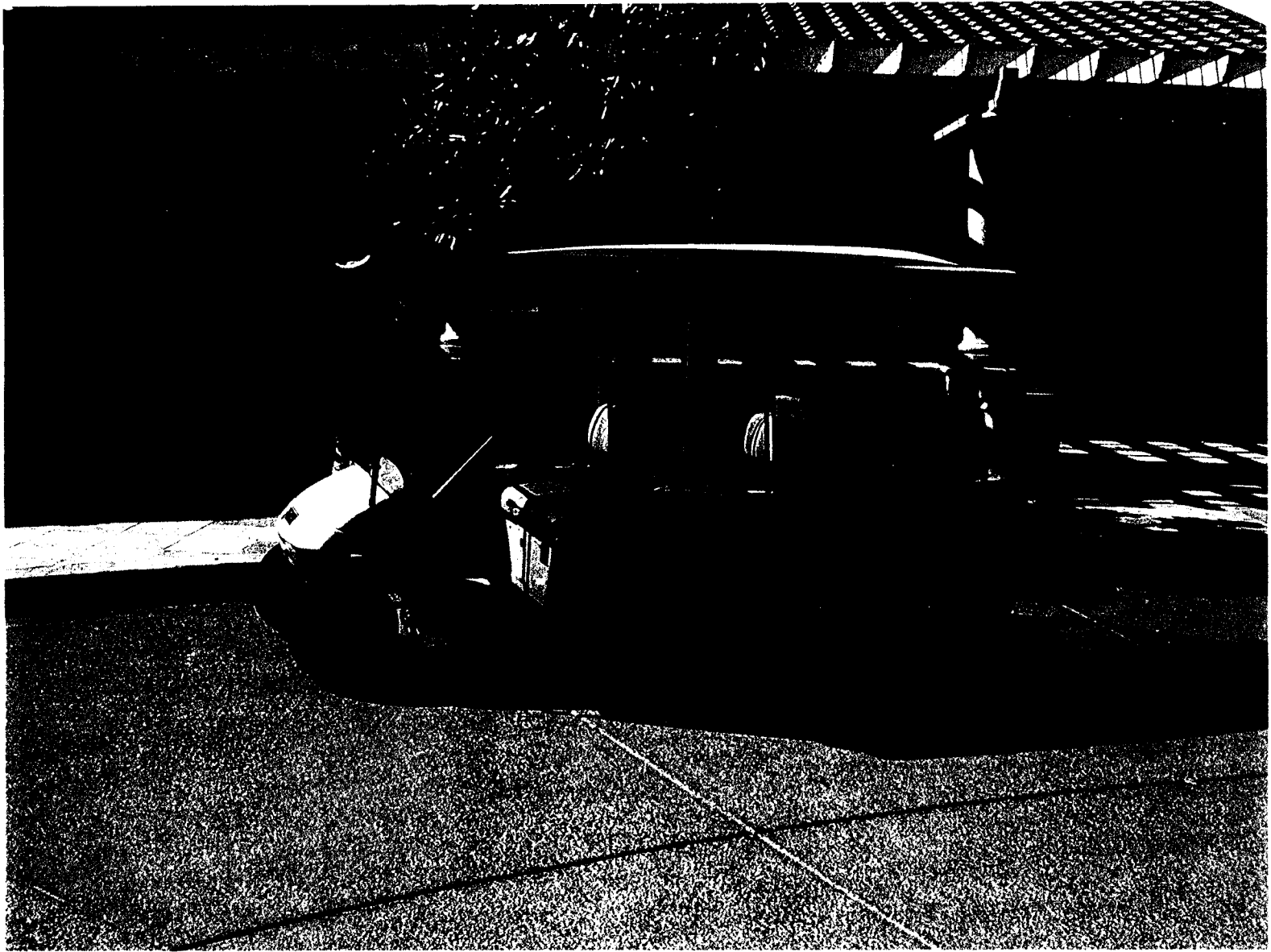
GOLF CART  
44" wide  
68" high

TRAM  
44" wide  
68" high

**EXHIBIT No. 4**  
Application Number:  
**5-02-120**

**Tram Near Golf  
Clubhouse Page**

California Coastal  
Commission



**EXHIBIT No. 5**

Application Number:  
**5-02-120**

**Photo of Tram**



California Coastal  
Commission



**EXHIBIT No. 6**

Application Number:

