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May 27, 2004

**TO:** Commissioners and Interested Persons**Th10a**

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SUBJECT: Revised Findings
City of Dana Point Local Coastal Program Amendment 1-03
Dana Point Headlands

SUMMARY

At the Commission hearing of January 15, 2004, the Commission approved the City of Dana Point Local Coastal Program Amendment 1-03, with suggested modifications. Commission debate during that hearing focused on 1) whether extensive grading of the bluff face to overcome geologic stability problems and the upgrade of an existing revetment to protect new development in the Strand can be found consistent with Coastal Act policies pertaining to hazards and shoreline protection; and 2) whether Environmentally Sensitive Habitat Area (ESHA) is present at all of the areas identified by Commission staff, and the extent of development that should be allowed to displace ESHA. Other issues were also discussed including the landowners' offer to contribute \$2 million for a long term habitat management program within the lands to be owned by the City; the necessity for policies that require technical studies addressing hazards and biological studies at the site; and the adequacy of height controls within the LCP.

Relative to hazards and the shoreline protective device at the Strand, Commission discussion centered on whether the work contemplated by the landowner would be classified as "new development" or a "repair and maintenance" activity. Ultimately, the Commission found that the work actually being contemplated by the landowner would constitute repair and maintenance. Accordingly, if the LUP were written to limit the allowable work to repair and maintenance, Section 30253, which regulates "new development," would not prohibit approval of those LUP provisions. Additionally, since the work would constitute repair and maintenance, it would not be "...construction of a protective device that would substantially alter natural land forms along bluffs and cliffs." Thus, Section 30253 would not prohibit the approval of a LUP that allows construction of new development on the Strand that relies on the upgraded revetment for its stability. Furthermore, if the revetment is solely to be repaired and maintained, its continued existence shouldn't be subject to any review, pursuant to Coastal Act Section 30610(d). Thus, the suggested modifications to the LUP policies are written to ensure that only the method of achieving the repair and maintenance would be subject to review against applicable policies in the LCP. The LUP policies are also written to ensure that the various public access improvements offered by the City and landowner are implemented in conjunction with the repair and maintenance work. A new

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Suggested Modification (SM), SM 64, was added to reflect this position. Changes to SM 62 and SM 63 were also made to reflect this position. Findings describing this issue begin on page 138 with additional discussion on pages 143 and 154, among others.

Commission discussion on ESHA debated whether all of the habitat shown on Exhibits 26a and 26b are ESHA or if the entirety of the ESHA is contained within the proposed boundaries of the Headlands Conservation Park (Planning Area 7), the Hilltop Park and Greenbelt Linkage (Planning Area 5) and the bluff edge and face at Harbor Point (Planning Area 8b), as the City and landowner had contended. The Commission found that all of the habitat areas identified on Exhibits 26a and 26b by staff are ESHA.

Although Section 30240 of the Coastal Act places strict limits on development within and adjacent to ESHA, the Commission found that certain encroachments by residential and commercial development could be found to be most protective of coastal resources under the balancing approach described in Section VII (beginning on page 172 of the following findings. Particular areas of encroachment were debated including 4.04 acres of impact that would be caused by the proposed 65-90 room inn within Planning Area 9 including overexcavation that would encroach into the Hilltop Park and Greenbelt (i.e. Planning Area 5), a 3 to 6.5 acre encroachment into ESHA by residential development in the bowl (i.e. Planning Area 6), and encroachments resulting from a planned lighthouse, community center, manicured landscaping and walkways at Harbor Point Park in Planning Area 8a. The Commission allowed the 4.04 acre encroachment for the inn as well as 6.5 acres for the residential development in the bowl. However, the encroachments upon ESHA at the Harbor Point Park, including the lighthouse, community center, landscaping and walkways were not allowed. Rather, a visitor center and parking area associated with Harbor Point Park were required to be placed in locations that wouldn't displace existing ESHA and the trails were required to be realigned to minimize disturbances to ESHA while still offering public access and view overlooks. The landowner also offered \$2 million to be used for habitat management of the open spaces to be owned by the City, which include Harbor Point Park and the Hilltop Park and Greenbelt Linkage. Changes to SM 34, 37, 40, 74, 78, 82, 87, 88, 90, 91, 92, 93, 103, 104, 115, 116, 118, 128, 137, 139, 140, 142, 144, 147, 148, 149, 151, 153, 185, 186, and 188 were necessary to reflect this action. Changes to the findings to reflect the action are found primarily on page 115.

Since Commission action in January, the City and landowner have asked staff to consider a variety of matters related to the suggested modifications and findings. After diligent review of the transcript and other pertinent records, Commission staff found that some of the issues were resolved by the Commission in January—either explicitly or implicitly—and can therefore be addressed in the revised suggested modifications and findings. These issues include that landscaping at the 65-90 room inn site (Planning Area 9) may include non-native, non-invasive, drought tolerant plant species (see 82, 125); a fuel-modified native plant palette may be utilized to re-vegetate the area of overexcavation that will occur in the Hilltop Park and Greenbelt Linkage (Planning Area 5) to accommodate construction of the 65-90 room in within Planning Area 9 (note: the

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impact to ESHA caused by the grading and ongoing management of that re-vegetated area for fuel modification purposes is accounted for in the 4.04 ESHA impact cap allowed for the inn); the height of the 65-90 room inn was approved pursuant to the City's action but that a fixed measuring point for that height based on existing conditions must be identified (see SM 28 and 112); trail widths in the Headlands Conservation Park may be less than 10 feet wide to minimize impacts to habitat generated by trail construction; easily re-locatable public amenities such as trails/lookouts need not strictly comply with the minimum 50 foot bluff edge setback provided they may be sited safely without need for protective devices (see page 152 of findings); the requirements of SM 72 would not prohibit future repair and maintenance of the revetment that protects the Strand development provided those actions don't result in seaward encroachment of the revetment; the existing studies prepared by the landowner satisfy the requirements of the policies that require hazards analyses and the investigation of alternative alignments of shoreline protective devices provided those studies remain valid at the time the applicant applies to the City for a coastal development permit for new development along the Strand that will be protected by the repair and maintenance of the existing revetment (see SM 66); and the existing studies prepared by the landowner documenting the presence of biological resources on the site satisfy the requirements of the policies that require a biological inventory of the site for a period of up to 2 years from the date of effective certification of the LCP amendment (see SM 17 and 101, and findings page 114 and 132).

On other matters, Commission staff have advised the City and landowner either that the Commission did not specifically address the issue or did not resolve it in the manner that the City and the landowner suggest. Thus, more consideration could be given to the issues they have raised, but more information is needed and/or an amendment to address the issue would be necessary. However, since the matter wasn't considered in the action in January, it can't be considered at this stage (i.e. revised findings). These include that the 25 foot setback from coastal bluff scrub must be strictly interpreted but that an LCP amendment could be considered to create a variance procedure for trail alignments if the alternative alignment is found to have a lesser impact upon sensitive habitat; that an LCP amendment could be considered to relax the requirement for exclusive use of plants native to coastal Orange County in common areas of the Strand and bowl residential development, along streets, at entrances to neighborhoods, and within Strand Vista Park. Meanwhile, Commission staff have asked the City and landowner to provide more information about fence designs in order to consider their concerns that the requirement for fences that are impervious to dogs along trails and other barriers around ESHA would have adverse impacts upon views and the trail experience, and the City and landowners assertion that a water utility line to be re-located from the section of Marguerite Road that will be removed and re-vegetated can only occur in a new alignment that would impact existing ESHA.

Finally, there remain some other issue areas where staff believe the Commission addressed the issue, but that the City and landowner may request additional clarification. Among these issues are whether any part of the 3:1 mitigation to impact ratio required under the Commission's action can be satisfied by the landowner's

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participation in the Central Coastal Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP). Commission staff believe the Commission action required that the entirety of the mitigation take the form of 'in ground' restoration, with some allowance to accept the direct conservation and extinguishments of development rights on privately held lands containing ESHA (see page 122). Contribution of funding toward planning efforts and associated programs would not qualify. To the extent the City and landowner can demonstrate that their participation in the NCCP/HCP results in 'in ground' restoration and the retirement of development rights on developable property containing ESHA, that is directly attributable to their participation, and that is not being credited as mitigation for other impacts (i.e. double-counting), and is distinguishable from other participants' contribution, then that participation may be eligible to count toward the mitigation requirements.

The Commission's January 2004 action also requires that the trail alignments in Harbor Point Park comply with Exhibit 26b/26c and that a 'loop' trail may not be implemented. Furthermore, the Commission's action authorizing the 65-90 room inn did not also result in the approval of the City-proposed trail segment from the inn to the Strand. Rather, the trail alignments shown on Exhibit 26b/26c control (which eliminates the trail segment in question). The trail alignments sought by the City and landowner would have a significant adverse impact upon the ESHA within Harbor Point Park and would bisect and further fragment the ESHA within the Headlands Conservation Park and the Hilltop Park and Greenbelt Linkage that the Commission explicitly voted to protect. The recommendation regarding these trail alignments in the January 2004 staff recommendation was clearly described in the report and depicted on Exhibit 26b (the same alignments are also now depicted on Exhibit 26c which is attached to these findings). The Commission took no action to modify the staff recommendation relative to these trail alignments. Accordingly, Exhibit 26b/26c is controlling relative to both trail segments in question.

The Commission's action in January also required that the entirety of \$2 million pledged by the landowner during the hearing be utilized for habitat management within the open spaces to be owned by the City and that no portion was allowed to be used for related public education and public access and recreation oriented projects at the Headlands. The City and landowner assert that the \$2 million greatly exceeds the funding necessary to address habitat management within the lands to be owned by the City. The City and landowner base this upon estimates they state have been obtained from the Center for Natural Lands Management. Commission staff believe the Commission's action required the entirety of the \$2 million should be reserved for habitat management purposes at this time. Estimates can be inaccurate. It would be best to gauge the costs of the management upon actual operations over time, have funds available for unforeseen circumstances, and have funds in reserve. If the City finds that the \$2 million far exceeds management needs, once the project is implemented and there has been adequate operational time to gauge those costs, the City could revisit the issue with the Commission to consider uses of any excess funds.

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SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **ADOPT** the following revised findings in support of the Commission's decision on January 15, 2004 to deny the proposed Land Use Plan and Implementation Plan Amendments, as submitted, and to approve the Land Use Plan and Implementation Plan amendments with suggested modifications. The motions to accomplish this begin on Page 10.

DESCRIPTION OF APPROVED LCP AMENDMENT

On January 15, 2004, the Commission approved, with suggested modifications, an amendment to the Dana Point Local Coastal Program (LCP) to certify the presently uncertified Dana Strand area and replace the 1986 Dana Point Specific Plan LCP as it pertains to the remainder of the 121.3 acre project site with the LCP that consists of the City's 1996 Zoning Code and the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the City's General Plan and amend those documents, through the Headlands Development Conservation Plan (HDCP) to, among other things, authorize creation of a Planned Development District for the site that could allow development of up to 125 single family residential lots, a maximum of 110,750 square feet of visitor serving commercial land use including a 65-90 room inn, a 35,000 square foot commercial site with visitor information center and minimum 40-bed hostel and 68.5 acres of public parks, coastal trails and open space and a funicular to serve Strand beach. The amendment affects the City's certified Land Use Plan and Implementation Plan.

The proposed LCP amendment affects 121.3 acres of land known as the Dana Point Headlands and Strand beach that is owned by a single entity, Headlands Reserve LLC. The site is located in the City of Dana Point, Orange County, immediately upcoast of Dana Point Harbor (Exhibit 1).

CITY COUNCIL APPROVAL OF SUGGESTED MODIFICATIONS

Since the Coastal Commission approved this LCP amendment request with suggested modifications, the City of Dana Point City Council will have the opportunity to review the suggested modifications to the LCP amendment approved by the Coastal Commission.

Pursuant to Section 13544(a) of Title 14 of the California Code of Regulations, the City of Dana Point City Council must, by action of its governing body, (1) acknowledge receipt of the Coastal Commission's resolution of certification of the LCP amendment, including the suggested modifications, (2) accept and agree to the suggested modifications and take the formal action required to satisfy the suggested modifications (e.g. adoption of ordinances and Zone Text and General Plan amendments to incorporate the suggested modifications), and (3) agree to issue coastal development permits for the total area included in the certified local coastal program.

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Pursuant to Sections 13537 and 13542 of Title 14 of the California Code of Regulations (14 CCR), the Commission's certification with suggested modifications of Dana Point LCP Amendment No. 1-03 expires six months from the date of Commission action. This means that, without a time extension, the Dana Point City Council action to adopt the suggested modifications must occur by July 15, 2004. If the Commission does not extend this deadline and the City Council does not take the actions described above by July 15, 2004 (i.e. within six months from the date of Coastal Commission approval on January 15, 2004 of the LCP amendment with suggested modifications), then pursuant to Sections 13537(b) and 13542(b) of Title 14 of the California Code of Regulations, the Coastal Commission's approval with suggested modifications expires. At that point, the City of Dana Point would have to submit a new LCP amendment. A time extension has been requested by the City and is scheduled for the same day as the review by the Commission of these revised findings.

ADDITIONAL INFORMATION

For further information, please contact **Karl Schwing** at the South Coast District Office of the Coastal Commission at: **562-590-5071**. This amendment to the City of Dana Point LCP, is available for review at the Long Beach Office of the Coastal Commission or at the Community Development Department for the City of Dana Point. The City of Dana Point Community Development Department is located at 33282 Golden Lantern, Dana Point, CA 92629. **Kyle Butterwick** is the contact person for the City's Planning Department, and he may be reached by calling **(949) 248-3588**.

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I. Commission Resolutions to Adopt Findings on City of Dana Point Local Coastal Program Amendment 1-03

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. RESOLUTION #1 (RESOLUTION TO ADOPT FINDINGS IN SUPPORT OF DENIAL OF CERTIFICATION OF THE DANA POINT LAND USE PLAN AND IMPLEMENTATION PLAN AMENDMENT 1-03, AS SUBMITTED)

Motion #1

I move that the Commission adopt the revised findings in support of the Commission's action on January 15, 2004 to deny certification of the City of Dana Point Land Use Plan and Implementation Plan Amendment 1-03, as submitted."

Staff recommendation

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the January 15, 2004 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote Are: Peters, Potter, Wan, Burke, Iseman, Kruer, Orr, Chairman Reilly

Resolution #1

The Commission hereby adopts the findings set forth below for denial of certification of the Dana Point Land Use Plan and Implementation Plan Amendment 1-03, as submitted, on the ground that the findings support the Commission's decision made on January 15, 2004 and accurately reflect the reasons for it.

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B. RESOLUTION #2 (RESOLUTION TO ADOPT FINDINGS IN SUPPORT OF APPROVAL OF CERTIFICATION OF THE DANA POINT LAND USE PLAN AMENDMENT 1-03, WITH SUGGESTED MODIFICATIONS)

Motion #2

I move that the Commission adopt the revised findings in support of the Commission's action on January 15, 2004 to approve certification of the City of Dana Point Land Use Plan Amendment 1-03, with suggested modifications."

Staff recommendation

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the January 15, 2004 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote Are: Burke, Iseman, Kruer, Chairman Reilly

Resolution #2

The Commission hereby adopts the findings set forth below for approval of certification of the Dana Point Land Use Plan Amendment 1-03, with suggested modifications, on the ground that the findings support the Commission's decision made on January 15, 2004 and accurately reflect the reasons for it.

C. RESOLUTION #3 (RESOLUTION TO ADOPT FINDINGS IN SUPPORT OF APPROVAL OF CERTIFICATION OF THE DANA POINT IMPLEMENTATION PLAN AMENDMENT 1-03, WITH SUGGESTED MODIFICATIONS)

Motion #3

I move that the Commission adopt the revised findings in support of the Commission's action on January 15, 2004 to approve certification of the City of Dana Point Implementation Plan Amendment 1-03, with suggested modifications."

Staff recommendation

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a

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majority vote of the members from the prevailing side present at the January 15, 2004 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote Are: Burke, Iseman, Kruer, Chairman Reilly

Resolution #3

The Commission hereby adopts the findings set forth below for approval of certification of the Dana Point Implementation Plan Amendment 1-03, with suggested modifications, on the ground that the findings support the Commission's decision made on January 15, 2004 and accurately reflect the reasons for it.

II. Procedural Process (Legal Standard For Review)

A. STANDARD OF REVIEW

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: *"(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission."*

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission must act by majority vote of the Commissioners present when making a decision on the implementing portion of a local coastal program.

B. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551(b) of the California Code of Regulations, a resolution for submittal must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City's resolution of adoption (Ordinance No. 02-01) states that this LCP amendment will take effect upon

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Commission certification. If this certification is subject to suggested modifications by the Commission, this local coastal program amendment will not become effective until the City of Dana Point formally adopts the suggested modifications and complies with all the requirements of Section 13544 including the requirement that the Executive Director determine the City's adoption of the amendment to the Land Use Plan and Implementation Program is legally adequate.

III. Background

A. HISTORY OF CERTIFICATION OF CITY OF DANA POINT

Dana Point is a shoreline community in southern Orange County (Exhibit 1). Prior to the City of Dana Point's incorporation in 1989, the Commission approved the segmentation of formerly unincorporated Orange County's coastal zone into the Capistrano Beach, Dana Point, Laguna Niguel, and South Laguna segments. Following the City's incorporation in 1989 all of the geographic areas covered by the former Orange County LCP segments of Capistrano Beach, Dana Point, and Laguna Niguel were included within the city limits of the new City of Dana Point. In addition, a portion of the South Laguna segment was within the new City's boundary. The City combined the Capistrano Beach and Dana Point segments, and the portion of the South Laguna segment within its jurisdiction, into one certified LCP segment. After some minor modifications, the City then adopted the County's LCP documents as its first post-incorporation LCP. On September 13, 1989, the Commission approved the City's post-incorporation LCP. Meanwhile, the City did not adopt the LUP which had been certified as the Laguna Niguel segment (which contained the area known as the Strand). In order to differentiate between the new City of Laguna Niguel (which was also incorporated in 1989) and the Laguna Niguel planning area (which was within the new City of Dana Point and not within the new City of Laguna Niguel), the Laguna Niguel LUP planning area was re-named 'Monarch Beach'.

Since initial certification of the City's LCP, the City has taken steps to consolidate the LCP documents and update those documents to reflect the current needs of the City. The first step involved certification of a new land use plan (LUP) and implementation plan (IP) for the Monarch Beach area of the City under LCP Amendment 1-96. This action adopted, with modifications, a new Land Use Plan ("LUP") component consisting of three elements of the City's General Plan: Land Use, Urban Design, and Conservation/Open Space¹. The implementing actions component of the LCP for the Monarch Beach area is the City's Zoning Code, as changed according to modifications suggested by the Commission (herein referred to as the '1996 LCP'). When the

¹ Certain sections and policies within these documents that pertained to areas that were not being updated/re-certified were excluded from the certification. Among the areas excluded were the policies associated with the Dana Point Headlands, the harbor and the town center areas.

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Monarch Beach area was certified, the City chose to whitehole 'the Strand'. Thus, the Strand remained uncertified (Exhibit 3a).

The second step involved updating the Capistrano Beach area and incorporating it into the 1996 LCP. Similar to LCPA 1-96, LCPA 1-98 adopted the 1996 LCP comprised of the LUP that consists of the three elements of the City's General Plan and the IP consisting of the City's zoning code. The City adopted the modifications to the LUP and IP suggested by the Commission. The modified LCP for Capistrano Beach was effectively certified on July 13, 1999.

Those certified portions of the City that have not been updated remain controlled by the former County LCP documents that the City adopted when it incorporated (Exhibit 3a-3c). The City continues to incrementally update these areas to bring them into the 1996 LCP. The areas that remain to be updated are the town center, harbor, and the Dana Point Headlands (all of which are within the former County LCP segment known as the 'Dana Point Specific Plan Local Coastal Program', a.k.a. the '1986 LCP'). In addition, the Strands remains uncertified and has yet to be brought into the 1996 LCP.

B. AREA OF THE SUBJECT LCP AMENDMENT

The proposed LCP amendment focuses on the 121.3 acre Dana Point Headlands site (herein 'Headlands')(Exhibit 1). The Headlands, is one of the last undeveloped coastal promontories in Southern California. Topography of the site is varied. The highest elevation on the site is a conical hill that is approximately 288 feet above sea level (a.k.a. the 'hilltop'). The northern portion of the site is the location of a former trailer park on the bluff face. Some of the ancillary improvements including roads, a clubhouse, and tennis courts, still exist. The trailer park, and the steep eroded hillside to the south of it, is referred to as "the Strand." Slope gradients in the Strand range from 1.5:1 to 2:1². A former nursery facility is located east of the Strand and south of Pacific Coast Highway and consists of greenhouses, ornamental plantings and disturbed areas, in an area referred to informally as the 'bowl' (Exhibits 2a-2b). South and east of the nursery facility lies a large patch of coastal sage scrub (CSS) with patches of southern coastal bluff scrub occurring along the rim of the 'bowl'. Maritime succulent scrub occurs in the hilltop area and southern needlegrass grassland occurs near the Pacific Coast Highway, in the northwesterly portion of the site. Southern mixed chaparral occurs along the westerly portions of the site closest to Street of the Green Lantern.

The southwestern and southeastern portions of the Headlands site are underlain with sandy soils and have been labeled the Headlands promontory and the Harbor Point promontory, respectively. These promontories are terraces that extend seaward to

² URS Corporation. 2001. Terrestrial Biological Resources Errata and the Biological Resources Report, The Headlands, Prepared for the City of Dana Point as Attachment B: to EIR Section 4.3 dated September 2001.

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coastal bluffs that are from 155 to 220 feet in height. Coastal sage scrub, southern coastal bluff scrub and southern mixed chaparral cover these promontories (Exhibit 15).

Dana Point Marine Life Refuge and the Niguel Marine Life Refuge lie immediately offshore of the Headlands site. Doheny Marine Life Refuge lies to the south. These refuges have been so designated due to the high quality of the marine resources that occur there (Beauchamp 1993).

Of the 121.3 acre area, 95.1 acres are presently certified under the 1986 LCP (Exhibits 3a-3c, 5c). The existing LCP divides the project site into residential, visitor serving commercial, and open space/conservation land uses. The following chart describes the distribution of land uses for the Headlands site as presently certified compared with the proposed land uses, including the area to be newly certified:

Land Use	Certified LCP (Acres)		Proposed LCP (Acres)	
	Certified Area	Un-certified Area	Certified Area	Un-certified Area to be Certified (26.2 ac.)
Residential	23 (approx.)	0	34.2	18.2
	(310 Units)	0	(125 Units)	
Tourist/Recreation/ Commercial ³ + public right of way	20 (approx.)	0	6.9 ⁴	0
Recreational Open Space	6.5 (approx.)	0	23.7 ⁵	8
Conservation ⁶	27.3	0	30.3 ⁷	0
Other Open Space ⁸	18.3	0	No such category under proposed LCP	No such category under proposed LCP
Subtotal	95.1	26.2	95.1	26.2
Total	121.3		121.3	

³ The Tourist/Recreation/Commercial (5.31) land use designation in the certified LCP contemplates a mixture of recreational open space and commercial structures such as hotels and visitor serving commercial. Whereas the Visitor/Recreation Commercial land use category contemplated in the proposed LCP is focused on visitor serving commercial development (i.e. hotels/commercial) exclusive of open space

⁴ This number comprised of proposed Planning Areas (PA) 4 and 9 plus 2.5 acres public right of way

⁵ This number comprised of proposed PA 1, 3, 5, and 8A

⁶ The "Conservation" land use category in the certified LCP and proposed LCP is the most restrictive on development generally limiting the land to natural conservation but allowing minor appurtenances

⁷ This number comprised of proposed PA 7 and 8B

⁸ The "Other Open Space" land use category in the certified LCP are lands "of notable scenic, natural and cultural attraction, or special ecological, wildlife or scientific study potential, and areas of topographical, geographical, and historical importance". Principal permitted uses are pedestrian access, passive recreation, coastal viewing, and parking to support those uses. The category allows trails, stairways, signs, view points, roads, off street parking, restrooms, weather shelters, other park facilities such as seating, maintenance buildings and information centers, walls, fences, drainage facilities.

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C. CURRENT SUBMISSION

On May 30, 2002, the City of Dana Point submitted Local Coastal Program Amendment (LCPA) 2-02. A public hearing was held on October 9, 2003, at which the City of Dana Point withdrew the amendment request. In accordance with agreements made during the October 9th meeting, the City re-submitted the LCPA –which is identical to the May 30, 2002 submittal, on October 22, 2003 that is named Dana Point Local Coastal Program Amendment (LCPA) 1-03 (Exhibits 4a-4f, 22-24)⁹. This LCP Amendment affects the City's certified Land Use Plan and Implementation Plan. The proposed LCP amendment has a complex structure and is packaged in a manner that can be confusing to the reviewer. First, the existing LCP document that applies to the area, the 1986 plan (Exhibit 3b), including LUP and IP are to be entirely replaced for the Headlands area. The LCP amendment proposes to replace the 1986 plan, with the 1996 plan, which consists of three elements of the City's General Plan (the Land Use Element (LUE), Urban Design Element (UDE), and Conservation Open Space Element (COSE)) (Exhibit 22) as the LUP, and the City's Zoning Code as the baseline IP (Exhibit 23). Next, the submittal modifies and adds policies to the LUP to accommodate the development plan at the Headlands through the proposed Headlands Development Conservation Plan (HDCP) (Exhibit 24). The HDCP adds a new chapter to the zoning code, Chapter 9.34, that allows the City to create planned development districts (PDDs). Finally, the HDCP includes a PDD for the Headlands area. The PDD is part of the IP, not the LUP.

There is a document titled the 'Headlands Development and Conservation Plan' or HDCP dated July 24, 2001, that packages some, but not all, of the components of the above described LCP amendment (Exhibit 24). The HDCP document does not contain the baseline 1996 LUP in its entirety or IP. Rather, the HDCP contains five sections. Section 1.0 identifies only the proposed changed and new policies of the 1996 LUP. In addition to the changes to the 1996 LUE, UDE, and COSE, Section 1.0 shows changes to other elements of the City's General Plan, such as the Circulation Element, Public Safety Element, and Public Facilities/Growth Management Element. These other elements are not part of the 1996 LCP and the proposed amendment does not seek to certify these other elements as part of the 1996 LCP. Section 2.0 contains new Chapter 9.34 which is proposed to be added to the 1996 IP/Zoning Code. Sections 3.0 and 4.0 are the proposed PDD for the Headlands. Section 5.0 of the HDCP is an analysis of the proposed PDD with the Coastal Act.

⁹ In a letter from City Attorney A. Patrick Munoz of Rutan & Tucker LLP dated December 11, 2003, the City has asserted that the Revised HDCP dated August 21, 2003, should be considered the baseline project for analysis by the Commission rather than the HDCP dated July 24, 2001. The City asserts that the Coastal Commission hearing on October 9, 2003 was sufficient to satisfy the requirements of Section 13536 of the Commission's regulations. The Commission disagrees because a local government must, at a minimum, have a noticed public hearing at the local level and a formal resolution to amend their submittal, neither of which occurred for the August 21, 2003 edition of the HDCP. Furthermore, the demand is inconsistent with the agreement made with Commission staff in their meeting with the City and Landowner on October 21, 2003 to consider the July 24, 2001 HDCP as the baseline document and that the Revised HDCP dated August 21, 2003 would be considered a working document containing recommended suggested modifications from the City and Landowner to implement project modifications discussed with staff and the Commission from which staff could draw suggested modifications that it would recommend to the Commission.

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The information submitted as part of LCPA 2-02 was transferred and incorporated into LCPA 1-03. Pursuant to Section 30510(b) of the Coastal Act, the submittal was deemed to be complete and in proper order for filing as of October 22, 2003.

Pursuant to Sections 30512 and 30514 of the Coastal Act and Section 13522 of the Commission's regulations, an amendment to a certified LCP affecting the land use plan and implementation plan, must be acted on by the Commission within 90 days after the submittal request has been deemed to be in proper order for filing. Thus, the Commission must act on the amendment request by January 20, 2004, or, pursuant to Section 30517 of the Coastal Act, grant an extension to the ninety (90) day time limit.

1. LAND USE PLAN AMENDMENT

This LCP amendment proposes to replace –in its entirety- the certified Land Use Plan (the 1986 plan) presently effective on 95.1 acres of the 121.3 acre Dana Point Headlands site and to newly certify the remaining 26.2 acres (commonly known as the 'Strand'). The new plan will consist of the 1996 LUP comprised of the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the City's General Plan which are to be further amended to authorize development of 125 single family residential lots on 52.4 acres, a total of 4.4 acres of visitor serving commercial land use including up to 110,750 square feet including a 65-90 room inn on 2.8 acres, a 40,000 square foot of commercial on 1.6 acres, 62 acres of public parks, coastal trails and open space, and 2.5 acres of public right-of-way/roads at the 121.3 acre site (Exhibits 5a-5c). Each of these elements is discussed more fully below.

The proposed LUP amendment is focused on the Headlands site, however, certain changes to policies in the 1996 LUP to accommodate the Headlands development plan would be effective everywhere in the City that the 1996 LUP is the controlling LUP. For instance, the LUP amendment contains language regarding the creation of planned development districts (PDDs) in the City that would apply to the entire area controlled by the 1996 LUP.

As stated in the LUP itself, one characteristic of the LUP is an absence of specificity regarding development of the Headlands site. The LUP states the purpose of this is "...to provide both the City and property owner with the flexibility needed to allow consideration of alternative development designs..." Accordingly, the LUP policies are non-specific. When specificity is provided, the detail is deferred to the IP/PDD for the Headlands area.

a) Residential Land Use

The proposed LUP would designate 52.4 acres of the 121.3 acre Headlands area for residential uses. The residential land use is divided into two areas, one within the Strand, and one in the area of the site commonly called the 'bowl' (Exhibits 2a, 5a). In

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the Strand, the proposed LUP would allow a density of up to 3.5 dwelling units per gross acre. Within the bowl, the LUP would allow a density of 2.5 dwelling units per gross acre. Although general floor area ratios are identified in the LUP, specific policies identifying maximum structural size, height, or setbacks are not provided in the LUP, rather, they are deferred to the IP/PDD for the site.

The configuration of the residential area would overlap areas containing existing native vegetation and sensitive wildlife and habitat areas that have been identified as environmentally sensitive habitat areas (ESHAs) by the Commission's biologist (Exhibit 15a). Of the approximately 49.3 acres of ESHA depicted on Exhibit 15a, there is an overlap of at least 15.1 acres for Planning Areas 6 (residential) and 9 (hotel/VRC) plus additional acreage associated with the roads, parking areas, and community facilities (Exhibit 15c). Furthermore, the area of required fuel modification extends beyond the boundary of the residential land use designation into the area identified in the proposed LUP as Recreation Open Space and/or Conservation Open Space. The maximum width of fuel modification is not identified in the LUP, however, additional detail is supplied in the IP/PDD. Nevertheless, any detail provided is conceptual and subject to additional negotiations between the landowner, City and Orange County Fire Authority.

Also, developing a residential area in the Strand to the density proposed would – according to the City and landowner- necessitate significant grading and geologic remediation of the site (Exhibit 8a-8f). The area to be graded and developed in the Strand is almost entirely bluff face. Furthermore, the development configuration contemplated relies on a 2,100 linear foot long shoreline protective device. In this case, the shoreline protective device contemplated in the LUP would be a revetment in the same alignment as an existing dilapidated revetment (Exhibit 7a).

b) Commercial Land Use

The proposed LUP would designate 2.8 acres of visitor/recreation commercial land use in the bowl/hilltop area that will allow a maximum of 110,750 square feet of visitor serving commercial use including a sixty-five to ninety (65-90) room inn. In addition, at the corner of Coast Highway and Street of the Green Lantern, a 1.6 acre area is designated for up to 40,000 square feet of visitor/ recreation commercial use.

As modified by the LUP amendment, the "Visitor/Recreation Commercial" designation includes primarily visitor-serving uses, such as restaurants, resort uses, such as hotels and motels uses, commercial, recreation specialty and convenience retail goods and services, auto service businesses, open space/recreational uses, and community public facilities. Other supporting uses include conference facilities and cultural uses, such as museums and theaters.

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The 2.8 acres slated for the 65-90 room inn is almost entirely within ESHA as identified by the Commission's biologist. In addition, portions of the commercial area at the corner of Coast Highway and Green Lantern overlap ESHA.

c) Recreation/Open Space & Roads

The Recreation/Open Space designation in the LUP does not differentiate between open space oriented toward more active recreational uses such as ball fields from more passive recreational uses such as trails, nor does it separate recreation oriented open space from habitat preservation oriented open space. As noted elsewhere, such details are deferred to the IP/PDD. The proposed LUP would designate a total of 62 acres of recreation/open space, plus 2.5 acres of public right-of-way/roads, on the 121.3 acre Headlands site.

Although there are no distinguishing designations in the LUP or specific policies that make a distinction, narrative in the Conservation/Open Space Element (COSE) portion of the LUP identifies the quantity of recreation/open space to be provided in the Headlands and the type of recreation/open space uses these areas are to accommodate. Recreation oriented open spaces totaling 31.7 acres include Strand Vista Park (9.9 acres) that would overlook Strand Beach (5.2 acres); Harbor Point Park (4.3 acres) that would overlook the Dana Point Harbor; and Hilltop Park with greenbelt (12.3 acres) an inland high point that includes the rim of the bowl area on the site that would include ocean view and overlook open space areas and the proposed commercial and residential areas. Conservation oriented open space areas totaling 30.3 acres include the Headlands Conservation Park (24.2 acres) and Harbor Point Park (6.1 acres) that are both bluff with bluff top promontories on the Headlands site.

Excepting Strand Vista Park, Strand Beach, existing asphalt roads, and certain pockets of highly disturbed native vegetation, all of the proposed recreation/open space areas have been identified by the Commission's biologist as existing ESHA. The proposed LUP would allow some uses within certain recreation/open space areas that would disturb and degrade the ESHA. These uses include community structures such as a lighthouse and community/visitor facility buildings, hardscape, parking lots, and fuel modification. The proposed LUP also designated 2.5 acres of public right-of-way/roads on the Headlands site. Some of these roads/right-of-way overlap ESHA.

d) Orange County Central Coastal Subregion NCCP/HCP

The proposed LUP acknowledges that certain types of sensitive habitat and wildlife would be impacted should development be undertaken as contemplated in the LUP. The LUP proposes to mitigate impacts to sensitive habitat on the site by requiring restoration of native habitat on-site within recreation/open space areas that are presently or are proposed to be disturbed or otherwise degraded and through the

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Headlands' landowners' participation in the Central Coastal Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (herein 'NCCP/HCP') adopted by the U.S. Department of Interior, the U.S. Fish and Wildlife Service (USFWS), the California Resources Agency, the California Department of Fish and Game (CDFG), the California Department of Forestry and Fire, the California Department of Parks and Recreation, and the Orange County Environmental Management Agency, in conjunction with participating property owners, in 1996 (Exhibits 11a-11c).

The LUP does not refer to the sensitive habitat and wildlife areas to be impacted on the site as ESHA. Rather, the LUP adds language to certain policies in the 1996 LUP that defer to the findings made in the NCCP/HCP and associated CEQA documents relative to the quality and long term viability of the habitat on the site and the circumstances under which habitat on the Headlands site may be impacted and then mitigated through participation in the NCCP/HCP.

The NCCP/HCP creates a habitat reserve and management program designed to conserve a variety of sensitive plants and wildlife. Among other species, the NCCP/HCP provides coverage for impacts to California gnatcatcher, Pacific pocket mouse, Blochman's dudleya, Cactus wren, western dichondra, Nuttall's scrub oak, cliff spurge, Palmer's grappling hook. In total, the habitat reserve consists of 38,738 acres of land located in two areas of the county. A portion of this reserve, 10,960 acres, is located within the coastal zone (Exhibit 11c). All of the reserve area located in the coastal zone consists of land that had previously been preserved as parkland or other publicly held land or of privately owned land previously committed to dedication as open space under existing development entitlements (e.g. The Irvine Company, Irvine Coast Wilderness, Muddy Canyon, Los Trancos Canyon)¹⁰. Approximately 50% of the reserve in the coastal zone contains coastal sage scrub habitat. About 740 acres of suitable pocket mouse habitat is within the proposed NCCP reserve, however, none of this acreage is known to be occupied by the Pacific pocket mouse. In addition, although the NCCP/HCP provides coverage for impacts to Blochman's dudleya, no existing or suitable habitat for Blochman's dudleya was identified within the proposed NCCP/HCP reserve.

As a landowner participant to the agreement, the NCCP/HCP requires the Headlands' landowner to:

- Contribute \$500,000 toward a \$10.6 million endowment for the 'NCCP Non-Profit Corporation' and 'Adaptive Management Program'
- Establish an 8-year temporary 22 acre preserve for Pacific pocket mouse on the headlands (with option for additional 4 years of extensions), to expire in 2008

¹⁰ Figure 14, County of Orange & U.S. Fish and Wildlife Service. 1996. Natural Community Conservation Plan & Habitat Conservation Plan & EIR & EIS, County of Orange, Central & Coastal Subregion, Map Section (Figures 1 through 76). May 1996.

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- Commit to negotiate an option agreement to provide opportunity for the USFWS and CDFG to purchase the 22 acre pocket mouse preserve at the end of the 8 year temporary preserve period, to expire in 2004. If the preserve is not acquired within the specified period, and following a pocket mouse relocation effort, the participating agencies have authorized the take of all species covered by the NCCP/HCP within the 22 acre preserve.
- Contribute \$350,000 to fund Pacific pocket mouse population propagation, enhancement, relocation and recovery efforts upon issuance of Section 10(A)(1)(A) permit for pocket mouse
- Contribute to the cost of preparation of the NCCP/HCP
- Commit to transplant, at CDFG's request, any Blochman's dudleya populations at Headlands Reserve's expense (not to exceed \$23,000) that would be directly impacted by development on the property. Subject to CDFG approval, the landowner may collect and sow seed, rather than translocate individual plants. Under this commitment, the landowner has no responsibility to acquire or maintain land to which Blochman's dudleya would be transplanted. Furthermore, if CDFG fails to identify and secure an appropriate translocation site within one year of the landowners' request to identify such location, the landowner is no longer obligated to translocate the Blochman's dudleya.

The U.S. Fish and Wildlife Service and California Department of Fish and Game have indicated that the landowners have 'carried out all of their conservation commitments according to schedule'¹¹.

There are a variety of other mutual agreements between the participating landowners and agencies that are established in the NCCP/HCP Implementation Agreement. For instance, CDFG and USFWS agreed to provide letters to the City of Dana Point and the Commission with respect to the development of the subject property. In addition, the landowner agreed to propose and promote certain measures within the temporary Pacific pocket mouse preserve¹² (Exhibits 14b, 14c).

In exchange for the landowner's commitments identified above, the participating agencies have authorized the landowner to impact up to 30 acres of coastal sage scrub (CSS) habitat on their property. In addition, the landowner is allowed to 'take' (within the meaning of this term under the Federal and State Endangered Species Acts) any of the sensitive species covered by the NCCP/HCP on Headlands property. The actual take is authorized under an incidental take permit issued by USFWS (TE810581-1).

¹¹ U.S. Fish and Wildlife Service & California Department of Fish and Game. 2003. Dana Point Headlands Development and Conservation Plan, City of Dana Point, Orange County, California. Letter from William E. Tippets, CDFG, and Karen A. Goebel, USFWS to Mike Reilly, California Coastal Commission dated March 28, 2003.

¹² Section 8.3.2(a)(1)(C), U.S. Fish and Wildlife Service & California Department of Fish and Game, et. al. 1996. Implementation Agreement Regarding the Natural Community Conservation Plan for the Central/Coastal Orange County Subregion of the Coastal Sage Scrub Natural Community Conservation Plan. Dated July 17, 1996.

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2. IMPLEMENTATION PROGRAM AMENDMENT

This LCP amendment proposes to replace –in its entirety- the certified Implementation Plan (the 1986 plan) presently effective on 95.1 acres of the 121.3 acre Dana Point Headlands site and to newly certify the remaining 26.2 acres (commonly known as the ‘Strand’). The new Implementation Plan (IP) will consist of the 1996 IP comprised of the City’s Zoning Code which is proposed to be further amended to include provisions for the creation of planned development districts (PDDs) in the City and at the same time create a PDD for the 121.3 Headlands site (Exhibits 4a-4f, 5b).

The proposed IP amendment is focused on the Headlands site, however, one change to the 1996 IP to accommodate the Headlands development plan would be effective everywhere in the City that the 1996 IP is the controlling IP. The IP amendment adds a section pertaining to the creation of planned development districts (PDDs) in the City that would apply to the entire area controlled by the 1996 IP.

a) Adoption of 1996 IP/Zoning Code

The Commission has previously certified the 1996 IP through LCP Amendments 1-96 (which made it effective in the Capistrano Beach area of the City) and 1-98 (which made it effective in the Monarch Beach area of the City). The proposed IP amendment would apply the 1996 IP/Zoning Code to the Headlands area.

b) Modifications to 1996 IP/Zoning Code

The proposed amendment would also modify the previously certified 1996 IP/Zoning Code to create Chapter 9.34 that inserts the ordinance that allows the City to adopt Planned Development Districts (PDDs). PDDs are similar to specific plans in that both implement general plan/LUP policy by establishing regulations, conditions, and programs concerning development standards and precise location for land use and facilities; standards and locations for streets, roadways, and other transportation facilities; standards indicating population density and building intensity, and provisions for supporting services and infrastructure; specific standards designed to address the use, and development and conservation of natural resources. According to the LUP, PDDs are different from specific plans in that they also establish regulations, conditions and programs concerning developments that provide a mix of land uses; creative approaches in the development of land; more accessible and desirable use of open space area; variety in the physical development pattern of the city; and utilization of advances in technologies and programs that are innovative to land development.

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c) Headlands Planned Development District (Key Features)

The Headlands PDD is comprised of Sections 3 and 4 of the HDCP (Exhibit 24). Section 3.0 establishes the project zoning and development standards, and incorporates by reference the general provisions, the land use plan, and definitions. Section 4.0 provides development guidelines for the area. The PDD augments the development standards identified in the IP/Zoning Code, and supercedes those standards where they conflict with the IP/Zoning Code or where the PDD otherwise specifies that the standards identified supercede those identified in the IP/Zoning Code.

The HDCP also contains Section 5.0 that contains the City and landowners analysis of the HDCP's conformance with the Coastal Act. Section 5.0 does not contain any provisions beyond those described in Sections 3 and 4 of the HDCP.

The PDD breaks the Headlands site up into various planning areas, labeled Planning Areas 1-9 (Exhibit 5b). The major elements of these planning areas are discussed below:

(1) Residential, Planning Area 2 (The Strand)

The PDD creates 25.7 acres of residential zoning in the Strand. A maximum of 75 single-family residences would be allowed within this area. Maximum height is 2-stories, 28 feet above finished grade (not existing or natural grade) for primary structures, and 16 feet for detached accessory structures. A minimum 15-foot rear yard setback, measured from the top of slope for the building pad, is required on all lots. There is no distinct, shorefront development setback. Thus, the 15-foot rear yard setback is the shorefront setback. No stringline for shorefront development is established either.

The PDD specifies that grading will terrace the area to maximize views from the residential lots. Furthermore, as described above, the PDD allows for the construction of a 2,100 linear foot shoreline protective device to protect the new residential development. The PDD also specifies that the residential area will be gated to control vehicle access. Allowances are made for the provision of public pedestrian and bicycle access through the area.

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(2) Residential, Planning Area 6 (Upper Headlands/Bowl Area)

Planning Area 6 is comprised of 26.7 acres of residential use. A maximum of 50 single-family residences could be authorized in this area. Maximum height is 1-story, 18 feet above finished grade for primary and accessory structures. Soil removed as part of the grading and geologic remediation in the Strand would be deposited in Planning Area 6 and graded into terraces so that the residences in Planning Area 6 would have ocean views. The residential community would be gated to control vehicle access. There are no specific provisions for public pedestrian and bicycle access through the area.

(3) Visitor/Recreation Commercial, Planning Area 4 (PCH & Green Lantern)

Planning Area 4 is a 1.6 acre site located at the corner of Pacific Coast Highway and Street of the Green Lantern. Up to 40,000 square feet of commercial and office uses would be allowed on this site. The first floor is limited to retail commercial uses, and the second floor could have retail or professional offices. Maximum height is 2-stories, 31-35 feet, measured from either finished floor, finished grade, or the ceiling of the basement or subterranean parking garage of the structure, whichever is lower.

Permitted uses in Planning Area 4 under the PDD are bed and breakfast inn, clinical services, cultural uses, educational uses, food service uses/specialty, fractional ownership, hotel, marine uses, open space, personal service uses, photographic, reproduction and graphic service uses, professional office uses on the second floor or below street level, restaurant, and retail sales. A variety of other uses are also permitted subject to conditional use permits or as accessory uses such as commercial antennas, day care centers, furniture stores, massage establishments, membership organizations, walkup and take-out restaurants.

(4) Visitor/Recreation Commercial, Planning Area 9 (Resort Seaside Inn)

Planning Area 9 is a 2.8 acre site generally located near the corner of Street of the Green Lantern and Harbor Drive, and overlooks Harbor Point and the Dana Point Harbor. The PDD would authorize up to 110,750 square feet of commercial floor area, with a maximum height of 3 stories, 42 feet measured from either finished floor, finished grade, or the ceiling of the basement or subterranean parking garage of the structure, whichever is lower.

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The primary permitted use of Planning Area 9 is a bed and breakfast inn or hotel (e.g. 65-90 room inn). Permitted uses, only in conjunction with a seaside inn, are caretakers residence, clinical services, cultural uses, fractional ownership, and restaurant. Uses subject to a conditional use permit, also only in conjunction with an inn, are commercial antennas, commercial entertainment uses, commercial recreational uses, day care centers, educational uses, live entertainment uses, massage establishments, walkup restaurant, and video arcades/game rooms. Accessory uses allowed are food service uses/specialty, personal service uses, professional office uses, recreational use, and retail sales use.

(5) Recreation Open Space, Planning Area 1 (Strand Vista Park/Public Beach Access)

Strand Vista Park would consist of 9.9 acres. This park would be located seaward of the existing County park and landward of the proposed residential development. A linear trail with benches and tables along the bluff top would provide views of the Pacific Ocean. Planning Area 1 also contains the existing County stairway that presently provides access to Strand Beach along the northerly edge of the Headlands site. The PDD includes provisions to upgrade this existing stairway. At the southerly end of Planning Area 1, the PDD includes provisions to construct a new public access pathway from the bluff top to the beach. Finally, a new public pedestrian access is contemplated from the bluff top through the central portion of the Strand residential to the beach.

Under the PDD, uses permitted in areas designated Recreation Open Space (REC/OS), are visitor recreation facilities, cultural uses, kiosks/gazebos, outdoor artwork, public land uses, hiking and biking trails. Commercial uses would also be allowed subject to a conditional use permit, and temporary uses would also be allowed subject to special use standards identified in Chapter 9.39 of the IP/Zoning Code.

(6) Recreation Open Space, Planning Area 3 (Strand Beach)

According to the City and landowner, Strand Beach, located seaward of the Strand, is presently private property to the mean high tide line^{13, 14, 15}. The mean high tide line has not been adjudicated in this area, thus, the demarcation between public and private land is ambulatory with the location of the mean high tide line. The proposed PDD indicates this beach (5.2 acres) is to be dedicated to the public. The "5.2" acres is based on a mean high tide line measured on a single day, January 28, 1989. Since the location of mean high tide is ambulatory and not fixed at the point measured in 1989, this 5.2 acre figure may overestimate and/or underestimate the quantity of private

¹³ Headlands Reserve LLC. 2002. City of Dana Point LCP Amendment No. 1-03, Headlands Development and Conservation Plan. Letter dated July 30, 2002 from W. Kevin Darnall, Headlands Reserve LLC to Karl Schwing, California Coastal Commission.

¹⁴ Chicago Title Company. 2002. Policy No. 7300387-M07. Letter from Charles Axen, Chicago Title Company to W. Kevin Darnall, Headlands Reserve LLC regarding ownership and status of lots within Tract No. 697, 771 and 790

¹⁵ County of Orange v. Chandler-Sherman Corporation (1976) 54 Cal.App.3d. 561

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beach area being dedicated to the public, depending on the actual location of the mean high tide line. The public would access this beach from the bluff top and existing County parking lot via the existing and proposed to be upgraded North Strand Beach Access, and the Central Strand and South Strand Beach accessways proposed in the PDD.

The event triggering the dedication requirement nor the timing by which the dedication must occur is identified.

(7) Recreation Open Space, Planning Area 5 (Hilltop Park & Greenbelt Linkages)

Planning Area 5 comprises 12.3 acres and contains the 'hilltop' portion of the property and the rim of the 'bowl' portion of the property, as well as open space corridors, or greenbelt linkages, around the perimeter of residential Planning Area 6. Uses identified in the PDD are an open air visitor/education center, trails, overlooks, seating, parking for access to the open space, signs, fencing, habitat preservation, landscaping and fuel modification.

(8) Recreation Open Space, Planning Area 8A (Harbor Point Park)

Planning Area 8A would be 4.3 acres and contain the more level, interior portions of the Harbor Point promontory that overlooks Dana Point Harbor. The PDD designates this area for visitor recreation education facilities, such as a lighthouse, cultural arts center, nature interpretive center, trails, memorials, picnic areas, scenic overlooks, benches, signs, kiosks, fencing, and landscaping.

(9) Conservation Open Space, Planning Area 8B (Harbor Point Park)

Planning Area 8B is 6.1 acres and consists of bluff edge, bluff face areas and rocky beach as the base of the bluff at the Harbor Point promontory which overlooks Dana Point Harbor.

Areas designated Conservation Open Space (CON/OS) are oriented toward habitat preservation and enhancement. The PDD prohibits all uses other than 'public land uses'¹⁶ and hiking trails.

¹⁶ Chapter 9.75 of the IP/Zoning Code defines "public land uses" as "shall mean land and/or facilities owned, operated and maintained by public agencies for the use and enjoyment of the general public. Typical uses would include, but not be limited to, beaches, parks and open space."

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**(10) Conservation Open Space, Planning Area 7
(Headlands Conservation Park)**

Planning Area 7 contains 24.2 acres and would contain the Headlands portion of the property that consists of bluff top promontory, bluffs and rocky beach. This area contains significant sensitive habitat including coastal sage scrub, southern coastal bluff scrub, California gnatcatcher and Pacific pocket mouse. Improvements within the area would be limited to a bluff top trail, overlooks, seating, and fencing.

The PDD states the area is to be conserved by a non-profit trust and perpetual endowment. Additional information indicates that the endowment will come from the Harry and Grace Steele Foundation (Exhibit 16).

D. INFORMAL REVISED SUBMISSION

Commission staff have, on several occasions, met with the City and landowners to discuss the key substantive issues raised by the proposed LCP amendment. In summary, those key issues include:

- Siting development within ESHA and fuel modification impacts on ESHA
- Siting single family residences in the Strand that rely upon significant geologic remediation/grading and the construction of a 2,100 linear foot long shoreline protective device (i.e. revetment)
- Exclusion of public vehicular access through the Strand to the beach
- Over-emphasis of exclusive, luxury, overnight visitor accommodations and lack of consideration for the provision of lower cost, overnight visitor accommodations
- Over-emphasis on uses considered a lower priority under the Coastal Act, such as residential development
- Notwithstanding Coastal Act prohibitions on shoreline protective devices¹⁷, the absence of lateral public access between the proposed shorefront residences in the Strand and the proposed shoreline protective device
- Notwithstanding Coastal Act prohibitions on shoreline protective devices, the absence of consideration of alternative shoreline protective devices that would minimize the encroachment of such structures onto sandy beach

¹⁷ I.e. Sections 30211, 30213, 30253

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The above issues raise fundamental questions about the LCP amendment's consistency with Chapter 3 Coastal Act policies including Sections 30240, 30253, 30250, and 30213. Other issues raised by the LCP amendment include, but are not limited to:

- Absence of access to and information about visitor facilities at the Headlands directly from Pacific Coast Highway
- Lack of beach visitor support facilities (e.g. restrooms) at the southern end of Strand Beach
- Lack of direct pedestrian access from the existing County parking lot inland of Planning Area 1 to the proposed Central Strand Beach Access

The City and landowner have countered that the existing certified LCP raises similar issues and that the proposed LCP would significantly reduce any inconsistencies comparing build-out under each plan. The City and landowner have also provided information indicating that there is an existing subdivision of the property (discussed below) and have raised the specter of constitutional/takings issues that may be averted if the current proposal is authorized.

City staff and the landowner have submitted an edited version of the LCP amendment that represents their effort to address some of the issues identified above^{18, 19} (Exhibits 6a, 6b, 25). This edited version of the LCPA is not a formal submittal. Accordingly, the edited version of the LCPA has not been subject to local hearings, nor reviewed and approved by the City Council, nor submitted by resolution as is required pursuant to Sections 30510(a) of the Act and 13551 of the Commission's regulations, if the Commission is to consider this as a formal request. Rather, the City and landowner have asked Commission staff to consider these edits as 'suggested modifications' made by the Commission pursuant to Sections 30512 and 30513 of the Coastal Act.

In summary, the revisions to the LCPA that the City staff and landowner have made are as follows:

- Reduce impacts to ESHA by shrinking the size of the Upper Headlands Residential area (Planning Area 6) from 26.7 acres to 20.2 acres, adding the difference to the areas designated recreational/conservation open space. Direct impacts to ESHA remain within Planning Area 6, as well as within Planning Areas 4, 8, and 9.

¹⁸ City of Dana Point. 2003. Dana Point Local Coastal Program Amendment, No. 1-03. Letter dated August 18, 2003 from Douglas C. Chotkevys, City Manager, City of Dana Point to Deborah Lee, California Coastal Commission.

¹⁹ City of Dana Point. 2003. Revised – The Headlands Development and Conservation Plan. Submittal includes Section 1.0 General Plan Amendment and Local Coastal Program Amendment, Section 3.0 Headlands Planned Development District, Section 4.0 Development Guidelines. Submittal dated August 21, 2003.

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- Provide a 40 bed hostel in Planning Area 4; reduce VRC in Planning Area 4 from 40,000 sq. ft. to 35,000 sq. ft.; increase quantity of allowable luxury accommodation rooms from 65 to 90 within Planning Area 9
- Provide a visitor information center and 6 public parking spaces in Planning Area 4 that will be directly accessible from Pacific Coast Highway
- Provide an 8 foot wide walkway, plus benches along the top or landward of the revetment seaward of the Strand residential area
- If the Strand residential area is allowed to be gated to vehicular access, provide public mechanized access (e.g. funicular) from the County parking lot to the beach along the northern Strand Beach Access walkway
- Provide new Mid-Strand Beach Access stairway from the County parking lot to the Central Strand Beach access.
- Provide restrooms at the south end of Planning Area 1 for beach visitors

More recently (i.e. since the Commission's October 2003 hearing and/or during the Commission's January 2004 hearing on the project), the landowner offered to make some additional revisions, as follows:

- Realigning the existing revetment an average 5 feet landward or easterly than the existing alignment
- In addition to the proposed non-wasting endowment to maintain the biological values of the Headlands Conservation Park; an offer of \$2 million paid by the developer to the City to establish a non-wasting endowment to maintain the biological values of the open space areas within the Headlands that will be owned and/or maintained by the City
- Implementation of a program to retrieve debris from the beach that impedes public access
- Agreement to provide picnic benches at the seaward terminus of the Central Strand Beach public access (i.e. mid-point of the lateral public walkway that would be along the top or landward of the revetment seaward of the Strand residential area)

As described in the following findings, the Commission has found that the subject LCP amendment could be approved if suggested modifications are adopted. The suggested modifications incorporate a majority of the revisions offered by the City and landowner, plus additional changes. Of particular note are the circumstances under which the

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development contemplated by the landowner and described in the LCP amendment could be approved. The Commission found that certain aspects of the development could only be allowed, such as specified ESHA impacts, in conjunction with a comprehensive development proposal that included certain other key project elements. The Commission refers to these key elements in the suggested modifications and findings as the 'HDCP Elements' and are summarized as follows: 1) preservation, enhancement, dedication and perpetual management of all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) the dedication of the private portion of Strand beach to the public; 3) the construction and dedication of public parks, a public trail network throughout the Headlands, and vertical and lateral public access to and along Strand beach including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implementation of extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) the preservation of significant landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop and ridgeline; and 6) the provision of lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

E. STATUS OF LAND OWNERSHIP AND SUBDIVISION

According to the City and landowner, the Headlands area that is the subject of this LCP amendment was subdivided under recorded Tract No.'s 697, 771, and 790, in 1924, 1925, and 1926, respectively²⁰, ²¹ (Exhibit 2d). Copies of the tract maps were supplied to staff by the landowner, along with evidence of title insurance²². The tract maps appear legitimate. The tracts affect the Headlands promontory, hilltop, and bowl areas of the property. In total, the tract maps show approximately 291 lots, typically 40-50 feet wide, and 100 feet long. Public rights-of-way are also shown on the tract maps to access each of these lots. A small number of the lots (less than 20) were sold and developed over time by individuals. The remainder of the lots have remained under the ownership of a single entity, Chandler-Sherman until 1998, and now Headlands Reserve LLC. Although the status of any pre-1929 subdivision is subject to some question, no specific evidence has been supplied to the Commission that would indicate the land owned by Headlands Reserve LLC is not legally subdivided as shown on the above identified tract maps.

²⁰ Headlands Reserve LLC. 2002. City of Dana Point LCP Amendment No. 1-03, Headlands Development and Conservation Plan. Letter dated July 30, 2002 from W. Kevin Darnall, Headlands Reserve LLC to Karl Schwing, California Coastal Commission.

²¹ Headlands Reserve LLC. 2002. City of Dana Point LCP Amendment NO. 1-03, Headlands Development and Conservation Plan. Letter dated July 31, 2002 from W. Kevin Darnall, Headlands Reserve LLC to Karl Schwing, California Coastal Commission regarding transmittal of copies of Tracts 697, 771 and 790 with copies of maps attached.

²² Chicago Title Company. 2002. Policy No. 7300387-M07. Letter from Charles Axen, Chicago Title Company to W. Kevin Darnall, Headlands Reserve LLC regarding ownership and status of lots within Tract No. 697, 771 and 790

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The subject LCP amendment also affects the Strand area of the site. Based on the maps supplied by the landowner, this area is divided into 3 larger irregularly sized lots, 3 smaller lots typical for residential use adjacent to the existing northerly residential enclave, plus road rights-of-way and portions of several other legal lots. Some portions of these lots were used as a mobile home park until its closure in 1988.

IV. Summary of Public Participation

The City Planning Commission held a public hearing for the proposed LCP amendment on December 5, 2001, and the City Council held a public hearing for the proposed LCP amendment on January 8, 2002. This LCP amendment request is consistent with the submittal requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510, 30514 and 30605 of the Coastal Act, and Sections 13551, 13552 and 13553 of the California Code of Regulations).

V. Land Use Plan/Implementation Plan Suggested Modifications

Suggested Modifications: The Commission certifies the following, with modifications as shown. Language as submitted by City of Dana Point is shown in straight type. Language recommended by the Commission for ~~deletion~~ is shown in ~~double line out~~. Language proposed to be inserted by the Commission is shown double underlined.

Commission Review of Narrative Text: The City's LCP can be divided into two major divisions. The first division is narrative, which describes the City, how the LCP program functions, and the explanatory basis for the various standards and policies contained in the LCP. The second division of the LCP consists of the actual standards and policies. It is this second division that is the focus of Commission review.

Commission review of the LCP has been primarily limited to Goal 2, Policies 2.1 to 2.12, Goal 4, Policies 4.1 to 4.10, Goal 5, Policies 5.1 to 5.27, Figures LU-4, LU-6, Tables LU-4, LU-6 and LU-6a within the Land Use Element; Goal 1, Policies 1.1 to 1.7, narrative identified as 'Policy' in the Urban Design Plan component of the Urban Design Element, Figure UD-2, Goal 1, Policies 1.1 to 1.8, Goal 2, Policies 2.1 to 2.20, Goal 3, Policies 3.1 to 3.10, Goal 6, Policies 6.1 to 6.8, Figures COS-1, COS-2, COS-4, COS-5, COS-6, Table COS-4, and narrative identified as 'policy' in the Conservation and Open Space Plan components of the Conservation Open Space Element, all of which constitute standards and policies of the Land Use Plan. In addition, Commission review of the Implementation Plan has been primarily limited to new Section 9.35 of the Zoning Code and the new Planned Development District (PDD) described in Sections 3.0 and 4.0 of the 'Headlands Development and Conservation Plan'. In terms of how "goals" and "policies" are to be treated in the LCP, the policies and associated "figures" and "tables" are the mandatory enforceable component. The goals and non-policy narrative provide background and context for the policies. Therefore, the standard of review for the City in permitting development under the LCP will be the policies, figures and tables of the LCP.

Revisions to the policies, made through suggested modifications, in certain circumstances may make the background narrative obsolete. Descriptive narrative no longer consistent with the policies will need to be revised by the City to conform the narrative of any associated policy that has been revised through suggested modifications as part of the submission of the final document for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Organizational Notes: The addition of new policies or the deletion of policies (as submitted) will affect the numbering of subsequent LCP (Land Use Plan and Implementation Plan) policies when the City of Dana Point publishes the final LCP

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incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LCP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Additionally, the LCP (October 2003 submittal/cover dated July 24, 2001 version) submission contained formatting to show City revisions made to the LCP prior to its approval by the City Council. For purposes of clarity this formatting has been **removed**.

A. SUGGESTED MODIFICATIONS TO COASTAL LAND USE PLAN CONSISTING OF THE LAND USE ELEMENT (LUE), URBAN DESIGN ELEMENT (UDE), AND CONSERVATION OPEN SPACE ELEMENT (COSE):

1. Global Change: Modify/Add appropriate Coastal Act policy references following each Land Use Element, Urban Design Element, and Conservation Open Space Element policies referenced in the Suggested Modifications.
2. (Priority Uses) LUE, Goal 2, Policy ~~2.102-14~~: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. In the Headlands, this prioritization of uses is satisfied by the provision of visitor-serving commercial recreational development on the private lands suitable designated for visitor-serving commercial recreational facilities are on the portions of the site that adjoin Pacific Coast Highway and Street of the Green Lantern in the vicinity of existing visitor-serving commercial recreational uses. (Coastal Act/30222)
3. (Water Quality) (WQ15) LUE, Goal 4, Policy 4.4: Preserve, maintain—and, where feasible, enhance, and where feasible restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. Sustain and where feasible restore general water quality and biological productivity as necessary to maintain optimum populations of marine organisms and for the protection of human health. (Coastal Act/30230)
4. (Biological Resources/Hazards), LUE, Goal 5, Add following introductory narrative: Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. This comprehensive approach to developing the Headlands will allow for the following project elements (herein 'HDCP Elements'): 1) preservation, enhancement, dedication and perpetual management of all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) the dedication of the private portion of Strand beach to the public; 3) the construction and dedication of public parks, a public trail network throughout the Headlands, and vertical and lateral public access to and along Strand beach including

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realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implementation of extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) the preservation of significant landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) the provision of lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

5. (Visual Resources) LUE, Goal 5, Create Figure COS-5a, Headlands Coastal View Opportunities, modeled on Figure 4.5.3 from the Headlands Development Conservation Plan, with changes to be consistent with the Commission's action.
6. (Visual Resources) LUE, Goal 5, New Policy: Zoning and development regulations shall detail the location and extent of public coastal view opportunities (i.e. unobstructed view, intermittent view or no view) that will be established for designated public open space and trail areas which shall, at minimum, conform with the public view opportunities identified on Figure COS-4, Figure COS-5, and Figure COS-5a in the Conservation Open Space Element. (Coastal Act/30251).
7. (Visual Resources) LUE, Goal 5, New Policy: Maximum building heights for each zoning district shall be established that prevent significant adverse impacts to public views to and along the coast from, at minimum, the public view opportunities identified on Figure COS-4, Figure COS-5, and Figure COS-5a in the Conservation Open Space Element. Applications for land divisions and/or grading shall establish finished grades such that structures constructed to the maximum building heights identified for each zoning district shall not significantly adversely impact the public views identified in this policy (Coastal Act/30251)
8. (Visual Resources) LUE, Goal 5, New Policy: Submittals for tentative tract maps and coastal development permits for development proposed within any public viewshed identified on Figure COS-4, Figure COS-5, and Figure COS-5a in the Conservation Open Space Element, shall include a visual impact analysis to demonstrate that the public coastal view opportunities designated pursuant to Policy [Suggested Mod 6] shall be established and maintained. (Coastal Act/30251)
9. (Hazards) LUE, Goal 5, Policy 5.2: Require geotechnical studies to assess geologic hazards~~ensure geological stability~~ in the areas where development is proposed. ~~to be permitted and~~ Except for the public access facilities and residential development in the Strand (which is exempt from this requirement only if proposed in the context of an application that provides all of the HDCEP Elements, and only in conjunction with a requirement that the plan be completed as a whole), require ~~adequate~~ a minimum 50 foot setbacks from the bluff top areas ~~edges~~ or a sufficient

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setback to avoid anticipated erosion/bluff retreat over a minimum 75 year timeframe in accordance with those ~~engineering~~ geotechnical studies, whichever is most restrictive and adopted City regulations. (Coastal Act/30250, 30253)

10. (Visual Resources) LUE, Goal 5, Policy 5.4: Assure that the height and scale of the development within the Headlands are compatible with development in the community and that the visual impact of the development from coastal areas below the project is minimized. Prohibit new development that significantly degrades public views to and along the coastline including, but not limited to, existing, enhanced or created views from the Hilltop park and greenbelt linkage, the Strand Vista Park, the Dana Point Promontory/Headlands Conservation Park and Harbor Point. (Coastal Act/30251)
11. (Public Access) LUE, Goal 5, Policy 5.6: Require that a continuous scenic walkway or trail system be integrated into the development and conservation plan for the Headlands and that it provide connection points to off-site, existing or proposed walkways/trails, including integration with the California Coastal Trail. The alignment of the walkway and trail system shall be consistent with their depiction on Figure COS-4, Figure COS-5, and Figure COS-5a in the Conservation Open Space Element. (Coastal Act/30210, 30212)
12. (Public Access) LUE, Goal 5, Policy 5.9: Provide public trails within the Headlands. The system shall ~~include~~ provide access to the existing sandy beach areas, including but not limited to a minimum of three (3) public accessways, and an inclined elevator/funicular, from Selva Road, through the Strand area, to the beach, and to the visitor-serving recreational and public places developed within the Headlands.
13. (Biological Resources/Public Access) LUE, Goal 5, Policy 5.20: Regulate the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources and to protect the privacy rights of property owners while ~~balancing~~ honoring the public's constitutional right of access to navigable waters. (Coastal Act/~~30001, 30001.5, 30214, 30240~~)
14. (Coastal Resources) LUE, Goal 5, Policy 5.21: ~~Provide additional public access from Selva Road, the nearest public roadway, to the shoreline, consistent with public safety and the protection of fragile coastal resources.~~ (Coastal/30212).
15. (Public Access) LUE, Goal 5, Policy 5.23: Off-street parking shall be provided for all new residential and commercial development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources. A modification in the minimum quantity of parking stalls required through the variance process shall not be approved. Valet parking shall not be implemented as a means to reduce the minimum quantity of parking stalls required to serve the

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development. Provide on-street and off-street public parking facilities strategically distributed to maximize public use and adequately sized to meet the needs of the public for access to areas designated for public recreation and public open space uses at the Headlands development, as measured by the standards set forth in the City regulations, and Where existing adjacent public parking facilities are presently underutilized and those facilities are also anticipated to be underutilized by projected future parking demand, use those existing adjacent public parking facilities, where feasible, to serve the needs of the public for access to areas designated for recreation and public open space uses at the Headlands portions of the property. (Coastal Act/30212.5, 30252)

16. (Coastal Resources) LUE, Goal 5, Policy 5.25: Comply with the requirements of the Central Coastal Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) approved by the California Department of Fish and Game for the Headlands and avoid duplicative regulatory controls, in particular with respect to wildlife management programs such as the NCCP/HCP. (Coastal Act/30401, 30411)
17. (Biological Resources) LUE, Goal 5, New Policy: New development shall include an inventory of the plant and animal species present on the project site. If the initial inventory indicates the presence or potential for sensitive species or habitat on the project site, a detailed biological study shall be required. New development within or adjacent to ESHA shall include a detailed biological study of the site. Any coastal development permit application for the Headlands submitted on or prior to two years from the date of effective certification of LCP Amendment 1-03 by the Coastal Commission, shall utilize the ESHA delineation (for upland habitat purposes) identified by the California Coastal Commission in its January 2004 approval, with suggested modifications, of the HDCP and not require additional species surveys; for applications submitted thereafter an updated or new detailed biological study shall be required. (Coastal Act/30240)
18. (Hazards/Coastal Resources) LUE, Goal 5, New Policy: Land divisions, including lot line adjustments, shall be permitted only if all proposed parcels intended for development can be demonstrated to be safe from flooding, erosion, and geologic hazards and that development can be constructed consistent with all policies of the LCP. The creation of parcels not intended for development shall only be allowed in conjunction with the recordation of a deed restriction on any such parcels to prevent development and the dedication of such parcels to a public agency and/or non-profit entity in such a manner as to ensure that the property is conserved in perpetuity as open space. (Coastal Act/30253)
19. (Public Access) LUE, Goal 5, New Policy: Recreation and access opportunities at public beaches and parks at the Headlands shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the

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extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in user fees or parking fees shall be subject to a coastal development permit. (Coastal Act/30210, 30212, 30213, 30221)

20. (Public Access) LUE, Goal 5, New Policy: Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day; 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A coastal development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources. (Coastal Act/30212)
21. (Public Access) LUE, Goal 5, New Policy: New public beach facilities shall be limited to only those structures necessary to provide or enhance public recreation activities. No development shall be permitted on sandy public beach areas, except that lifeguard stations, small visitor serving concessions, restrooms, trash and recycling receptacles, and improvements to provide access for the physically challenged may be permitted when there is no less environmentally damaging feasible alternative and the development is sited and designed to minimize adverse impacts to public access, visual resources and sensitive environmental resources. (Coastal Act/30221, 30240, 30250, 30251, 30253)
22. (Public Access) LUE, Goal 5, New Policy: The implementation of restrictions on public parking along Selva Road, Street of the Green Lantern, and Scenic Drive that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.
23. (Public Access) LUE, Goal 5, New Policy: Except as noted in this policy, gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted upon any street (public or private) within the Headlands where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands. In the Strand residential area, gates, guardhouses, barriers and other structures designed to regulate or restrict public vehicular access into the residential development may be authorized provided that 1) pedestrian and bicycle access from Selva Road and the County Beach parking lot through the residential development to the beach remains unimpeded; 2) a public access connection is provided that gives direct access from approximately the mid-point of the County Beach parking lot to the Central Strand Access; and 3) an inclined

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elevator/funicular providing mechanized access from the County Beach parking lot to the beach is constructed, operated and maintained for public use for the duration of the period that public vehicular access through the residential subdivision is regulated or restricted.

24. (Public Access) LUE, Goal 5, New Policy: Where an inclined elevator/funicular is provided in accordance with Land Use Element Policy [Suggested Mod 23], the facility shall be open to the public every day beginning Memorial Day weekend through Labor Day weekend, and on holidays and weekends the remainder of the year, with additional days of operation as necessary to meet demand. If necessary, a fee may be charged for use of the inclined elevator/funicular to recover costs of operation and maintenance, however, that fee (round-trip) shall not exceed the regular cash fare for a single ride on a local route upon a public bus operated by the Orange County Transportation Authority.
25. (Public Access) LUE, Goal 5, New Policy: A trail offer of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide privacy for residents and maximum safety for trail users.
26. (Public Access) LUE, Goal 5, New Policy: If as a condition of a permit an easement is required to be dedicated for public use of a trail the opening of the trail shall only be required after a public agency or private association has accepted the offer of dedication and agreed to open, operate, and maintain the trail. New offers to dedicate public trail easements shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.
27. (Public Access) LUE, Goal 5, New Policy: A uniform signage program that provides clear and conspicuous notice shall be developed and utilized to assist the public in locating and recognizing trail access points, parks, open spaces, parking areas, and other visitor recreational amenities. In areas containing sensitive habitat or safety hazards, signs shall be posted with a description of the sensitive habitat or safety hazard and limitations on entry to those areas.
28. (Visual Resources) LUE, Goal 5, New Policy: The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height for the residential development in the Strand shall be 28 feet above finished grade, and at the upper Headlands shall be 18 feet above finished grade. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the

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structure provided they do not significantly degrade public views to and along the shoreline. Finished grades shall be set such that any structure constructed to the full height limit plus any chimneys and rooftop antennas shall not significantly degrade public views to and along the shoreline. The commercial development along Pacific Coast Highway shall have a maximum allowable height of 40 feet above existing grade, 32-35 feet above finished grade. The Seaside Inn development along Street of the Green Lantern/Scenic Drive shall not exceed 42 feet above the finished building pad elevation and no finished building pad shall be higher in elevation than 220' MSL. In no case shall more than 30% of the buildable area within the 2.8 acre site exceed the height of the adjoining ridgeline. For commercial development, minor architectural projections may exceed the height limit provided they do not significantly degrade public views to and along the shoreline.

29. (Visual Resources) LUE, Goal 5, New Policy: Signs shall be designed and located to minimize impacts to visual resources. Signs approved as part of commercial development shall be incorporated into the design of the project and shall be subject to height and width limitations that ensure that signs are visually compatible with surrounding areas and protect scenic views. Roof signs, pole signs, projecting signs shall not be permitted.
30. (Public Access/Biological Resources/Visual Resources) LUE, Goal 5, New Policy: The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent prior to or with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. All approved public park, open space and public trail network improvements and amenities shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP. All approved public park and open space improvements and amenities shall be completed and the facilities open to the public for public use prior to the residential certificate of occupancy or final inspection for the first to be completed residential property.
31. (Water Quality), LUE, Goal 5, New Policy: In conjunction with the development of a luxury inn at the Headlands, the developer shall install water quality best management practices, including structural best management practices, that shall treat runoff from the development site as well as at least 17 acres of off-site developed area.
32. (Access), LUE, Goal 5, New Policy: New development of a luxury overnight visitor-serving inn within the Headlands shall only be developed in conjunction with a

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component of lower cost overnight visitor accommodations (e.g. hostel) as either part of the project or elsewhere within a visitor recreation commercial area within the Headlands. The lower-cost overnight accommodations shall consist of no less than 40 beds and shall be available for use by the general public prior to or concurrent with the opening of the inn.

33. (Access), LUE, Goal 5, New Policy: Overnight visitor serving accommodations within the Headlands shall be open to the general public. Overnight accommodations shall not be converted to exclusively private uses or private membership club. Fractional ownership of the luxury inn may be authorized except that during the peak season (Memorial Day weekend to Labor Day weekend) the reservation of rooms/suites by fractional owners shall be limited to no more than 50 percent of the total rooms/suites approved for the luxury inn.
34. (Biology/Access) Modify LUE, Figure LU-4 Land Use Policy Diagram to reconfigure bowl area residential to avoid ESHA (except for 6.5 acres of allowable impact area) and incorporate avoided area into open space; eliminate/relocate visitor buildings and parking within Harbor Point Park to avoid ESHA
35. Modify LUE, Table LU-4, Table LU-5, Table LU-6, and Table LU-6a and revise narrative in the 'Land Use Plan' to reflect suggested modifications
36. (Biology/Access) Modify Narrative in LUE, Land Use Plan...Overlooking Dana Point Harbor and the Pacific Ocean, Harbor Point Park will provide the opportunity for establishing dramatic views, limited public recreation, a nature interpretive center and public parking, visitor amenities, and conservation of native vegetation and coastal bluffs. Strand Vista Park, which overlooks Strand Beach, will create and link several coastal access ways and provide visitor amenity and public recreation opportunities. Strand Beach Park will be dedicated to a public agency and will provide coastal recreational opportunities.
- A maximum of ~~five~~four visitor-serving, recreational facilities consisting of a Nature Interpretive Center, Visitor Information Center, and new restrooms (2) will be integrated into the parks and open space to attract and serve local and statewide visitors to the Headlands coastline. The visitor-serving recreational facilities shall be built by the developer, open to the public, and no less than ~~four~~two shall include educational programs relating to...
37. (Biology/Access) Modify LUE, Figure LU-6, Headlands Land Use Policy Diagram to reconfigure residential in upper headlands to avoid ESHA (except for 6.5 acres of allowable impact area) and incorporate avoided area into open space; eliminate/relocate visitor buildings and parking to avoid ESHA; show public accessway seaward of Strand residential/on top of or landward of the shoreline protective device; add reference to 'Strand Beach Park'; add other identifiers including 'bowl'; bowl rim/ridgeline.

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38. (Biology/Views) Modify narrative in the UDE, Urban Design Plan, Dana Point Headlands and Bluffs, as follows: The following Urban Design policies and concepts will guide the development of the Headlands and shall be used as a standard of review for Local Coastal Program purposes:

[no intervening changes]

- Require setbacks of buildings and site improvements from the bluff faces, as set forth in the policies of the General Plan/Local Coastal Program Land Use Plan and the Specific Plan or PDD, which will ensure public and structural safety, consistent with detailed and site specific geotechnical report recommendations.

39. (Hazards/Access) Modify narrative in UDE, Urban Design Plan, The Beaches, as follows:

[no intervening changes]

- On the Headlands, the following urban design policies will guide development of the area adjacent to Strand Beach and will serve as the standard of review for review of any application for a coastal development permit for development proposed in the area:...

[no intervening changes]

There is an existing revetment on Strand Beach. In order to re-develop the Strand area with residential uses and public parks and amenities the new development will be subject to the analysis of a registered geotechnical engineer and a registered marine/coastal engineer to incorporate design measures that further stabilize the site to ensure public safety. If a permit is approved authorizing the repair and maintenance of the existing revetment or the building of any other sort of protective device to support the Strand development, it shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE). The Keith Companies dated January 8, 2004), such that, the average position of the revetment is moved 5 feet landward or easterly. Any shoreline protective device. Such reconstruction must incorporate a linear coastal access path along the top or landward of the reconstructed revetment shoreline protective device not encroach seaward of the toe of the existing revetment at bedrock, unless improvements are necessary to create or enhance new public access and/or public safety.

To compliment the surrounding urban residential character, the Strand area shall limit development to residential land uses.

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Development of the old Mobile Home Park above Strand Beach according to a Specific Plan or PDD for the Headlands shall accommodate two Strand Beach vertical public beach access paths (one of which will branch off to provide a connection to the mid-point of the County Strand Beach parking lot), a linear park adjacent to the County Strand Beach parking lot, a lateral public accessway between the residential development and shoreline protective device, terraced landscaped slopes, a public funicular (if public vehicle access into the Strand residential area is restricted), and residential lots.

40. (Biology/Access/Views) Modify UDE, Figure UD-2 to reconcile differences between Figure UD-2 and Figure COS-4 and Figure COS-5 relative to scenic overlooks; modify footprint of development in 'bowl' area to reduce ESHA impacts to 6.5 acres.

41. (Biology/Access/Visual Resources) Modify narrative in UDE, Urban Design Plan, The Headlands, as follows:

- Create safe coastal view opportunities such as the Strand Vista Park adjacent to the County Strand Beach parking lot, and a lateral public accessway with picnic tables and benches, near beach level, seaward of the Strand residential development and on top or landward of any shoreline protective device.

[no intervening changes]

- Drought tolerant and native ~~or naturalized~~ non-invasive species should shall be utilized within public open spaces, commercial areas and the edges of private development adjoining natural open space areas. Landscaping of the Seaside inn site may utilize non-native species provided those species are drought tolerant and non-invasive.

- Design all public beach accessways and surrounding development in a manner that conspicuously invites and encourages maximum public use of the accessways, beach and other public facilities.

42. (Biology) Modify narrative in COSE, Related Plans and Programs, California Fish and Game Regulations, as follows:

~~As identified in Section 30401 and 30411 of the Public Resources Code, the California Department of Fish and Game is the principal state agency responsible for the establishment and control of wildlife management programs.~~

43. (Coastal Resources/Biology) Modify narrative in COSE, Related Plans and Programs, California Coastal Act, as follows:

The 1976 California Coastal Act is intended to protect the natural and scenic qualities of the California coast. Three Elements of the City's General Plan (the Land Use, Urban Design, and Conservation Open Space Elements), Zoning Ordinance and other

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implementing action will comprise the City's Local Coastal Program. The goals and policies of the Conservation/Open Space ~~Plan~~Element implement many of the objectives and requirements of the California Coastal Act and, in conjunction with the Land Use Element and Urban Design Element, serve as the Land Use Plan component of the Local Coastal Program for the areas of Monarch Beach, Capistrano Beach, Doheny Village, and Headlands portions of the City that are located in the coastal zone. Among other requirements, the Coastal Act encourages the protection and enhancement of public coastal access, the protection and enhancement of visual resources, and requires the identification of sensitive biological habitat meeting specified criteria, known as 'Environmentally Sensitive Habitat Areas' and the protection of those habitat areas from significant disruption by development.

44. (Water Quality) COSE, Goal 1, following Policy 1.8, add following narrative:
The Headlands Water Quality Program

Although portions of the Headlands have been previously developed, specifically the mobile home park in the Strand area, the greenhouses and related improvements in the Upper Headlands and several public streets, the storm water conveyance systems that are currently in place are in a state of disrepair. Moreover, no water quality Best Management Practices ("BMPs") in the form of structural devices are in place to prevent or mitigate water quality impacts to the Pacific Ocean or Dana Point Harbor. In addition, existing urban development adjoining and within the same drainage basin as the Headlands are not currently served by such BMPs.

The City of Dana Point recognizes impacts can occur to coastal waters from both storm water runoff and "nuisance" runoff from urban areas. Therefore, it is of utmost importance that any Headlands project be designed to incorporate effective Site Design, Source Control and Treatment Control BMPs to minimize the potential for water quality impacts to the adjoining marine environment and to Dana Point Harbor.

In addition to the prior policies, the following policies shall guide future development/redevelopment of the Headlands:

45. (Water Quality) COSE, Goal 1, New Policy (WQ2): All development shall meet the requirements of the California Regional Water Quality Control Board San Diego Region's Waste Discharge Requirements for discharges of urban runoff from Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region or subsequent versions of this plan.
46. (Water Quality) COSE, Goal 1, New Policy (WQ3): Concurrent with the submittal of a tentative tract map and/or master coastal development permit application, a post-development drainage and runoff control plan shall be prepared that incorporates a combination of structural and non-structural Best Management Practices ("BMPs") best suited to reduce pollutant loading in runoff from the area proposed for development to the maximum extent feasible. BMPs shall include Site Design, Source Control, and Treatment Control BMPs. In addition, schedules for the required

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routine maintenance for each of the structural BMPs and the responsible party for the maintenance shall be identified.

47. (Water Quality) COSE, Goal 1, New Policy (WQ4): Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (multiplied by an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.
48. (Water Quality) COSE, Goal 1, New Policy (WQ5): Development that requires a grading/erosion control plan shall include a plan and schedule for landscaping and re-vegetation of graded or disturbed areas. If the grading occurs during the rainy season, the plan will include BMPs to minimize or avoid the loss of sediment from the site.
49. (Water Quality) COSE, Goal 1, New Policy (WQ6): The City, property owners, or homeowners associations, as applicable, shall vacuum sweep public and private streets, and parking lots frequently to remove debris and contaminant residue.
50. (Water Quality) COSE, Goal 1, New Policy (WQ7): The City, property owners, or homeowners associations, as applicable, shall be required to maintain any structural BMP device to ensure it functions as designed and intended. Owners of these devices shall be responsible for ensuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, shall be required to be carried out prior to the next rainy season.
51. (Water Quality), COSE, Goal 1, New Policy (WQ8): Commercial development shall incorporate BMPs designed to minimize or avoid the runoff of pollutants from structures, landscaping, parking and loading areas.
52. (Water Quality), COSE, Goal 1, New Policy (WQ9): Restaurants shall incorporate BMPs designed to minimize runoff of oil and grease, solvents, phosphates, suspended solids, and other pollutants to the storm drain system.
53. (Water Quality), COSE, Goal 1, New Policy (WQ10): Storm drain stenciling and signage shall be provided for new stormdrain construction in order to discourage dumping into drains.
54. (Water Quality/Hazards), COSE, Goal 1, New Policy (WQ11): Utilize efficient irrigation practices to minimize the potential for nuisance water runoff.
55. (Water Quality) COSE, Goal 1, New Policy (WQ12): Divert low-flow "nuisance" run-off to the sanitary sewer system for treatment, thereby avoiding dry weather flows to the beach or Harbor.

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56. (Water Quality) COSE, Goal 1, New Policy (WQ13): Reduce impervious surfaces through design of narrower than standard streets; shorten streets where feasible; and on single loaded streets, eliminate sidewalks on one side.
57. (Water Quality) COSE, Goal 1, New Policy (WQ14): Develop a public awareness program concerning water quality for future homeowners, property managers, and visitors to the public open space. The program will emphasize the proper use of irrigation, fertilizers and pesticides by homeowners and landscape contractors.
58. (Hazards) COSE, Goal 2, Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from 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. ~~For the Headlands, minimization of risk to life and property and preservation of the natural environment is met by a requirement that new development be sited and clustered into areas determined by geological feasibility studies to be suitable, such as by remediation of unstable slopes impacted by such new development.~~ (Coastal Act/30233, 30253)
59. (Hazards) COSE, Goal 2, Policy 2.14: Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. ~~For the Headlands, the potential for coastal slope erosion shall be minimized and public safety and coastal access protected by reconstruction of the existing revetment. Such reconstruction must not encroach seaward of the toe of the existing revetment at bedrock unless improvements are necessary to create or enhance new public access and/or public safety.~~ (Coastal Act/30210-12, 30235)
60. (Water Quality) COSE, Goal 2, Policy 2.20: The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/ 30231).
61. (Hazards) COSE, Goal 2, add introductory text after Policy 2.20: In addition to the above policies, the following policies apply to new development at the Headlands:

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62. (Hazards/Access) COSE, Goal 2, New Policy (HAZARDS1): Notwithstanding Conservation Open Space Element Policy [Suggested Modification 69], and in the context of any specific project application that provides all of the HDGP Elements, creation of a residential subdivision of up to 75 homes with associated infrastructure development and public access amenities all dependent upon geologic remediation and the existing shoreline protective device (including such upgrades as are permitted in Conservation Open Space Element Policies [Suggested Modifications 63 and 64]) shall be permitted in the Strand area provided it is consistent with all other applicable policies. Furthermore, in conjunction with any shoreline protective device, a lateral public accessway following the entire length of the protected area shall be constructed seaward of any new residential development and on top of or landward of any shoreline protective device. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources including local shoreline sand supply. (Coastal Act/30007.5, 30200(b), 30210, 30240, 30250, 30253)
63. (Hazards/Access) COSE, Goal 2, New Policy: In the context of any specific project application that provides all of the HDGP Elements, and only in conjunction with a proposal that completes the plan as a whole, the revetment in the Strand may be repaired and maintained consistent with Conservation Open Space Element Policy [Suggested Modification 64] and subject to the requirements of Conservation Open Space Element Policy [Suggested Modification 72] in order to protect new development in the Strand provided that the repaired and maintained revetment is set further landward than the existing alignment. The revetment shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the revetment is moved 5 feet landward or easterly. All components of the existing revetment located seaward of the above identified toe shall be removed from the beach and recycled into the new revetment or properly disposed at an approved disposal site. The top edge of the revetment shall not exceed the top edge of the existing revetment located at +17 feet NGVD. The methods by which the repair and maintenance would be conducted shall remain reviewable for consistency with all applicable policies.
64. (Hazards) COSE, Goal 2, New Policy: The establishment of a revetment of the same height and footprint size as the southerly 2,240 feet of the existing revetment, along Strand Beach, through the repositioning of rocks that were once part of the existing revetment, and are still in the vicinity thereof, and the importation of up to 50 percent new rock by volume, including excavation and new bedding material and foundation shall constitute repair and maintenance of the existing revetment. In part, for that reason, such work would not constitute "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs."
65. (Hazards) COSE, Goal 2, New Policy: Where development in the Strand area occurs on active or ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where a minimum factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition.

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66. (Hazards) COSE, Goal 2, New Policy: All applications for new development on a beach, beachfront, bluff or bluff top property in the Headlands area shall include a shoreline and bluff erosion report and analysis prepared by a licensed geologist, geotechnical or civil engineer with expertise in coastal processes, that examines the stability of the site and the proposed development for the anticipated life of the development. If a comprehensive shoreline protection and stabilization plan is implemented in the Strand area pursuant to Conservation Open Space Element Policy [Suggested Mod 62], subsequent applications for development on individual residential lots protected by the comprehensive protection and stabilization shall not be required to individually analyze stability hazards provided the comprehensive protection and stabilization is deemed to adequately address those hazards.
67. (Hazards) COSE, Goal 2, New Policy: All applications for new development on a beach or beachfront property in the Headlands area shall include a wave uprush and inundation report and analyses prepared by a licensed civil engineer with expertise in coastal engineering, that examines the stability of the site and the proposed development for the anticipated life of the development. If a comprehensive shoreline protection plan is implemented in the Strand area pursuant to Conservation Open Space Element Policy [Suggested Mod 62], subsequent applications for development on individual residential lots protected by the comprehensive protection shall not be required to individually analyze wave inundation, flood or stability hazards provided the comprehensive protection is deemed to adequately address those hazards.
68. (Hazards) COSE, Goal 2, New Policy: Siting and design of new shoreline development anywhere within the Headlands and the siting and design of the shoreline protective device in the Strand shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 75 year economic life of the structure.
69. (Hazards) COSE, Goal 2, New Policy: All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline and/or bluff protection structure at any time during the life of the development, except as allowed under Conservation Open Space Element Policy [Suggested Mod 62].
70. (Hazards) COSE, Goal 2, New Policy: Except as allowed under Conservation Open Space Element Policy [Suggested Mod 62] no shoreline protection structure shall be permitted for the sole purpose of protecting an accessory structure. Any such accessory structure shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush and that a shoreline protection structure is necessary to protect it or if the adjacent bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures, including, but are not limited to, trails, overlooks, benches, signs, stairs, landscaping features, and similar design elements shall be constructed and designed

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to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.

71. (Hazards) COSE, Goal 2, New Policy: As a condition of approval of a coastal development permit for development on a bluff, beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other coastal or geologic hazards associated with development on a beach, shoreline or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.
72. (Hazards) COSE, Goal 2, New Policy: As a condition of approval of a shoreline protection structure in the Strand, or repairs or additions to a shoreline protection structure in the Strand, either of which can only occur consistent with the other provisions of this LCP, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235 and/or equivalent LCP policies.
73. (Biological Resources) COSE, Introduction to Goal 3: ... The existing development and urbanization of Dana Point has nearly eliminated sizable expanses of undisturbed native vegetation. The remaining vegetation includes smaller areas ~~isolated pockets~~ of chaparral and coastal sage scrub...
74. (Biological Resources) COSE, Goal 3, Policy 3.1: Environmentally sensitive habitat areas (ESHAs) are any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments, and include, but are not limited to, ~~ing~~ important plant communities, wildlife habitats, marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1. ESHAs shall be preserved, except as provided in Conservation Open Space Element Policy [Suggested Mod 78]. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts ~~which that~~ would significantly degrade those areas ~~through such methods as, the practice of creative site planning, revegetation, and open space easement/dedications,~~ and such development shall be compatible with the continuance of those habitat areas. Among the methods to be used to accomplish the siting and design of development to prevent ESHA impacts are the practice of creative site planning, revegetation, and open space easement/dedications. A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. For the Headlands, the extent of environmentally sensitive habitat area presently known to the City is generally depicted on Figure COS-1, and the land use area boundaries at the Headlands recognize the presence of the habitat. The

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precise boundary of the sensitive habitat at the Headlands shall be determined through the coastal development permitting process, including but not limited to those provisions outlined in Land Use Element Policy [Suggested Mod 17]. ~~the determination of native habitats will be based on the findings of the NCCP/HCP and compliance with CEQA.~~ (Coastal Act/30230, 30240)

75. (Biological Resources) COSE, Goal 3, Policy 3.7: Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas, except as provided in Conservation Open Space Element Policy [Suggested Mod 78]. Development in areas adjacent to ESHA shall incorporate buffering design elements, such as fencing, walls, barrier plantings and transitional vegetation around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Variances or modifications to sensitive resource protection standards shall not be granted. For the Headlands, a combination of on-site preservation and compliance with the requirements of the NCCP/HCP shall fulfill ESHA requirements. (Coastal Act/30240)
76. (Biological Resources) COSE, Goal 3, add introductory narrative after Policy 3.10: In addition to the policies above, the following policies shall guide future development/redevelopment of the Headlands:
77. (Biological Resources) COSE Goal 3, New Policy: Except as authorized under Conservation Open Space Element Policy [Suggested Mod 78], uses within ESHA within the Headlands area, which includes but may not be limited to the approximately 50 acres of land on Dana Point, the Harbor Point promontory, the Hilltop Park and greenbelt and is generally depicted on Figure COS-1, shall be limited to habitat enhancement and maintenance; passive public recreational facilities such as trails, benches, and associated safety fencing and interpretive/directional signage provided those uses do not significantly disrupt habitat values. Fuel modification to serve adjacent development shall be prohibited within ESHA.
78. (Biological Resources) COSE Goal 3, New Policy: In the context of any specific project application that provides all of the HDCE Elements, and only in conjunction with a requirement that the plan be completed as a whole, a maximum of 6.5 acres of ESHA may be displaced along the slopes of the bowl to accommodate development within the bowl, and a maximum of 0.75 acres of ESHA located on the Strand bluff face at the southerly boundary of the Strand may be displaced to accommodate development within the Strand. The amount of ESHA permitted to be displaced may be increased as necessary to accommodate construction of a 65-90 room inn, scaled appropriately to the property, within Planning Area 9 provided that lower-cost visitor overnight accommodations are provided consistent with Land Use Element Policy [Suggested Mod 32]. The maximum impacts to ESHA identified in this policy do not pertain to or limit vegetation removal necessary to construct and maintain public trails as identified on Figure COS-4.
79. (Biological Resources) COSE Goal 3, New Policy: Fencing or walls shall be prohibited within ESHA except where necessary for public safety or habitat protection

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or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor. If new development engenders the need for fencing or walls to protect adjacent ESHA, the fencing or walls shall be located within the development footprint rather than within the ESHA.

80. (Biological Resources) COSE Goal 3, New Policy: Exterior night lighting shall be shielded and directed so that light is directed toward the ground and away from sensitive biological habitat.
81. (Biological Resources) COSE Goal 3, New Policy: All new development that degrades or eliminates ESHA, as specifically allowed under Conservation Open Space Element Policy [Suggested Mod 78], shall only be allowed in conjunction with a requirement for mitigation for those impacts such that the net impact of both the development and the mitigation results in no net loss of ESHA within the coastal zone. The mitigation ratio shall be a minimum of 3:1 (substantial restoration/creation:impact) of which there shall be a minimum 1:1 substantial restoration/creation to impact ratio, preferably on-site or within the coastal zone.
82. (Biological Resources/Hazards/Water Quality) COSE Goal 3, New Policy: Except for landscaping on private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point, all landscaping (including temporary erosion control and final landscaping) for all development within the Headlands shall be of plants native to coastal Orange County and appropriate to the natural habitat type. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources at the Headlands. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the Headlands, including within private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. Drought tolerant plant species shall be used and native plant species are encouraged within the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point.
83. (Biological Resources) COSE Goal 3, New Policy: To protect ESHA and minimize adverse visual impacts new structures shall be prohibited on bluff faces excepting repair, re-construction or improvements to existing, formal public trails or stairways identified in this LCP and the new residential development and new public accessways specifically contemplated by this LCP in the Strand, and in that case only in the context of a project application that provides all of the HDCEP Elements, and only in conjunction with a requirement that the plan be completed as a whole. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

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84. (Biological Resources) COSE, Goal 6, add introductory narrative after Policy 6.8: In addition to the policies above, the following policies shall guide future development/redevelopment of the Headlands:
85. (Biological Resources/Access) COSE Goal 6, New Policy: As contemplated in the Headlands Development and Conservation Plan, the Headlands area shall be developed as a unified project, with one exception provided at the end of this policy. The first application for land division within the Headlands seeking development pursuant to the Headlands Development and Conservation Plan shall encompass the entire approximately 121 acre Headlands area and shall include a proposal to cause the expungement of any preceding land division within said area, the dedication of all land therein containing ESHA excepting those areas identified in Conservation Open Space Element Policy [Suggested Mod 78] in such a manner as to ensure that the property is conserved in perpetuity as open space, and the dedication of all parks, beaches and accessways identified in this LCP at the Headlands to the City, County or other willing public agency or non-profit entity in such a manner as to ensure their use in perpetuity for public purposes. The one exception to this requirement shall be that, prior to the wholesale re-division of the 121-acre Headlands area, the landowner may apply for, and the City may approve, any lot merger, lot line adjustment, or other land division necessary to enable the landowner to separate out and transfer approximately 27 acres of land on the Headlands promontory, provided that any such approval is conditioned on the requirement that the area so separated is irrevocably deed restricted as conserved open space in conjunction with the land division and is thereafter dedicated in a manner that ensures that it is conserved in perpetuity as conserved open space, in which case the requirement in the preceding sentence shall apply only to the remainder area of the Headlands.
86. (Biological Resources) COSE Goal 6, New Policy: Any specific project application that invokes the exceptions identified in Conservation Open Space Element Policies [Suggested Mod 62 and 78] shall only be approved in connection with a requirement that all preserved ESHA and all mitigation areas, onsite and offsite, shall be secured through the dedication of a conservation easement to the City, Coastal Conservancy or the wildlife agencies. In addition, a preserve management plan shall be prepared for the preservation and mitigation areas, to the satisfaction of the City, the wildlife agencies, and the Executive Director of the Coastal Commission. The preserve management plan shall ensure adequate funding to protect the preserve as open space and to maintain the biological values of the preservation and mitigation areas in perpetuity. Management provisions and funding shall be in place prior to any impacts to habitat. At a minimum, monitoring reports shall be required as a condition of development approval for at least 5 years after habitat mitigation efforts.
87. (Biological Resources), COSE Goal 6, New Policy: The funding required under Conservation Open Space Element Policy [Suggested Mod 86] shall at minimum consist of 1) A non-wasting endowment sufficient to maintain the biological values of the open space areas within the Headlands that will not be owned by the City or other public agency; and 2) \$2 million paid by the developer to the City, all of which shall be used to establish a non-wasting endowment sufficient to maintain the biological values of the open space areas within the Headlands that will be owned

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and/or maintained by the City. The amount of the endowments shall be identified and documented by a public agency or non-profit entity (e.g. Center for Natural Lands Management) experienced in the estimation of costs for open space management.

88. (Biological Resources) COSE, The Conservation Plan, The Headlands, modify narrative as follows:

The NCCP/HCP provides for the conservation of certain sub-regionally significant natural resources and multi-species habitat preserve areas.

[no intervening changes]

The Headlands Conservation Park shall be a conservation area and generally include the land on either side seaward of existing Marguerita Road (to be removed and the area restored) lying between the two existing residential enclaves. This area includes the most important biotic resources, the adjacent coastal bluffs, the rocky beach, and the entire Pacific pocket mouse reserve identified in the NCCP/HCP. The Headlands Conservation Park shall provide limited public access to the bluff top via a perimeter bluff top trail. A greenbelt buffer will be provided between the Headlands Conservation Park and the proposed residential development on the Upper Headlands. The greenbelt buffer will provide additional habitat conservation ~~accommodate recreational opportunities~~ outside of the conservation area. Public parking and any other facilities also must be located outside of the Headlands Conservation Park conservation area and all other lands containing environmentally sensitive habitat area, except as allowed under Conservation Open Space Element Policy [Suggested Mod 78].

89. (Biological Resources) COSE, Figure COS-1: Modify figure to identify all ESHA identified in Exhibit 15a of the January 2004 Staff Recommendation.

90. (Biological Resources/Access) Table COS-4, Parks And Recreational Facilities, update figures/acreages in this table to reflect suggested modification reconfigure bowl area residential to avoid ESHA (except for 6.5 acres of allowable impact area) and incorporate avoided area into planning area 5; eliminate/relocate visitor buildings and parking to avoid ESHA; show public accessway seaward of Strand residential/on top or landward of shoreline protective device, as well as following specific changes:

SITE	NET NEW ACREAGE	LOCATION	PROPOSED FEATURES
Headlands Conservation Park—Conservation Open Space	<u>24.227.9</u> acres	The Dana "Point" promontory area. Approximately <u>seaward Falls on either side</u> of existing Marguerita Road.	Preservation and conservation of native species, coastal bluffs and rocky beaches. Public safety fencing and security for biotic resources. Limited public access, signage, bluff top trails and lookouts.
Strand Vista Park—Recreational Open Space	9.9 acres	Seaward of the County Strand Beach	Linear park with <u>unobstructed</u> scenic overlooks <u>to and along the ocean per</u>

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<ul style="list-style-type: none"> North Strand Beach Access <u>Mid-Strand Vista Park Access</u> South Strand Beach Access 	<p><u>[modify acreage to incorporate space for funicular]</u></p>	<p>parking lot.</p> <p>Existing stairway from the County Strand Beach parking lot to the beach at the north boundary.</p> <p><u>Runs from approximately the middle of Strand Vista Park to a connection with the Central Strand Beach Access at the intersection of the first cul-de-sac street.</u></p> <p>Between County Strand Beach parking lot and the existing residential enclave to the south.</p>	<p><u>Figure COS-5a</u>, public trails, seating, landscape and hardscape features. Includes the North <u>Mid-Strand Vista Park Access</u> and South Strand Beach Access.</p> <p>Reconstruct access to provide overlooks, resting points, landscape features. <u>Restrooms/showers above the beach. Funicular to provide mechanized beach access assistance.</u></p> <p>Meandering trail to beach, overlooks, public safety fencing, emergency access to beach. <u>Restrooms/showers above the beach.</u></p>
<p>Strand Beach Park Recreational Open Space</p> <ul style="list-style-type: none"> Central Strand Beach Access 	<p>5.2 acres</p> <p><u>[modify acreage to incorporate additional walkway seaward of the Strand residential]</u></p>	<p>From the Strand residential development seaward to the mean high tide.</p>	<p>Wide, sandy beach; pedestrian access to the County Strand Beach parking lot. <u>Public walkway with picnic tables and benches seaward of the Strand residential development and on top or landward of the shoreline protective device to provide all-weather lateral beach access, unobstructed views to and along the ocean, and recreational opportunities.</u></p> <p><u>Unobstructed public pedestrian and bicycle access</u> through the Strand residential development to the Central Strand Beach access point.</p>
<p>Harbor Point Park—Recreational Open Space</p>	<p>4.3 acres</p>	<p>Seaward of Cove Road and <u>realigned Scenic Drive</u>, not including adjacent coastal bluffs.</p>	<p>Visitor Recreational Facilities, historic and cultural elements, monuments, eOverlooks, public trails, <u>benches, signage, preservation and conservation of native species</u>biotic gardens, seating, landscape and hardscape features.</p>
<p>Harbor Point Park—Conservation Open Space</p>	<p>6.1 acres</p>	<p>From the top of bluff to the mean high tide, including the coastal</p>	<p>Preservation of coastal bluffs and rocky beaches; no improvements</p>

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		bluffs and rocky beaches.	except those required for public safety, signage or erosion control.
Hilltop Park—Recreational Open Space Greenbelt Buffers	12.3 acres <u>[modify acreage to incorporate additional preserved open space.]</u>	Highest point of the property, westerly of PCH and Green Lantern. Buffers to residential and commercial uses, adjoins Headlands Conservation Park on the south, connections to Hilltop Park, South Strand Beach access, Harbor Point Park, and Strand Vista Park.	Public trails, overlooks, signage, seating, <u>native habitat conservation and enhancement.</u> Public trails, open space parking <u>(outside of designated ESHA)</u> , visitor recreational facilities <u>(outside of designated ESHA)</u> , seating, signage, fuel modification, landscape features, security fencing, public roads necessary to access open space areas <u>(outside of designated ESHA)</u> , <u>native habitat conservation and enhancement.</u>

91. (Biological Resources/Views/Access) COSE, The Open Space Plan, modify Figures COS-4 Open Space Walkway/Bike Trail Opportunities and Figure COS-5 Scenic Overlooks from Public Lands: Reconcile differences between figure COS-4 and Figure COS-5 relative to overlooks/views; modify footprint of development in 'bowl' area to reduce ESHA impacts to 6.5 acres; modify trail alignments adjacent to and through ESHA consistent with alignments depicted on Exhibit 26b of the January 2004 Staff Recommendation.
92. (Biological Resources) COSE, Figure COS-6 Open Space Plan: Modify this figure to reconfigure bowl area residential to avoid ESHA (except for 6.5 acres of allowable impact area) and incorporate avoided area into open space; eliminate/relocate visitor buildings and parking to avoid ESHA and identify area as open space

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B. SUGGESTED MODIFICATIONS TO IMPLEMENTATION PROGRAM:

93. Modification suggested by staff but rejected by Commission

94. (Coastal Resources) Global Change, Sections 3.0 and 4.0: Clarify everywhere it is applicable that the standard of review for coastal development permits processed by the City is the certified local coastal program which consists of the Coastal Land Use Plan and the Implementation Plan. For the Headlands, the Coastal Land Use Plan is comprised of the Land Use Element, Urban Design Element, and Conservation Open Space Element of the City's General Plan; while the Implementation Plan is comprised of the City's Zoning Code and Section 3.0 (Headlands Planned Development District) and Section 4.0 (Development Guidelines) of the Headlands Development and Conservation Plan.

For example, modify Section 3.1, PDD: The City's Zoning Code primarily implements the General Plan. In accordance with State law, it provides permitted land uses, development standards, and implementation programs for the City. The property is zoned Planned Development District (PDD-1). The PDD zoning provides for the orderly systematic implementation of the General Plan. The HDCP complies with and augments the City's Zoning Code. The development standards in the Section 3.0 and 4.0 of the HDCP are the required zoning standards for the property. ~~The HDCP is a regulatory document and, as it relates to the property, constitutes the City's General Plan, Zoning Code, and in conjunction with the Zoning Code,~~ serve as the Implementing Actions Program for the Local Coastal Program.

95. (Biology/Access) Global Change, Sections 3.0 and 4.0: eliminate all references to the visitor facilities at Harbor Point and Hilltop/Greenbelt parks that result in impacts to ESHA, such as the Maritime Historical Visitor Center (lighthouse), cultural arts center and veterans memorial.

96. Section 3.1.B.1, PDD, Conflicts: If there is a conflict between this PDD and the Municipal Code, ~~or~~ Zoning Code, or Implementing Actions Program of the Local Coastal Program the provisions of the PDD shall prevail. If there is a conflict between this PDD and the Land Use Plan policies of the Local Coastal Program, the Land Use Plan policies of the Local Coastal Program shall prevail.

97. (Biology/Access/Views) Section 3.2.D., Variances, PDD: Applications for a variance to the development standards of these regulations shall be processed in accordance with the City Zoning Code. Variances from 1) the minimum number of parking stalls (excepting residential uses), 2) bluff edge setbacks, 3) requirements relative to protecting Environmentally Sensitive Habitat Area (ESHA) including required setbacks, and 4) height restrictions necessary to protect public views, shall not be granted.

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98. (Biology/Access) Section 3.2.E., Planning Area Boundaries, PDD: The boundary alignments shown on the Planning Area Plan in Section 4.0 and referenced in this Section 3.0 are based on topography, known landmarks, acreage figures, and existing structures and roadways. The precise boundaries of each Planning Area shall be determined at tentative tract map submittal. The tentative tract map shall not deviate from the boundaries shown in the Land Use Plan by more than 5% from the amounts shown in Table 3.2, Land Use Plan Statistical Summary and shall be consistent with the Local Coastal Program Land Use Plan. The Director of Community Development may approve adjustments up to 5% of the gross acreage of any Planning Area provided the maximum acreage established for the total public open space is not diminished, the quantity or alignment of public accessways as depicted in the General Plan/Local Coastal Program Land Use Plan is not changed, and no impacts to ESHA occur beyond those specifically allowed under the General Plan/Local Coastal Program Land Use Plan. Any proposed change in excess of 5% of the gross acreage of any Planning Area shall require an amendment to the HDCP. Boundary alignments approved in a coastal development permit may only be changed through a coastal development permit amendment.
99. (Views) Section 3.2.F., Submittal Materials, PDD: Except as provided below, the Developer shall follow standardized City submittal requirements for all applicable discretionary permit applications unless such materials were previously submitted and approved by the City in a prior application. ~~Except for site specific coastal development and site development permits for Planning Areas 4 and 9 (Visitor/Recreation Commercial),~~ Submittals for future project wide discretionary actions (i.e., Coastal Development Permit, Site Development Permit, Tentative Map, etc.) related to development involving solely land division and/or demolition and/or grading shall not be required to conform to Section 9.61.040(e)(2)(F) and 9.61.040(e)(2)(G), regarding elevations and floor plans. In addition, the following submittal requirements shall be required:
100. (Views) Section 3.2.F.2, PDD: A view analysis exhibit which illustrates that coastal views from public viewing areas and public walkways shall be established, maintained and protected in accordance with the policies and standards in the Land Use, Urban Design, and Conservation Open Space Elements of the City's General Plan/Local Coastal Program and Section 4.0, Development Guidelines.
101. (Hazards/Biology/Access/Cultural Resources) Section 3.2.F, Submittal Materials, PDD, add new Sections 3-7:
3. All applications for new development on a beach, beachfront, bluff or bluff top property in the Headlands area shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development, over the

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development's anticipated economic life (no less than 75 years), in relation to the following:

- The profile of the beach;
- Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
- The area of the project site subject to design wave uprush;
- Foundation design requirements;
- The long term effects of proposed development on sand supply;
- Future projections in sea level rise;
- Project alternatives designed to avoid or minimize impacts to public access.

4. All applications for a coastal development permit for new development in the vicinity of a coastal bluff shall supply all of the information identified in Zoning Code Sections 9.27 and 9.69 except that any hazards analyses shall analyze hazards over the development's anticipated economic life but no less than a period of 75 years. Furthermore, the analyses shall demonstrate a minimum factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition. Seismic analyses may be performed by the pseudostatic method, but in any case shall demonstrate a permanent displacement of less than 50 mm.

5. Applications for new beachfront, bluff or bluff-top development, shall include a site map that shows all easements, deed restrictions, or OTD's and/or other dedications for public access or open space and provides documentation for said easements or dedications. The approved development shall be located outside of and consistent with the provisions of such easement or offers.

6. Applications for new development on property that is 1) within identified ESHA; 2) adjacent to identified ESHA (where the proposed development area is within 200 feet of identified ESHA); or 3) where an initial site inventory indicates the presence or potential for sensitive species or habitat, shall include an inventory of the plant and animal species present on the project site, or those known or expected to be present on the project site at other times of the year, prepared by a qualified biologist, or resource expert. The inventory shall include an identification of any species present that have been designated as rare, threatened, or endangered species under State or Federal law. Where the site is within or adjacent to an identified ESHA or where the initial site inventory indicates the presence or potential for sensitive species or habitat on the project site, the submittal of a detailed biological study of the site is required. The detailed biological study of the site, prepared by a qualified biologist, or resource expert, shall include the following:

- A study identifying biological resources, both existing on the site and potential or expected resources.
- Photographs of the site.

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- A discussion of the physical characteristics of the site, including, but not limited to, topography, soil types, microclimate, and migration corridors.
- A map depicting the location of biological resources.
- An identification of rare, threatened, or endangered species, that are designated or are candidates for listing under State or Federal Law, an identification of "fully protected" species and/or "species of special concern", and an identification of any other species for which there is compelling evidence of rarity, for example, plants designated "1B" or "2" by the California Native Plant Society, that are present or expected on the project site.
- An analysis of the potential impacts of the proposed development on the identified habitat or species.
- An analysis of any unauthorized development, including grading or vegetation removal that may have contributed to the degradation or elimination of habitat area or species that would otherwise be present on the site in a healthy condition.
- Project alternatives designed to avoid and minimize impacts to sensitive resources.
- Mitigation measures that would minimize or mitigate residual impacts that cannot be avoided through project alternatives.
- An analysis of project conformance with the ESHA avoidance and buffering requirements identified in the Land Use, Urban Design, and Conservation Open Space Elements of the General Plan/Local Coastal Program and the implementation program.

Any coastal development permit application for the Headlands submitted on or prior to two years from the date of effective certification of LCP Amendment 1-03 by the Coastal Commission, shall utilize the ESHA delineation (for upland habitat purposes) identified by the California Coastal Commission in its January 2004 approval, with suggested modifications, of the HDCP. Any application submitted two years after the date of effective certification of LCP Amendment 1-03 by the Coastal Commission, shall fully conform with the requirements relative to habitat mapping identified above.

7. Applications for new development that may impact archeological/cultural resources shall identify proposed investigation and mitigation measures and a archeological/cultural resources construction phase monitoring plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. The archeological/cultural resources monitoring plan shall identify monitoring methods and shall describe the procedures for selecting archeological and Native American monitors; and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Plans shall specify that archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and Native American

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monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC) shall be utilized. Furthermore, plans shall specify that sufficient archeological and Native American monitors must be provided to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times. All plans shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area.

102. (Access) Section 3.2.N. Employee Quarters: Employee quarters shall be permitted and if provided, qualify for low-income housing credits on a per lot basis. Living quarters may be provided within the primary structure, or a detached accessory structure for the persons employed on the premises. The following conditions shall apply: (1) No Conditional Use Permit shall be required if the quarters are limited to one bedroom and one bath; (2) Rooms beyond one bedroom and bath (per employee) shall require a Conditional Use Permit from the City; (3) The quarters may contain separate kitchen or cooking facilities; (4) The quarters shall not be rented to non-employees; and (5) For any employee quarters that do not contain a separate kitchen or cooking facility, the quarters shall be treated as a bedroom for all requisite parking calculations, for all employee quarters that contain a separate kitchen or cooking facility those quarters shall be treated as a separate unit for all requisite parking calculations.

103. (Biology/Access) Figure and Table 3.3.1 Land Use Plan: Modify this figure to ; reconfigure bowl area residential to avoid ESHA (except for allowable impact area identified in the LUE/UDE/COSE) and incorporate avoided area into planning area 5; eliminate/relocate visitor buildings and parking to avoid ESHA; show public accessway seaward of strand residential/on top or landward of the shoreline protective device.

104. (Biology/Access) Section 3.3.C, Density Transfers: A maximum five percent (5%) of the total project residential units may be transferred between Planning Areas 2 and 6. A maximum five percent (5%) of an individual planning area acreage may be transferred between Planning Areas 2, 4, 6, and 9. Such transfers shall not require an amendment to the General Plan, Local Coastal Program and Policy, PDD, or Local Coastal Program Implementing Actions Plan and shall be subject to the following:

1. Any proposed increase, decrease or transfer of residential density between Planning Areas 2 and 6, or any adjustment to Planning Area acreage boundaries between Planning Areas 2, 4, 6, or 9, shall be submitted as part of a Tentative Tract Map application and coastal development permit application. Deviations from any boundary alignments and any increases, decreases or transfers of

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residential density approved in a coastal development permit may only be further modified through a coastal development permit amendment.

[no intervening changes]

4. The character or amount of total public open space within the HDCP shall not be diminished through a transfer of planning area density or acreage.
5. The transfer of acreage from Planning Areas 2 and 6 (Residential) to Planning Areas 4 and 9 (V/RC) shall revise the density as follows. Reductions due to acreage transfers that eliminate one Residential lot shall allow two additional rooms (keys) in Planning Area 9, the Seaside Inn, or, an additional 250 sq. ft. in Planning Area 4, PCH/VRC.

105. (Biology) Section 3.3.D, Public Facilities: The ~~five~~ four proposed visitor recreational facilities are outlined in Table 3.3.2, Visitor Recreational Facility Statistical Summary. All proposed facilities shall be built at maximum square footage, unless the Director of Community Development, the Planning Commission, or the City Council determines it infeasible to do so. All facilities shall conform with ESHA protection requirements.

106. (Biology/Access) Modify Table 3.3.2, Visitor Recreational Facility, Statistical Summary, as follows:

Public Facility	Planning Area	Maximum
Lighthouse	8A	2,000 sq. ft.
Cultural Arts Center	8A	2,000 sq. ft.
Nature Interpretive Center	8A	2,000 sq. ft.
Conservation Center	5	2,000 sq. ft.
Public Restrooms/Showers ¹	1	<u>2 x 500 sq. ft.</u>
<u>Visitor Information Center</u>	<u>4</u>	<u>800 sq. ft.</u>

All proposed public visitor facilities shall include public restrooms and public drinking fountains, open to the public at hours to be determined by the appropriate public agency.

¹ Public restrooms and showers shall be constructed at both the north and south ends of Planning Area 1 above Strand Beach.

107. (Biology) Section 3.4.A, Development Regulations, Residential Zoning Districts: Adjust maximum density to allow same quantity of units within the smaller development area identified in the suggested modifications.

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108. (Access) Section 3.4.A. add: 6. Public Access Restrictions in Planning Area 2 and 6

Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. If the funicular becomes inoperable for more than 3 consecutive scheduled operating days or is closed or made inoperable indefinitely or for any sustained time period for any reason, any gate, guardhouse, barrier or other development that regulates or restricts public vehicular access into Planning Area 2 shall be opened, removed or otherwise made inoperable such that public vehicular access is no longer regulated or restricted for the duration of the period the funicular is unavailable for public use. Signs shall be posted at the entrance to Planning Area 2 declaring the terms leading to the availability of public vehicular access through Planning Area 2. During the periods that Planning Area 2 is required to be open to public vehicular access, signs shall be posted at the entrance to Planning Area 2, and at other locations as reasonably necessary for public notification, that declare the availability of public vehicular access.

109. (Access) Table 3.4.1, Allowable Uses For Planning Areas 2 and 6: Add following notation to 'Security Structures', Gates, guardhouses, barriers or other development designed to regulate or restrict public access shall only be allowed in conjunction with a public funicular in Planning Area 1 providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted.

110. (Views) Table 3.4.2: Adjust density and minimum lot size and width to allow same quantity of units within the smaller development area identified in the suggested modifications; Add notation to 'maximum building heights' as follows: This is a maximum potential structural height. This maximum shall be reduced on a case-by-case basis where necessary to assure that public views to and along the shoreline, as identified on Figure 4.5.3 (Coastal View Opportunities) in Section 4.5 of the Development Guidelines, are not significantly degraded.

111. (Access) Section 3.4.B, VRC Zoning District, Permitted Uses, Accessory Uses, Temporary Uses and Conditional Uses: During the period starting with the Memorial Day weekend and ending with the Labor Day weekend, a minimum of 50% of the guest rooms/suites in any hotel/inn operating with a Fractional Ownership component shall be made available to the general public for lodging rather than reserved for participants in the fractional ownership.

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112. Section 3.4.B.3, modify, as follows:

In Planning Area 9 only, three-story structures may be built provided that one of the following is included: (i) the provisions of Zoning Code Section 9.05.200(a) and 9.05.200(b)(1) and 9.05.200(b)(2) are incorporated into the design; or (ii) any structure that is proposed to have three stories is set back an additional 10 feet beyond the minimum required set-back to the fronting street; or (iii) the building design provides a minimum of 5% articulation in building mass between the first and second stories and 10% articulation in building mass between the second and third stories. The Seaside Inn development along Street of the Green Lantern/Scenic Drive (Planning Area 9) shall not exceed 42 feet above the finished building pad elevation and no finished building pad shall be higher in elevation than 220' MSL. In no case shall more than 30% of the buildable area within the 2.8 acre site exceed the height of the adjoining ridgeline.

113. (Access) Add Section 3.4.B.5: 5. Development Requirements for Planning Area 4

Development of Planning Area 4 shall include the following uses regardless of other development that will occur there:

- a) A 40-bed hostel and Visitor Information Center. The hostel will serve as a lower-cost overnight visitor accommodation and will include a Visitor Information Center that shall provide detailed maps and other information regarding trails, overlooks, open space, parks, beaches and public access thereto, public parking facilities, and other visitor serving recreational and commercial facilities present at the Headlands and in the City of Dana Point and vicinity. Other information may also be provided regarding the biological, historical and cultural aspects of the Headlands, City of Dana Point and vicinity. The hostel and Visitor Information Center shall be constructed and open to the public in accordance with the phasing requirements identified in Section 3.7.C.6. Development Phasing Plan. The Visitor Information Center may be incorporated into the hostel, provided that it is clearly available for use by the general public separate from use of the hostel, or it may be constructed as a separate facility. If separate from the hostel, the Visitor Information Center shall consist of a minimum of 800 sq. ft.
- b) Six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be required over and above the parking required as part of the V/RC uses in Planning Area 4. The six parking spaces shall serve visitors intending to utilize the public open space in the project. The parking shall be constructed in accordance with the phasing requirements identified in Section 3.7.C.6 Development Phasing Plan.

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114. (Priority Use/Lower Cost VRC) Table 3.4.3, Allowable Uses in V/RC district, Planning Area 4: Clinical Services permitted (P) on second floor, above or below street level, but prohibited at street level; Commercial Recreation Uses permitted (P¹); Commercial Recreation Uses, change from prohibited to permitted; Add hostel as a permitted use; Membership Organizations, conditionally permitted on the second floor or above, or below street level, prohibited on street level; Add Visitor Information Center as permitted use.

Allowable Uses in V/RC district, Planning Area 9: Commercial Recreation Uses permitted (P¹)

115. (Views) Table 3.4.4: Adjust minimum lot size, width and depth to prevent impacts to ESHA, except as allowed under Conservation Open Space Element Policy [Suggested Mod 78] and Section 3.5.E of the Planned Development District [Suggested Mod 128]; add notation to 'maximum height' as follows: This is a maximum potential structural height. This maximum shall be reduced on a case-by-case basis where necessary to assure that public views, as identified on Figure 4.5.3 (Coastal View Opportunities) in Section 4.5 of the Development Guidelines, to and along the shoreline are not significantly degraded.

116. Table 3.4.4:

Within Planning Area 9 column, adjust quantity of total allowable 'keys' from 65 to 90. Within column for Planning Area 4, adjust square footage from 40,000 square feet to 35,000 square feet; reduce minimum lot size from 15,000 square feet to 5,000 square feet; reduce minimum lot depth and width from 80 feet to 60 feet.

117. (Access) Add Section 3.4.C.5 to Rec & Cons/OS Zoning District:
5. Inclined Elevator/Funicular in Planning Area 1

If any gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, a funicular (inclined elevator) sized to a minimum capacity of eight persons and available to the public shall be built parallel to the North Strand Beach Access and convey passengers from Strand Vista Park to a ramp to the beach. The funicular shall be made available to the public prior to any regulation or restriction of public vehicular access into Planning Area 2. The funicular shall provide sufficient capacity to ferry a family and associated beach recreational paraphernalia (e.g. chairs, coolers, surfboards, etc.) A reasonable fee for the use of the funicular may be collected to recover maintenance and upkeep for the funicular operation, however, any fee collected (round-trip) shall not exceed the regular cash fare for a single ride on a local route upon a public bus operated by the Orange County Transportation Authority. At minimum, the funicular shall be open to the public during daylight hours on weekends, holidays year-round and every day beginning the Memorial Day holiday weekend through the Labor Day holiday weekend. To the

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maximum extent feasible, maintenance of the funicular shall occur during scheduled periods of inoperation (e.g. evenings during the peak season/weekdays during the off season). If the funicular becomes inoperable for more than 3 consecutive scheduled operating days (e.g. 3 consecutive days during the peak season/a full weekend plus one day the following weekend during the off season) or the funicular is closed or made inoperable indefinitely or for any sustained time period for any reason, including but not limited to irreparable damage and/or an absence of funding for operation and maintenance, any gate, guardhouse, barrier or other development that regulates or restricts public access through Planning Area 2 shall be opened, removed or otherwise made inoperable such that public access is no longer regulated or restricted for the duration of the period the funicular is unavailable for public use. Signs shall be posted declaring the availability of the funicular to the public, the hours of operation, any fee, and the terms leading to the availability of public vehicular access through Planning Area 2. Signs shall be posted at the boarding area for the funicular, at locations visible to vehicles traveling on Selva Road, and elsewhere as reasonably necessary to assure adequate public notification relative to the funicular.

118. (Biology/Access/Hazards) Modify Table 3.4.5, Revise all figures to reflect incorporation of all ESHA located in Planning Area 6 into Planning Area 5, excepting 6.5 acres of ESHA allowed to be impacted, and text in table as follows:

PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
Planning Area 1	REC/OS	West of the existing Orange County public parking lot on Selva Road. Consists of <u>at least 9.9 acres</u> , uses include Strand Vista Park, North Strand Beach Access ¹ (Improved), <u>Mid-Strand Vista Park Access (New)</u> , Central Strand Beach Access (New), <u>and</u> South Strand Beach Access (New), <u>Strand Beach Park Lateral Accessway (New)</u> , and <u>as set forth below, a funicular</u> , and open space parking.
<ul style="list-style-type: none"> Strand Vista Park 	REC/OS	Located adjacent to and seaward of the existing Orange County public parking lot. The park connects to Selva Road, and the North, <u>Mid-Strand Vista Park</u> , Central and South Beach Access paths, overlooking the ocean...[NO INTERVENING CHANGES]
<ul style="list-style-type: none"> North Strand Beach Access (Improved) 	REC/OS	Including and adjacent to the existing offsite Orange County Strand Beach access. The existing, steep, narrow path shall be improved by incorporating additional land to widen and provide rest and landing areas and coastal view overlooks. <u>If any gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, a funicular (inclined elevator) shall be built parallel to the North Strand Beach Access and convey passengers from Strand Vista Park to a ramp to the beach.</u> The developer shall also construct new restroom and shower facilities near Strand Beach.

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PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
<ul style="list-style-type: none"> <u>Mid-Strand Vista Park Access (New)</u> 	REC/OS	<u>Located approximately in the middle of the park, this access leads from the trail located in Strand Vista Park and intercepts the Central Strand Beach Access at the intersection of the first residential cul-de-sac.</u>

PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
<ul style="list-style-type: none"> Central Strand Beach Access (New) <u>Lateral Accessway Along Strand Beach Park (New)</u> 	REC/OS	<p>Located adjacent to the Strand Residential Neighborhood Entry, the Central Strand Beach Access provides public access from the Strand Vista Park, through the Strand Residential Neighborhood (Planning Area 2), to the Strand Beach Park (Planning Area 3). <u>The entryway and path shall be designed to conspicuously invite public use of the public accessway.</u></p> <p><u>In conjunction with any shoreline protective device, an 8 foot wide concrete public access path shall be constructed seaward of the Strand residential development and on top or landward of any shoreline protective device. The path shall follow the entire length of the shoreline protective device. Benches (minimum 2), picnic tables (minimum 2), and trash receptacles, shall be available at regular intervals along the pathway. The location of the public pathway along the top or landward of the shoreline protective device will allow convenient year-round public access above and adjacent to the beach which is currently interrupted by seasonal conditions and high tides. The lateral public access path connects to the Central, North and South Beach Access paths, forming an integrated design that maximizes public coastal access and passive recreational opportunities, while minimizing potential overcrowding at any single public recreation area. Public access along and recreational use of the lateral accessway shall be secured through the dedication of the lateral accessway or an easement to a public entity (e.g. County of Orange or City of Dana Point).</u></p>
<ul style="list-style-type: none"> South Strand Beach Access (New) 	REC/OS	<p>Located adjacent to the Selva Road extension, this pathway provides direct access to the southern portion of Strand Beach. A meandering, switchback trail will provide rest and landing areas, overlooks and coastal view areas, and public safety measures. The contoured graded slope will blend into adjoining slopes, and be landscaped <u>vegetated</u> with appropriate native species. <u>Except for 0.75 acres of allowable impact to accommodate grading to stabilize the Strand, existing environmentally sensitive habitat area (ESHA) located on the bluff face shall be avoided and</u></p>

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		<u>shall be protected in place.</u> A public safety access ramp will allow lifeguards and emergency direct access to South Strand Beach. <u>The developer shall also construct new restroom and shower facilities near Strand Beach.</u>
Planning Area 3	REC/OS	Located in the northwestern portion of the HDCP, Strand Beach is privately owned to the mean high tide line and shall be dedicated to the County. <u>It consists of 5.2 acres and stretches approximately 2,800 linear feet, terminating at the "Dana Point."</u>
<ul style="list-style-type: none"> Strand Beach Park 	REC/OS	Strand Beach Park is <u>primarily located seaward of the existing revetment shoreline protective device protecting the Strand residential development.</u> <u>It also includes a small pocket park at the seaward end of the Central Strand Beach accessway.</u> Public access and recreational use of the pocket park shall be secured through the dedication of the pocket park or an easement over said land to a public entity (e.g. County of Orange or City of Dana Point). <u>The beach seaward of the shoreline protective device protecting the Strand residential development shall be publicly owned and offered for dedication to the County of Orange. If the County does not accept the facility, it shall be offered and dedicated to the City. Activities shall include those passive recreational uses typically associated with the ocean and beach, including coastal access, swimming, surfing, sunbathing, fishing, jogging, picnicking and hiking, as more fully described in Section 4.4, Parks and Open Space Plan. Strand Beach connects to the Central, North and South Beach Access paths, forming an integrated design that maximizes public coastal access and passive recreational opportunities, while minimizing potential overcrowding at any single public recreation area.</u>

PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
Planning Area 5	REC/OS	At 288 feet above sea level, the 12.3-acre site contains the highest elevation within the HDCP. Located near Pacific Coast Highway, the park preserves a significant landform, <u>protects habitat areas,</u> establishes recreation opportunities, dramatic public view overlooks, and coastal access.
<ul style="list-style-type: none"> Hilltop Park and Greenbelt Linkages 	REC/OS	Public facilities and uses include <u>an open air educational visitor conservation center,</u> trails, overlooks, seating, open space parking <u>(outside of environmentally sensitive habitat area),</u> signage, <u>buffers, landscaping,</u> protection of natural resources <u>including preservation and restoration of native vegetation,</u> fencing and other passive features, as more fully described in Section 4.4, Parks and Open Space Plan. As a focal point for the HDCP integrated

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		<p>trail system, it can be accessed from Street of the Green Lantern, Pacific Coast Highway, Selva Road, Street "A," and the Headlands Conservation Park. <u>In conjunction with the Visitor/Recreation Commercial development in Planning Area 4, accessible from Pacific Coast Highway, six parking spaces for open space uses will be provided and a Visitor Information Center will be constructed in Planning Area 4.</u></p> <p><u>Areas of the Hilltop Park and Greenbelt Linkages that serve as habitat for Blochman's dudleya will be protected pursuant to the requirements of the California Department of Fish and Game.</u></p> <p><u>Furthermore, all ESHA shall be avoided and shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas, pursuant to the requirements of the General Plan/Local Coastal Program. Fuel modification shall be prohibited within ESHA and habitat mitigation areas. Habitat restoration may occur. The ESHA area shall be preserved in perpetuity and endowed to cover the cost of management and maintenance. The area will require a long-term management program to help facilitate the survival of the sensitive plants and animal species.</u></p> <p>The Greenbelt Linkages bordering Planning Area 7 (Headlands Conservation Park) will be a minimum of 100 foot wide and will serve as an open space buffer. Pursuant to the Fuel Modification Plan in Section 4.0, buffer areas will be revegetated where required with appropriate native plant species and be appropriately managed.</p>
Planning Area 7	CONS/OS	<p>Located seaward of the existing Marguerita Road, <u>The park</u> includes 24.227.9 acres and the landform commonly known as the "Headlands Promontory." Conservation Open Space is the most restrictive land use designation, ensuring the preservation of the unique Headlands landform, the coastal bluffs and the rocky beaches. Conservation of natural resources is of utmost importance with limited disturbance along the seaward perimeter for the bluff top trail and overlooks. Buildings are prohibited. <u>In conjunction with the extension of Selva Road to the northerly residential enclave (located outside of but surrounded by the HDCP area) Marguerita Road and all utilities therein shall be removed, and the area recontoured to match adjacent contours and revegetated with native coastal sage vegetation.</u></p>

PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
• Headlands Conservation	CONS/OS	The Headlands Conservation Park includes a <u>limited</u>

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Park		<p>bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment. The Headlands Conservation Park, as more fully described in Section 4.4, Parks and Open Space Plan, will be preserved <u>in perpetuity</u> as conservation open space through the establishment of a non-profit trust and a perpetual endowment to own and manage the property.</p> <p>The area will require a long-term management program to help facilitate the survival of the sensitive plants and animal species. These uses and programs onsite must be coordinated with the U.S. Fish and Wildlife Service, which has issued an Endangered Species, Section 10(a) permit and the California Department of Fish and Game, in conjunction with the landowners' participation in the Central/Coast Orange County Natural Communities Conservation Program and Habitat Conservation Plan, Implementation Agreement.</p> <p>Improvements in the Headlands Conservation Park will be limited to a bluff top trail, overlooks, seating, and public safety fencing, and recontouring necessary to restore the road cut for Marguerita Road. Balancing the desire for limited public access and views along the perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of the area will accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating, and signage. <u>The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge.</u> The receiving agency or non-profit entity will establish hours of operation for the bluff top trail. Portions of the Hilltop Park and Greenbelt Linkages on the landward side of the Headlands Conservation Park will serve as a buffer between new development in Planning Area 6, the Upper Headlands Residential, and the Headlands Conservation Park.</p>
Planning Area 8	REC/OS CONS/OS	<p>Consists of 10.4 acres and includes a recreational conservation park with limited recreational and support facilities (located outside of ESHA) overlooking Dana Point Harbor with several proposed visitor recreation facilities and open space parking, as well as the adjoining coastal bluffs and rocky beach.</p> <p><u>All ESHA located in Planning Area 8 shall be avoided and shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those</u></p>

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		<p><u>areas, pursuant to the requirements of the General Plan/Local Coastal Program. Fuel modification shall be prohibited within ESHA and habitat mitigation areas. Habitat restoration may occur. Trails, interpretive/directional signage, and fencing for safety and habitat management purposes may be permitted provided they don't significantly disrupt habitat values. The ESHA area shall be preserved in perpetuity and endowed to cover the cost of management and maintenance. The area will require a long-term management program to help facilitate the survival of the sensitive plants and animal species.</u></p>
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PLANNING AREA	LAND USE	LOCATION AND DESCRIPTION
<ul style="list-style-type: none"> Harbor Point Park 		<p>Harbor Point Park overlooks Dana Point Harbor and provides dramatic coastal access and public view opportunities. Harbor Point Park is comprised of two sub-planning areas.</p>
8A	REC/OS	<p>Planning Area 8A is designated as Recreation Open Space and includes the bluff-top 4.3-acre Harbor Point <u>conservation and limited</u> recreational area.</p>
8B	CONS/OS	<p>Planning Area 8B is designated Conservation Open Space and includes the 6.1 acre coastal bluff and rocky beach area.</p> <p>Harbor Point Park accommodates several active <u>educational/passive</u> recreational uses as more fully described in Section 4.4, Parks and Open Space Plan. The uses include several visitor recreation and educational facilities, such as a maritime historic center (lighthouse), a cultural arts center, and a nature interpretive center. Other amenities include <u>limited</u> bluff top trails, open space parking, commemorative memorials, picnic areas, scenic overlooks, <u>conserved and restored native habitat areas/drought-tolerant landscaped areas,</u> benches, signage, kiosks, and fencing. Harbor Point Park also provides public recreational facilities that are distributed throughout the project, and thus avoids overcrowding or overuse by the public of any single area. The bluff top trail shall be sited to avoid coastal bluff scrub in the vicinity of the bluff edge. <u>Furthermore, parking areas and the nature interpretive center shall be sited to avoid impacts to ESHA.</u></p> <p>To preserve the visual landform associated with Harbor Point and to protect views, the proposed education visitor facility shall not extend beyond the adjacent commercial building stringline on Green Lantern as illustrated in Figure 3.4.4, Development Stringline. Sensitive natural resources associated with</p>

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		the coastal bluff and rocky beach areas will be preserved and protected by the Conservation Open Space designation....[NO INTERVENING CHANGES]
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119. (Access/Biology) Modify Table 3.4.6, Allowable Uses Rec/OS and Cons/OS:

Land Uses	REC/OS	CONS/OS
Visitor Recreational Facility	P ³	X
Cultural Uses	P ³	X
Commercial Antennas	C* ³	X
<u>Funicular¹</u>	<u>P³</u>	<u>X</u>
Kiosks/Gazebos	P ³	X
Outdoor Artwork	P ³	X
Public Land Uses	P ³	C ³
Temporary Uses	T* ³	X
Trails, Biking and Hiking	P ³	P ^{42,3}

LEGEND:

P = Permitted Use	P* = Permitted Use subject to special use standards (see Chapter 9.07 of the Zoning Code).
C = Conditional Use	C* = Conditional Use subject to special use standards (see Chapter 9.07 of the Zoning Code).
T = Temporary Use	T* = Temporary Use subject to special use standards (see Chapter 9.39 of the Zoning Code).
X = Prohibited Use	A = Accessory Use

¹ A funicular is an allowable use in Planning Area 1 only

⁴² Hiking Trails only

³ Use only allowed in locations such that ESHA is avoided and protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Uses adjacent to ESHA shall be sited and designed to prevent significant adverse impacts to ESHA and shall be compatible with the continuance of the ESHA.

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120. (Hazards) Modify Table 3.4.7, Recreation Open Space And Conservation Open Space Development Standards: Eliminate references to lighthouse and veterans memorial, including subpart (f) and footnotes 1, 2, and 4; modify footnote 3 as follows: The minimum structural setback from the top of bluff shall be 50 feet or greater as recommended by a geotechnical engineer ~~with special foundation, subject to City approval.~~
121. (Biology) Delete Figure 3.4.4, Development Stringline (for lighthouse at Harbor Point) and all references thereto.
122. (Access) Modify Section 3.5.A, General Development Standards All Districts, Access, Parking and Loading: Access, parking and loading regulations within this HDCP shall be as provided in Chapter 9.35 of the Zoning Code except for the following: ~~In Planning Area 9, tandem parking may be utilized to achieve the required parking for employees and for guests with valet parking.~~ In Planning Areas 2 and 6, parking in excess of zoning requirements may be provided in a tandem configuration in an enclosed garage. Parallel on-street parking shall be provided on only one side of all single-loaded vehicle restricted local streets. A minimum of 62 public parking spaces shall be provided ~~within~~ for exclusive use by the general public for access to the Recreation Open Space. In addition, six parking spaces in Planning Area 4, accessible from Pacific Coast Highway, shall be provided to exclusively serve open space visitors. The six parking spaces shall be in excess of those necessary to serve the V/RC uses in Planning Area 4 and shall be constructed concurrent with the development of V/RC improvements in Planning Area 4.
- In Planning Area 9, the minimum quantity of parking stalls per use shall be supplied as identified in Section 9.35 of the Zoning Code except that valet/tandem parking shall not be utilized to achieve the required parking. Valet parking may be provided as a service to guests/visitors provided that at least 50% of the parking remain available as self-parking. Furthermore, free or affordable employee parking shall be provided on-site. Incentives to employees to use alternative transportation shall be provided including, but not limited to, incentives to carpool and free or subsidized transit passes.
123. (Access/Biology) Modify Section 3.5.B.1, Entry Signage: The HDCP shall establish a unified image through the implementation of a series of Entry Signs. Entry Signage will designate the parks, visitor recreation and educational facilities, and V/RC facilities within the HDCP. Entry signage for the parks, visitor recreation and educational facilities and related uses shall clearly identify those areas are available for public use and coastal access. Where appropriate, use of the City seal and other public agencies may occur. The signage program is detailed in Section 4.12, Design Guidelines. Signs may be externally illuminated and lighting shall be directed and shielded so that light is directed toward the ground and away from

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sensitive biological habitat hidden by vegetation or installed flush with the grade.
Where feasible, Entry signage shall be wall mounted and shall not exceed 20 square feet.

124. (Biology) Modify Section 3.5.B.3, Visitor/Recreation Commercial Signage: Signs in Planning Area 4 and Planning Area 9 shall comply with the requirements for entry signage. Commercial signage shall comply with the requirements of the Master Signage Program described in Section 4.12 Design Guidelines. In addition, commercial signage shall be externally illuminated and lighting shall be hidden by vegetation or installed flush with the grade. Lighting shall be shielded and directed so that light is directed toward the ground and away from sensitive biological habitat. Signage shall be designed to compliment the architecture of the building and should emphasize natural materials.
125. (Biology) Add Section 3.5.C.3, Landscaping Standards and Requirements, Landscaping for All Development: Except for landscaping on the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point, all landscaping (including temporary erosion control and final landscaping) for all development shall be of plants native to coastal Orange County and appropriate to the natural habitat type. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources on the project site. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within any development area, including within any private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point. All landscaping shall be drought tolerant. Use of native plant species is encouraged within the private residential lots and the visitor/recreation commercial (i.e. Seaside inn) site adjacent to Harbor Point.
126. (Biology) Add Section 3.5.C.4, Lighting: All lighting shall be shielded and directed so that light is directed toward the ground and away from sensitive biological habitat.
127. (Biology) Add Section 3.5.D.7, Walls and Fencing for Habitat Protection Purposes: Walls and/or fencing shall be placed between all residential and commercial development and any adjacent environmentally sensitive habitat area for habitat protection and fire hazard management purposes. Walls and/or fencing shall be designed to be impervious to dogs.

Where necessary for habitat protection, fencing and barrier plantings shall be placed around ESHAs and along trails to provide physical barriers to human intrusion and

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domestic pets. Fencing that is both subordinate to the open space character and impervious to dogs shall be placed along trails that are adjacent to or pass through ESHA.

128. (Biology) Add Section 3.5.E. Environmentally Sensitive Habitat Areas (ESHA): Excepting up to 0.75 acres of impact in Planning Area 1, 6.5 acres of impact within Planning Area 6, and 4.04 acres of impact to accommodate construction of the seaside inn within Planning Area 9 (all of which are only allowable as provided in Conservation Open Space Element Policy [Suggested Mod 78], new development shall be sited and designed to avoid impacts to ESHA. The maximum impacts to ESHA identified herein do not pertain to or limit vegetation removal necessary to construct and maintain public trails. Impacts to up to 11.29 acres of ESHA shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. The coastal development permit shall include conditions that require implementation of all feasible mitigation measures that would significantly reduce adverse impacts of the development.

Any new development that includes impacts to ESHA as permitted under the LCP shall include mitigation for unavoidable impacts. ESHA impact mitigation shall include, at a minimum, creation or substantial restoration of ESHA of the same type as the affected ESHA or similar type. The acreage of ESHA impacted shall be determined based on the approved project. Prior to issuance of the coastal development permit authorizing the ESHA impact, the applicant shall identify an area of disturbed or degraded ESHA of equivalent type and acreage sufficient to provide mitigation of the ESHA impacts at a minimum 3:1 ratio (number of acres of created or restored habitat required for each acre of ESHA impacted). At least 1:1 of the 3:1 ratio shall consist of habitat creation/substantial restoration (i.e. no net loss) preferably on-site within the coastal zone. Habitat creation/restoration shall be located on-site to the maximum extent feasible, but may include an off-site component for the portion that is infeasible to provide on-site. Mitigation measures on land outside the coastal zone may be acceptable if it would clearly result in higher levels of habitat protection and value and/or would provide significantly greater mitigation ratios. The 3:1 mitigation ratio shall be the minimum standard. The removal of vegetation for new trail construction shall comply with the 3:1 mitigation ratio, except where vegetation removal is necessary to re-align an existing trail or informal footpath in which case the mitigation ratio shall be 1:1. Prior to issuance of the coastal development permit authorizing the ESHA impact, the applicant shall submit habitat creation, restoration, management, maintenance and monitoring plans for the proposed mitigation area prepared by a qualified biologist and/or resource specialist. The plans shall, at a minimum, include ecological assessment of the mitigation site and surrounding ecology; goals, objectives and performance standards; procedures and technical specifications for habitat planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance

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measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas in perpetuity. The area of habitat to be restored shall be restricted from future development and permanently preserved through the recordation of a conservation open space deed restriction that applies to the entire restored area. In addition to the deed restriction, the area may also be dedicated or offered to be dedicated to a public agency or non-profit entity.

129. (Hazards) Add Section 3.5.F., Bluff Edge Setback: Excepting development in Planning Area 1 and Planning Area 2 where development is contemplated on the bluff face and notwithstanding the minimum bluff edge setback identified in Zoning Code Section 9.27.030(c), all development shall be located a minimum of fifty (50) feet from the bluff edge or a sufficient setback to ensure the proposed development is safe from a threat of erosion and bluff retreat/failure for seventy-five (75) years, whichever is most restrictive.

130. (Hazards/Access) Add Section 3.5.G., Shoreline Protective Device in the Strand: Any shoreline protective device repaired and maintained in the Strand as allowed under Conservation Open Space Element Policies [Suggested Modifications 63 and 64] shall comply with the following development standards:

The shoreline protective device shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the shoreline protective device is moved at least 5 feet landward or easterly.

At the time of repair and maintenance of the shoreline protective device, all components of the existing revetment located seaward of the above identified toe and landward of the location of the intertidal zone shall be removed from the beach and recycled into the repaired and maintained shoreline protective device or properly disposed at an approved disposal site.

The top edge of the repaired and maintained revetment shall not exceed the top edge of the existing revetment located at +17 feet NGVD.

A shoreline protective device maintenance and monitoring plan shall be implemented that, at minimum, provides for the periodic retrieval and re-use or proper disposal of any rock or other components of the device that has become dislodged and/or has fallen to the beach as well as the retrieval and re-use or proper disposal of any rock or other component of any pre-existing device that becomes exposed on the beach for any reason.

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131. (Access) Add following definitions under Section 3.6, Definitions:

TEMPORARY EVENT - is (a) an activity or use that constitutes development as defined in Section 30106 of the Coastal Act but which is an activity or function which is or will be of limited duration and involves the placement of non-permanent structures such as bleachers, vendor tents/canopies, portable toilets, stages, film sets, etc., and/or involve exclusive use of sandy beach, parkland, filled tidelands, water, streets, or parking areas in temporary facilities, public or private buildings or open spaces, or outside of buildings which are otherwise open and available for general public use; or (b) an activity as defined in section (a) that involves any commercial component such as: admission fee, renting of facility, charging for valet parking or shuttle service.

132. (Coastal Resources) Section 3.7.A, Development Review Process, Purpose and Intent, add following statement to end of paragraph: This section does not provide an exhaustive list of applicable rules and procedures, and any non-conflicting rules or procedures in other parts of the LCP that would apply in the absence of this PDD continue to do so.

133. (Coastal Resource) Section 3.7.B.1: Section 3.0 and 4.0 of the HDCP ~~serves as the local entitlement document for the subject area and~~ must be adopted in accordance with the Zoning Code (Chapter 9.34). A PDD may be adopted in a variety of ways, both by resolution or ordinance. Section 4.0, Development Guidelines, must be adopted by resolution. Section 3.0, Planned Development District, must be adopted by ordinance and ~~serves as the~~ provides zoning regulations for development within the HDCP area.

134. (Coastal Resources) Section 3.7.B.2, Development Review Process, Adoption and Amendment, Amendment to Local Coastal Program: The HDCP requires an amendment to the Dana Point Local Coastal Program ("LCP"). The LCP Land Use Plan for the HDCP area consists of the Land Use Element, Urban Design Element, and Conservation Open Space Element of the City's General Plan (as amended). The LCP Implementation Program for the HDCP area consists of Section 3.0, Planned Development District, Section 4.0, Development Guidelines and ~~referenced chapters of the City's Zoning Code.~~

135. (Coastal Resources) Modify Section 3.7.C, Discretionary Approvals and Permits: All development shall require both: (i) a Site Development Permit as defined and issued by the City under Chapter 9.71 of the Zoning Code, as modified in this HDCP; and (ii) a Coastal Development Permit as defined and issued by the City under Chapter ~~9.71~~ 9.69 of the Zoning Code, or (iii) a Combined Coastal and Site Development Permit, as defined and issued in this HDCP.

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136. (Coastal Resources/Views/Biology) Section 3.7.C.2, Coastal Development Permit (Master and Individual): The Coastal Development Permit is the discretionary process that addresses development within the City's Coastal Zone. All development within the Coastal Zone must be consistent with the Dana Point Local Coastal Program. The HDCP is located within the Coastal Zone. The Coastal Development Permit ensures that the policies, programs, and regulations contained within ~~the HDCP~~ Local Coastal Program have been met, and that conditions have been incorporated into the Coastal Development Permit Resolution. The applicant may apply for individual or master coastal development permits as regulated in the HDCP, and any reference herein shall apply for both types of permit.

[no intervening changes]

- Application for a Coastal Development Permit. The applicant shall follow the format located in Section 9.69.050 of the Zoning Code, except that with respect to a Coastal Development Permit for Planning Area 2 and Planning Area 6 Section 9.61.040(e)(2)(F) and 9.61.040(e)(2)(G) of the Zoning Code shall not apply regarding elevations and floor plans of residential structures and associated appurtenances on residential lots, provided that the application contains sufficient information about the land division, grading plan and building envelopes to analyze whether the development complies with all the requirements of the Local Coastal Program, and provides sufficient information for the permit to contain conditions that the development on each residential lot is sited and designed to avoid the degradation of public views to and along the shoreline from public viewpoints, trails, parks and open spaces, and the development incorporates building setbacks that avoid any fuel modification requirements within ESHA. Also, the applicant shall incorporate all of the programs and include the required information as detailed in this HDCP.

A Master Coastal Development Permit, issued by the City under Chapters 9.27 and 9.69 of the Zoning Code, as modified by this HDCP, shall be allowed for Planning Area 2 (The Strand Residential) and Planning Area 6 (Upper Headlands Residential) and other Planning Areas at the discretion of the Director of Community Development. ~~The applicant~~ Director of Community Development has the discretion to allow an applicant to apply for a Master Coastal Development Permit in Planning Area 2 and Planning Area 6, rather than individual Coastal Development Permits for construction on each individual lot.

In addition, the applicant may elect to apply for a Combined Coastal and Site Development Permit, including a Combined Master Coastal and Site Development Permit, in lieu of separate applications for a Coastal Development Permit and Site Development Permit.

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- Notice and Public Hearing. ~~Except as noted in this HDGP, the City and~~ The City and applicant shall follow the procedure shown in Section 9.69.060 of the Zoning Code. Regardless of whether the Master Coastal Development Permit or Coastal Development Permit is combined with any other action, the notice procedures for the coastal development permit shall fully comply with those identified in Section 9.69.060 of the Zoning Code.
- Basis of Action. The City may approve, conditionally approve, or deny a Coastal Development Permit. ~~Coastal Development Permits may also be issued in any sequence.~~ The basis of action shall be subject to the findings located in Section 9.69.070 of the Zoning Code, as modified by the HDGP.
- Dei Minimis and Administrative Permits. Projects that qualify as either Dei Minimis or Administrative Permits may be approved by the City. Application procedures for Dei Minimis or Administrative Permits will be subject to the procedures shown in Sections 9.69.110 and 9.69.160 of the Zoning Code.
- Expiration. Any Coastal Development Permit granted herein shall be effective for a period of 24 months, ~~unless otherwise conditioned or agreed subject to an approved Development Agreement or otherwise agreed upon between the applicant and the City.~~ Failure to exercise the permit within the effective period will cause the permit to automatically expire, unless the applicant has requested an extension in conformance with Section 9.69.140 of the Zoning Code. Once construction has been initiated pursuant to the Coastal Development Permit, the Coastal Development Permit shall be deemed vested and shall not expire unless work is not diligently pursued to completion.

[no intervening changes]

- Temporary Events. Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day; 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A coastal development permit shall also be required for temporary events that do not meet all of these criteria if the Director of Community Development has determined that the event has the potential to result in significant adverse impacts to public access and/or coastal resources.

137. (Views/Biology) Section 3.7.C.3, Tentative Tract Maps: Tentative Tract Map review shall be processed pursuant to Chapter 7.01 of the Municipal Code. No application for a Tentative Tract Map for Planning Areas 2 and 6 shall be submitted to the City without either combining the application with a Site Development Permit(s) or first obtaining approval for a Site Development Permit(s) for Planning

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Areas 2 and 6. A Tentative Tract Map application that includes Planning Areas 4 and 9 is not required to be combined with an application for a Site Development Permit for those two Planning Areas. As provided above, individual Site Development Permits for Planning Areas 4 and 9 are required prior to building construction. After the initial approval of the Tentative Tract Map and Site Development Permit for the subject site, the approved Site Development Permit may be amended separately, either as a minor or major amendment. Land divisions, including but not limited to subdivisions, lot splits, and lot line adjustments shall require a coastal development permit. If a Master Coastal Development Permit and Site Development Permit are approved for a land division/Tentative Tract Map and grading plan for Planning Areas 2 and/or 6, there shall be no need to process individual Coastal Development Permits and Site Development Permits for construction of residential development and associated appurtenances on individual residential lots within that Subdivision Map, provided the Master Coastal Development Permit is conditioned to comply with all the requirements of the Local Coastal Program, the permit identifies specific final pad elevations for each residential lot and the permit conditions identify specific building envelopes/development standards for each residential lot including setbacks and heights that avoid the degradation of public views to and along the shoreline from public viewpoints, trails, parks and open spaces, and incorporate building setbacks that avoid any fuel modification requirements within ESHA, and required residential building permit application demonstrates compliance with the HDCP and the design guidelines in the combined Master Coastal and Site Development Permit.

138. (Access/Views/Biology) Section 3.7.C.5, Administrative Modification of Standards: Certain standards in this HDCP may be administratively modified by the Director of Community Development to permit development on a property that is constrained due to physical constraints. Administrative modifications may be considered in the HDCP area, subject to Chapter 9.61, Section 9.61.090 of the Zoning Code. For other modifications to certain development standards, a variance shall be required in accordance with Section 9.67 of the Zoning Code. Administrative modifications or variances from 1) the minimum number of parking stalls (except for residential uses), 2) bluff edge setbacks, 3) requirements relative to protecting Environmentally Sensitive Habitat Area (ESHA) including required setbacks, and 4) height restrictions necessary to protect public views, shall not be granted.

139. (Access/Biology) Add Section 3.7.C.6, Development Phasing Plan:

Development shall comply with the following development phasing plan:

Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. The allowance for impacts to up to 11.29 acres of environmentally sensitive habitat areas (excluding public trails) and the allowances relative to the construction of new development in the Strand that is reliant upon

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significant landform alteration and a shoreline protective device shall only be allowed in the context of a project that: 1) preserves, enhances, dedicates and perpetually manages all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) dedicates the private portion of Strand beach to the public; 3) constructs and dedicates the public parks and public trail network described in this HDCP including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implements extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) preserves landforms including the Harbor Point and Headlands bluffs and promontories and the Hilltop; and 6) provides lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. The one exception to this requirement shall be that, prior to the wholesale re-division of the 121-acre Headlands area, the landowner may apply for, and the City may approve, any lot merger, lot line adjustment, or other land division necessary to enable the landowner to separate out and transfer approximately 27 acres of land on the Headlands promontory, provided that any such approval is conditioned on the requirement that the area so separated is irrevocably deed restricted as conserved open space in conjunction with the land division and is thereafter dedicated in a manner that ensures that it is conserved in perpetuity as conserved open space, in which case the requirement in the preceding two sentences shall apply only to the remainder area of the Headlands.

The public parks, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed and open to the public prior to the opening of the luxury inn in Planning Area 9.

The 40-bed hostel shall be constructed and open to the public prior to or concurrent with the opening of the luxury inn in Planning Area 9.

All approved public park, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP. All approved public park and open space improvements and amenities shall be bonded for final completion (@120% of estimated construction cost) prior to recordation

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of the first Final Map, and construction shall be completed and the facilities open to the public for public use prior to the residential certificate of occupancy or final inspection for the first to be completed residential property.

The Visitor Information Center in Planning Area 4 shall be constructed and open to the public concurrent with the opening of any other commercial development within Planning Area 4.

The six (6) public parking spaces in Planning Area 4 to serve open space visitors shall be constructed and open to the public prior to or concurrent with the opening of any other commercial development within Planning Area 4.

140. (Biology) Global Change, Section 4.0, Development Guidelines: Page 4-13, change description of Planning Area 9 as follows:

Planning Area 9: Resort Seaside Inn (Visitor/Recreation Commercial)

This 2.8-acre site provides a maximum ~~65~~⁹⁰-room (keys), luxury Seaside Inn, with a public restaurant, amenities and accessory uses. The site fronts the Street of the Green Lantern and Scenic Drive, and complements existing, off-site commercial facilities, such as the Charthouse Restaurant. The site offers dramatic ocean and harbor views. The location, adjacent to the Harbor Point Park, lends itself to public and private functions, encouraging coastal access.

141. (Hazards/Views) Modify Section 4.1.A, Existing Site Characteristics, Landforms: The project site contains four distinct landforms: (1) the two geographical points—Dana Point and Harbor Point, (2) the coastal bluffs which range up to 215 feet in height and stretch from the Harbor Point to the northern end of the Strand ~~enclave of existing homes~~, (3) the Strand Beach, and (4) the hilltop near PCH.

A gently sloping mesa sits atop the Dana Point and the coastal bluffs to form a landmark from which the entire site derives its common name—the Headlands. The bluffs are a visible landform for thirty miles up and down the coast. ~~The coastal bluffs are defined as a natural, oceanfront landform having a continuous slope of 45° or greater over a distance of approximately 25 vertical feet and 100 horizontal feet.~~

142. (Biology) Modify Section 4.1.C, Biology: The project site contains diverse wildlife and plant species. The wildlife consists of mammals, including the Pacific Pocket Mouse, reptiles, and birds, including the California gnatcatcher and the coastal cactus wren.

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The site also contains many vegetation associations that are native to Southern California. Southern coastal bluff scrub, mixed chaparral, and coastal sage are found in the southern areas of the site. The northern portions of the site consist of heavily disturbed vegetation, native/non-native grassland, disturbed coastal sage and ornamental plantings associated with the vacant mobile home development.

In 1996, the U.S. Department of Interior...[no intervening changes]

The 1996 Orange County NCCP/HCP was preceded by five years of scientific analysis and public agency review. A joint Environmental Impact Report and Environmental Impact Statement (EIR/EIS) were prepared pursuant to the California Environmental Quality Act, the California Endangered Species Act, and the federal Endangered Species Act by the CDFG and the USFWS. In 1996, the EIR/EIS was certified as a Final EIR/EIS, with appropriate findings and mitigation measures to satisfy the requirements of the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA).

The landowners of the project site were identified in the NCCP/HCP as a "participating landowner" for "contributing significant land and/or funding toward implementation of the reserve system and adaptive management program." As a result, the landowners were issued a Section 10(a) Endangered Species Act Permit for the project site.

In addition to CESA and ESA requirements, the Coastal Act requires the identification and protection of any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. These areas are known as 'environmentally sensitive areas' or 'environmentally sensitive habitat areas' (ESHA). In conjunction with the Local Coastal Program (LCP) amendment that was processed to incorporate the HDCP into the City's LCP, the Coastal Commission identified approximately 50 acres of upland ESHA at the Headlands. The planning boundaries established in this LCP are designed to conserve all but 11.29 acres of the ESHA present at the time of the LCP amendment. The LCP contains provisions requiring an assessment during the coastal development permit process of whether additional ESHA is present on the site and the protection of the approximately 38.01 acres originally conserved in Planning Areas 1, 5, 7, and 8A/8B plus any additional habitat identified during the subsequent assessment. Pursuant to the requirements of Coastal Act Section 30240 and equivalent policies in the LCP, the ESHA must be protected and conserved in place, except as allowed under Conservation Open Space Element Policy [Suggested Mod 78] and Section 3.5.E of the Planned Development District [Suggested Mod 128], and only certain limited activities such as habitat restoration and limited public access are allowed within the ESHA.

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143. (Coastal Resources) Add notation to Section 4.2, Land Use Plan: Sections 3.0 and 4.0, including Section 4.2 thereof (i.e. 'Land Use Plan'), are components of the implementing actions of the City's Local Coastal Program within the meaning of Section 30513 of the Coastal Act.
144. (Biology/Access) Figure 4.2.1, Illustrative Plan: Modify This Figure To Reconfigure Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose) And Incorporate Avoided Area Into Planning Area 5; Eliminate/Relocate Visitor Buildings And Parking To Avoid Esha; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of the Shoreline Protective Device
145. (Access) Modify Section 4.3, Planning Areas, Planning Area 1: ...The developer will construct restroom and shower facilities adjacent to the pathway above Strand Beach.

If gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach.

The Mid-Strand Vista Park Access (New) leads from the trail in approximately the center of the park and connects to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

The Central Strand Beach Access (new)...

146. (Access) Modify Section 4.3, Planning Areas, Planning Area 2:... The community ~~will~~may be gated to control vehicle access provided the mitigation measures outlined below are implemented.

If gates, guardhouses, barriers or other development designed to regulate or restrict public vehicular access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach. Only public vehicular access may be restricted. Public pedestrian and bicycle access shall not be restricted. If the funicular is out of service for more than 3 consecutive scheduled operating days, public vehicular access through Planning Area 2 for passenger drop-off shall be available during the period of service outage and any gate, guardhouse, barrier or other development that regulates or restricts public vehicular access shall be opened, removed or otherwise made inoperable during the period of service outage. During periods of funicular

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service outage signs shall be posted at the boarding area of the funicular, along the public roadway leading to the Strand residential area and at the entrance to the Strand residential area indicating the availability of public vehicular access through the residential area for passenger drop-off at the beach.

147. (Biology/Access) Modify Figure 4.3.1: Modify This Figure To Reconfigure Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose) And Incorporate Avoided Area Into Planning Area 5; Eliminate/Relocate Visitor Buildings And Parking To Avoid Esha; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of the Shoreline Protective Device
148. (Access) Modify Section 4.3, Planning Areas, Planning Area 4: PCH and the Street of the Green Lantern border the 1.6-acre Planning Area 4. This Visitor/Recreation Commercial area complements the adjacent City Town Center, and will attract coastal visitors by providing a variety of commercial and office uses including a Visitor Information Center and can comprise one or more buildings. A maximum of ~~40~~35,000 square feet will be developed, limited to two stories. The first floor will be limited to retail commercial uses including the Visitor Information Center. Additionally, the second floor can support either retail commercial or and professional office uses.
149. (Biology/Access) Modify Section 4.3, Planning Areas, Planning Area 5: Reconfigure Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose) And Incorporate Avoided Area Into Planning Area 5; Modify text as follows: The 12.3-acre (modify acreage figure) Hilltop Park and Greenbelt Linkage preserves a significant landform, establishes a public park, provides integrated trails, and connects to adjacent parks and open space. It serves as a major feature of the integrated trail system by providing dramatic views of the surrounding City, Harbor, and Pacific Ocean. Access and parking are provided from the Street of the Green Lantern, Scenic Drive, Selva Road (Dana Strand Road), "A" Street, and Pacific Coast Highway. In addition, six public parking spaces to exclusively serve open space uses will be constructed in Planning Area 4, PCH V/RC. The Hilltop Park and Greenbelt Linkage is detailed in Section 4.4, Park and Open Space Plan. Natural resource (Blochman's dudleya) habitat will be preserved in the vicinity of the Hilltop Park and managed by the City of Dana Point pursuant to the recommendation and approval of the California Department of Fish and Game. Furthermore, all ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas, pursuant to the requirements of this LCP. Fuel modification shall be prohibited within ESHA. Habitat restoration may occur. The ESHA area shall be preserved in perpetuity and endowed to cover the cost of management and maintenance. The area will require a long-term management program to help facilitate the survival of the sensitive plants and animal species.

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The Hilltop Park includes trails, rest areas, overlooks, seating, open space, signage, native landscaping, fencing, and other passive features. The Greenbelt Linkage includes trails, ~~landscaping~~ habitat preservation and restoration, fencing, signage, open space buffers to the Headlands Conservation Park, ~~a proposed visitor recreation facility (the Conservation Center)~~, and other passive features.

150. (Biology) Modify Section 4.3, Planning Areas, Planning Area 7: Modify acreage figures to reflect suggested modifications herein; modify text as follows: In conjunction with the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG), the Headlands Conservation Park also provides for the long-term preservation and management of habitat for sensitive species, including the Pacific pocket mouse, and other flora and fauna. The 22.0 acre temporary Pacific pocket mouse preserve established by the NCCP will be expanded by 2.25.9 acres, and a ~~minimum 100' wide~~ greenbelt buffer has been designated in adjoining Planning Area 5. A non-profit trust will be established to manage the Park in conjunction with the USFWS and CDFG. The recording of easements, deed restrictions, and additional measures ensure that the Headlands Conservation Park remains permanently designated as conservation open space.

151. (Biology) Modify Section 4.4, Park and Open Space Plan: Reconfigure Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose) And Incorporate Avoided Area Into Planning Area 5; Eliminate/Relocate Visitor Buildings And Parking To Avoid Esha; modify text as follows: ...The three primary goals of the Park and Open Space Plan are as follows:

1. Create high quality public parks, recreation, and open space areas that maximize coastal access, establish and preserve public views, and conserve natural resources including the preservation and enhancement of environmentally sensitive habitat area...

152. (Access/Biology) Modify Section 4.4.A, The Public Parks: A public trail/access system, over three miles in length, links all of the parks and open space. The system includes pedestrian and bicycle trails, coastal and beach access, scenic overlooks, and ~~five~~four proposed public visitor recreation facilities to be constructed by the Landowner/Developer. The trails maximize public coastal access and view opportunities. These trails implement the policies and guidelines of the Dana Point General Plan and provide a comprehensive system that reinforces the relationship between the project site, the Harbor, and the Pacific Ocean.

The public parks and open space areas will be improved by the developer, offered for dedication, transferred, and/or conveyed to the appropriate public agency or non-profit entity in the first phase of the project, consistent with the Development Phasing Plan identified in Section 3.7.C.6 of the Planned Development District terms and conditions provided for in the Development Agreement

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153. (Biology/Access) Modify Figure 4.4.1, Park and Open Space Plan: Reconfigure Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose) And Incorporate Avoided Area Into Planning Area 5; Eliminate/Relocate Visitor Buildings And Parking To Avoid Esha; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of the Shoreline Protective Device

154. (Biology) Modify Section 4.4.B.1, Headlands Conservation Park, Setting/Site Features: ...Marguerita Road borders the northerly edge of the site and will be removed and the area restored concurrent with the extension of Selva Road...

[no intervening changes]

Site Features

- ~~The existing Marguerita Road adjacent to the park,~~ shall be removed, the area shall be graded to natural contours and re-vegetated pursuant to Figure 4.4.6 and Section 4.13, Coastal Resources Management Program.

[no intervening changes]

- A 10' wide pedestrian trail of decomposed granite/gravel shall provide controlled access to the coastal bluff top. The bluff top trail alignment shall be designed to minimize impacts to areas of natural resource value, including coastal bluff scrub habitat. The trail shall be located a minimum of 25 feet from the edge of Coastal Bluff Scrub habitat. See Figure 4.4.3, Headlands Conservation Park Bluff Section.

[no intervening changes]

- A proposed Nature Interpretive Center shall be constructed in the adjacent greenbelt (Planning Area 8a) outside of environmentally sensitive habitat area to serve as management and educational headquarters for the Headlands Conservation Park.

155. (Biology) Modify Figure 4.4.2, Headlands Conservation Park Conceptual Plan: Modify Park Boundary To Incorporate Area Of Marguerita Road, And Modify Location Of Parking And Nature Interpretive Center To Avoid Impacts To Esha

156. (Biology) Modify Section 4.4.B.2, Hilltop Park and Greenbelt Linkages, Setting/Design Concept/Site Features: ...The park preserves a prominent landform and environmentally sensitive habitat area. Access is currently provided from PCH, Street of the Green Lantern, and Scenic Drive...

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[no intervening changes]

...Provide a series of greenbelt linkages and public trails to adjacent parks and open space. Conserve, enhance and restore environmentally sensitive habitat area. ~~Emphasize the use of natural or drought tolerant landscape materials.~~ Provide appropriate public visitor facilities sited in locations that avoid the degradation of environmentally sensitive habitat areas.

[no intervening changes]

Level of Development:	Moderately Low. Multiple public trails, hilltop overlook, rest areas, visitor recreation facility, parking <u>sited in locations that avoid the degradation of environmentally sensitive habitat areas.</u>
Proposed Uses:	Walking, bicycling (<u>outside of environmentally sensitive habitat areas</u>), hiking, jogging, picnicking, educational, parking. Coastal access and view opportunities, fuel modification , protection of natural resources.
Program Elements:	Primarily <u>Solely native vegetation appropriate to the habitat type</u> landscape materials, drought tolerant landscape materials. Pedestrian/bicycle access pathways. Scenic overlooks. Visitor recreation facility, interpretive/informational signage. Fencing as appropriate for public safety, view preservation, and protection of resources.

Site Features

- Trails shall be either bikeways or pedestrian trails as designated on Figure 4.5.1, Public Trail/Access Plan. No bicycle trails shall be located within environmentally sensitive habitat areas. Combined bikeway/pedestrian trails shall be 12' wide and constructed of concrete. Pedestrian trails shall be 10' wide, constructed of decomposed granite/gravel. A ~~"switchback"~~ pedestrian trail shall provide access to the hilltop overlook. Trails shall be designed to minimize impacts to areas of natural resource value by utilizing existing trail alignments where feasible. Existing disturbed areas, including unnecessary trails, will be re-vegetated pursuant to Section 4.13, Coastal Resources Management Program.
- A hilltop overlook shall be provided at the park's highest elevation. The overlook shall be constructed of concrete or other durable materials and be

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designed to blend with the natural surroundings. See Figure 4.4.5, Hilltop Park Section. A minimum of two benches and one covered trash receptacle shall be provided. Fencing may be required as deemed necessary by the Director of Community Development.

- ~~Marguerita Road shall be removed, the area graded to natural contours and revegetated pursuant to Section 4.13, Coastal Resources Management Program. See Figure 4.4.6, Greenbelt Buffer at Headlands Conservation Park.~~ Areas of natural resource value shall be protected through signage, barrier plantings, walls and fencing if necessary. A solid wall, impervious to dogs, shall be placed along the entire border of the residential development in Planning Area 6 and commercial development in Planning Area 4 and the environmentally sensitive habitat area within Planning Area 5. Furthermore, fencing and/or barrier plantings shall be placed around the entire perimeter of the environmentally sensitive habitat area and along the perimeter of trails to prevent human intrusion into sensitive habitat, direct people toward trails and to confine users to the trails.

[no intervening changes]

- ~~The proposed visitor recreation facility, the Conservation Visitor Center, shall be located near the terminus of Selva Road. The Conservation Visitor Center shall be a maximum of 2,000 square feet and, due to fuel modification requirements, constructed as an open air facility using non-combustible materials.~~
- ~~The Conservation Visitor Center shall include an educational program open to the public highlighting the various conservation programs that have been established along the California Coast.~~

[no intervening changes]

1. LANDSCAPE DESIGN

- ~~Primarily~~Solely native shrubs, ground covers and grasses selected from the Headlands Revegetation Palette. The greenbelt along the Selva Road extension and along the border with the Niguel Terrace Condominiums may utilize the Landscape Palette identified on Table 4.16.1
- Subject to other restrictions, native trees shall be selectively planted as necessary to screen adjacent uses. Trees shall be located to minimize conflicts with views from surrounding areas. Trees shall not be planted within environmentally sensitive habitat areas. See Figure 4.4.7, Greenbelt Linkage.

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- Limited temporary irrigation for native plant establishment ~~and limited permanent irrigation as necessary to comply with Fuel Modification Zone requirements or for designated drought-tolerant landscaping areas.~~

2. OWNERSHIP, CONSTRUCTION MAINTENANCE

The Hilltop Park and Greenbelt Linkages shall be transferred to the City pursuant to ~~the terms of Section 4.4(A.) above the Development Agreement.~~ The property shall be conveyed subject to the completion of all improvements, which shall be constructed by the Landowner/Developer. Maintenance and management costs shall be borne by the Landowner/Developer, as detailed in Section 4.14, Coastal Resources Management Program, for a one year period, and thereafter, by the City. An endowment may be utilized to cover the costs of maintenance and management of environmentally sensitive habitat areas and such areas shall be managed and maintained consistent with the Headlands Conservation Park.

157. (Biology/Access) Figure 4.4.6 Greenbelt Buffer at Headlands Conservation Park: Modify Park Boundary, Trails, Residential Structure, Etc. To Reflect Park Expansion
158. (Biology) Modify Section 4.4.B.3, Harbor Point Park, Design Concept/Site Features:

3. CONCEPTUAL PLAN

See Figure 4.4.8, Harbor Point Park Conceptual Plan

4. SETTING

The Harbor Point Park, located on the southeastern edge of the project, overlooks Dana Point Harbor. The site includes the Harbor "Point" which borders the harbor, the adjacent coastal bluffs, and a plateau that provides dramatic views. The Street of the Green Lantern, Cove Road and Scenic Drive provide access to the area.

5. DESIGN CONCEPT

Create a public park that preserves a major landform and environmentally sensitive habitat area, while establishing and encouraging public coastal access. Incorporate coastal view opportunities. Integrate the public trail system and the proposed visitor recreation facilities ~~by providing areas that can be actively used by the public.~~ Provide trails and overlooks ~~a contemplative space~~ within the park. Align the trails, overlooks, and public facilities to visually link with the harbor and

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the ocean. ~~For Planning Area 8b, restrict~~ Confine public access through ~~from~~ sensitive natural resources to public trails.

6. PROGRAM

Intensity of Use:

For Planning Area 8a, Recreation—Low. Limited development of public visitor facilities permitted (sited in locations that do not degrade environmentally sensitive habitat areas). Limited recreational activities permitted. ~~recreation moderately high. Multiple recreational activities permitted.~~ For Planning Area 8b, conservation-very low, no active development permitted.

Level of Development:

For Planning Area 8a, moderately ~~low~~ high. Multiple public trails, overlooks, rest areas, parking, nature interpretive center sited in locations that avoid the degradation of environmentally sensitive habitat areas, visitor public facilities, public art, veterans' memorial. Planning Area 8b, public access to the coastal bluff face is prohibited. Limited access to the rocky beaches in conjunction with the Ocean Institute.

Proposed Uses:

For Planning Area 8a, walking, bicycling, hiking, jogging, picnicing, educational, historical, artistic, parking. Coastal access and view opportunities. Public and private ceremonial activities. All of the preceding shall only occur in locations that avoid the degradation of environmentally sensitive habitat areas. For Planning Area 8b, scientific and educational uses only. Permanent conservation through deed restrictions.

Program Elements:

For Planning Area 8a, drought tolerant and native landscaping materials. Pedestrian/bicycle access pathways. Scenic overlooks. Nature interpretive center. Visitor recreational facilities. Veterans' memorial. Public art. Interpretive/informational signage. Safety fencing. All of the preceding shall only occur in locations that avoid the degradation of

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environmentally sensitive habitat areas. For Planning Area 8b, conservation of natural resources. Interpretive/ informational signage.

7. SITE FEATURES

- Trails shall be either bikeways or pedestrian trails as designated on Figure 4.5.1, Public Trail/Access Plan. ~~Bikeway trails surrounding the proposed Maritime Historical Visitor Center shall be 10' wide, constructed of concrete.~~ Other pedestrian trails shall be typically 10' wide, constructed of decomposed granite/gravel or stabilized soil. Trail alignments shall be designed to minimize impacts to areas of natural resource value, including coastal bluff scrub habitat.
- A series of ~~seven~~ overlooks shall be constructed of decomposed granite/gravel, concrete, or enhanced pavement. A minimum of two benches and one covered trash receptacle shall be provided at each overlook. To the extent such facilities may be constructed such that ESHA is not degraded, ~~Public art, kiosk, markers or signage providing interpretive, historical or other relevant information shall be provided as determined through the coastal development permit process by the Director of Community Development.~~
- Safety view fence shall separate trails from adjacent coastal bluffs. Fencing and/or barrier plantings shall be placed around the entire perimeter of the environmentally sensitive habitat area and along the perimeter of trails to prevent human intrusion into sensitive habitat, direct people toward trails and to confine users to the trails.
- ~~A proposed Veteran's Memorial, with two components—a monument/public art element and a flagpole, shall establish a contemplative area near the proposed Maritime Historical Visitor Center.~~
- ~~The proposed Maritime Historical Visitor Center shall be a maximum of 2,000 square foot. The design shall replicate an early Californian lighthouse, and include historical exhibits related to California's maritime and local history. It shall be located inside the VR/C building stringline established by the adjacent commercial development on Green Lantern. A paved, enhanced patio area, suitable for outdoor receptions and picnicking shall be included in the design program. Sidewalks immediately adjacent to the Maritime Historical center shall be concrete enhanced pavement. See Figure 4.4.9, Harbor Point Park Section.~~
- ~~The proposed Cultural Arts Visitor Center shall be a maximum of 2,000 square foot. It shall be constructed of appropriate materials consistent with~~

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~~Section 4.12, Design Guidelines, to complement the surrounding area. It shall be located adjacent to Scenic Drive overlooking the Pacific Ocean. The facility shall include multi-purpose space suitable for exhibitions, lectures, and educational uses. A paved patio area shall adjoin the building.~~

- The proposed Nature Interpretive Visitor Center shall be a maximum of 2,000 feet. It shall be constructed of appropriate materials consistent with Section 4.12, Design Guidelines, to complement the surrounding area. It is located adjacent to the Headlands Conservation Park, at the terminus to Scenic Drive. The facility shall include educational, management, and operational space designed to serve the adjacent Headlands Conservation Park. The facility shall be sited in a location that avoids the degradation of environmentally sensitive habitat areas.
- Vehicular drop-off/turnarounds shall be provided ~~immediately east of the Maritime Historical Visitor Center and~~ at the terminus to Scenic Drive adjacent to the proposed Nature Interpretive Visitor Center. Vehicular drop-offs shall be paved with enhanced pavement and shall have planted islands. A minimum of two benches and one covered trash receptacle shall be provided at each drop-off. The facility shall be sited in a location that avoids the degradation of environmentally sensitive habitat areas.

8. LANDSCAPE DESIGN

- Harbor Point Park shall be landscaped with native and drought tolerant materials appropriate to the habitat type as identified in Table 4.14.2 ~~and Table 4.16.1. Accent plantings immediately adjacent to the visitor recreation facilities may be planted subject to approval by the Director of Community Development.~~
- ~~An open meadow appropriate to informal uses shall be established in the area overlooking the Dana Point Harbor. It shall be composed of appropriate native grasses or groundcovers.~~
- ~~Subject to fuel modification and other restrictions, low canopy trees shall be selectively planted within 50 feet of the Maritime Historical Visitor Center, Cultural Arts Visitor Center and Nature Interpretive Visitor Center. Trees may also be selectively planted within and immediately adjacent to parking areas. Trees shall be located to minimize conflicts with views from surrounding areas.~~
- Irrigation shall be temporary in those areas adjacent to the coastal bluffs. ~~Permanent irrigation shall be allowed within enhanced landscape zones immediately adjacent to visitor facilities and as required. See Section 4.16 for additional irrigation guidelines.~~

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9. OWNERSHIP, CONSTRUCTION AND MAINTENANCE

The Harbor Point Park shall be transferred to the City pursuant to ~~the requirements of Section 4.4(A.) above the Development Agreement.~~ The property shall be conveyed subject to the completion of all improvements, which shall be constructed by the Landowner/Developer. The maintenance and management costs shall be borne by the Landowner/Developer, as detailed in Section 4.14, Coastal Resource Management Program, for a one year period, and thereafter, by the City. An endowment may be utilized to cover the costs of maintenance and management of environmentally sensitive habitat areas and such areas shall be managed and maintained consistent with the Headlands Conservation Park.

- 159. (Biology) Figure 4.4.8 Harbor Point Park Conceptual Plan: Modify This Figure To Eliminate/Relocate Visitor Buildings And Parking To Avoid Esha
- 160. (Biology) Figure 4.4.9 Harbor Point Park Section: Modify Figure To Eliminate Maritime Historical Visitor Center And Patio, Replace Enhanced Plantings With Native Vegetation Restoration.
- 161. (Access/Biology) Modify Section 4.4.B.4., Strand Vista Park/Public Beach Access:

10. DESIGN CONCEPT

Create an active park that utilizes the unique site characteristic to provide dramatic coastal access and view opportunities. Establish the integrated trail system as a major feature within the park. Incorporate a series of view overlooks to establish public view opportunities.

Create an improved public beach access, the North Strand Beach Access, by widening the existing County facility, and designing two rest/landing areas with view opportunities. Construct a new restroom and outdoor shower facility at the base of the stairs immediately above Strand Beach. If gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular (inclined elevator) in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach.

Create the Mid-Strand Vista Park Access as a new public path leading from the trail in approximately the middle of the park, to the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

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Create the Central Strand Beach Access as a new public path to Strand Beach, conveniently located within the Strand Vista Park, near the entry to the Strand Residential neighborhood (Planning Area 2). The entry of the Central Strand Beach Access shall be designed to encourage public use, i.e., architectural elements shall be incorporated into the entry to distinguish it and appropriate signage announcing the presence and encouraging use of the access by the public shall be posted. The Central Strand Beach Access shall provide direct access to Strand Beach, opening a portion of the property currently fenced and restricted from public use.

Construct the South Strand Beach Access to provide additional access to Strand Beach. Create new coastal view opportunities by establishing a public overlook area adjacent to the Selva Road entry, and by integrating rest/landing areas into the "switchback" public access trail. The South Strand Beach Access will provide direct access to the beach, opening a portion of the property currently fenced and restricted from public use. Construction of this walkway implements the coastal access identified in the Certified Dana Point Local Coastal Program. Construct a new restroom and outdoor shower facility above Strand Beach.

11. PROGRAM

<i>Intensity of Use:</i>	Recreation—Moderately high. Multiple recreation activities permitted.
<i>Level of Development:</i>	Moderately high. Multiple public trails, overlooks, rest areas, visitor recreation facilities* (public restrooms and showers), <u>funicular</u> , public art, coastal access pathways. <u>The facilities shall be sited in locations that avoid the degradation of environmentally sensitive habitat areas located on the Strand bluff face in the vicinity of the South Strand Beach Access.</u>
<i>Proposed Uses:</i>	Walking, bicycling, hiking, jogging, picnicking, restroom, and shower facilities. Coastal access and view opportunities.
<i>Program Elements:</i>	Drought tolerant landscape materials with appropriate transitions to native materials at the south end. <u>Vegetation on the bluff face south of the Strand residential and seaward of the Selva Road extension shall be solely native vegetation appropriate to the habitat type.</u> Pedestrian/bicycle access pathways. Scenic overlooks. Visitor recreational facility. Interpretive informational signage. Public art.

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Vertical and lateral coastal access. Safety fencing,
view fencing.

Site Features

- A meandering 10' wide concrete pedestrian trail shall be constructed within the linear park. As appropriate, the trail shall be grade separated, with approximately a five-foot difference in elevation between the trail and parking lot. See Figure 4.4.11, Strand Vista Park Prototypical Trail Section.
- Pedestrian plazas/overlooks shall consist of enlarged paved areas, appropriate metal view fencing, with a minimum of two benches, a picnic table, and a trash receptacle. If necessary, retaining walls adjacent to the trails or overlooks shall be constructed of appropriate, durable materials that blend with the setting. See Figure 4.4.12, Strand Vista Park Conceptual Overlooks.
- The existing County public beach access shall be improved as the North Strand Beach Access. Two overlooks providing coastal views, rest/landing areas shall be incorporated into the trail design. Benches shall be provided at each overlook. The access shall be enhanced through new landscaping and related amenities to integrate it with Strand Vista Park. See