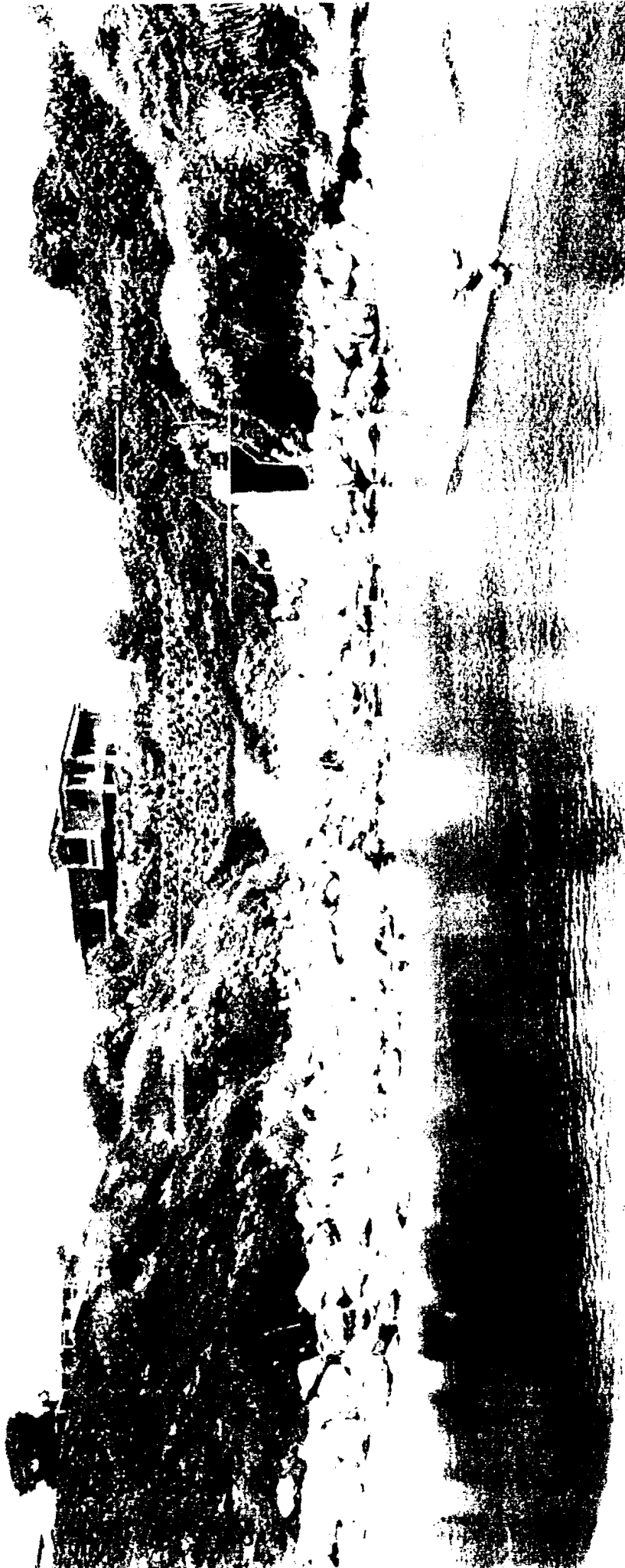
**5-02-120**

**View from Beach**


**Looking Inland**



California Coastal  
Commission



**LOFFEL WALL EXHIBIT**

<b>EXHIBIT No. 7</b>	
Application Number: <b>5-02-120</b>	
<b>Proposed Loffel Wall Simulation</b>	
	California Coastal Commission

FILED  
CITY OF DANA POINT  
MAR 17 2003  
CALIFORNIA COASTAL COMMISSION


March 14, 2003

PN 01043-00

Makar Properties, LLC  
4100 MacArthur Boulevard, Suite 150  
Newport Beach, California 92660

**Attention: Mr. Michael Gagnet**

**Re: Additional Clarification - Potential Sea Bluff Issue  
Proposed Tramway at Monarch Beach Resort  
Southeast of Monarch Beach Resort Parking Lot  
City of Dana Point, California**

<b>EXHIBIT No. 8</b>
Application Number: <b>5-02-120</b>
<b>Zeiser Kling Letter Page 1 of 2</b>
 California Coastal Commission

Reference: Our letter on the same date March 4, 2003.

Dear Mr. Gagnet,

This letter is to provide additional clarification regarding our evaluation as to if the proposed tramway is located in a known bluff top area.

Our referenced letter discussed the subject area as follows:

Based on our understanding and work at the site, the proposed tram alignment is located within the dissection formed by the mouth area of Salt Creek, which has been subsequently modified by grading and development. It is located in an area geomorphically controlled by Salt Creek and coastal plain processes, and is both landward and geometrically essentially orthogonal to the actual sea bluff and general shoreline. Based on our work, the proposed tramway appears to be not located within an area of known historic marine erosion. In fact, the tramway is to be constructed along an existing graded and paved access road cut below an existing graded and developed area. Based on these conditions and our understanding of the Coastal Act, it is our opinion that the proposed project is not considered a "bluff" area project. Additionally, the position of the tram path and associated walls appear to be such that it will not be subject to wave attack and therefore will not require shoreline protective devices, however, maintenance and protection from ordinary geotechnical processes remain applicable.

Clarification:

- The subject area is located in an area originally created by terrace dissection associated with the mouth of Salt Creek.
- This dissection and the subject tram area is oriented roughly perpendicular to the shoreline and is located landward ("behind") the actual seabluff line.
- The original creek dissection and associated terrace area has been heavily modified by grading processes to create the current configuration, and the area of the proposed tram path is actually principally situated on a graded cut slope and path bench that extends into terrace outside the original limits of dissection.

1221 E. Dyer Road ▪ Suite 105 ▪ Santa Ana, CA 92705 ▪ (714) 755-1355 ▪ Fax (714) 755-1366

*Geotechnical Engineering ▪ Engineering Geology ▪ Materials Testing and Inspection*



Makar Properties, LLC  
March 14, 2002

PN 01043-00


- The subject tram area is now, and has been historically outside the limits of coastal marine processes.
- The subject tram area is located in an area not geomorphically associated with actual seabluff and shoreline. It is located in an area geomorphically controlled by as-graded processes and Salt Creek.
- The area is now and has been historically outside the limits of known wave attack.
- The past grading processes directly created the subject tram area.
- The subject tram area is not considered by this firm to have ever been or be an historic seabluff.

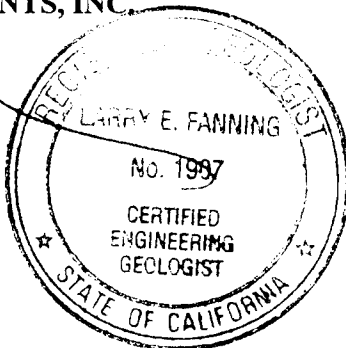
In summary, the subject tram area lacks the geometric orientation and other spatial relationships, creational and current geomorphology, and known controlling influences to be characterized as a seabluff, and is therefore NOT considered as such.

Thank you for the opportunity to be of continued service. Please do not hesitate to call with any questions or comments.


Sincerely,

**ZEISER KLING CONSULTANTS, INC.**

  
Larry E. Fanning  
Principal Engineering Geologist  
C.E.G. 1907  
Expires 1/31/04



LEF:mwl:cp

<b>EXHIBIT No. 8</b>
Application Number: <b>5-02-120</b>
<b>Zeiser Kling Letter</b> <b>Page 2 of 2</b>
 California Coastal Commission

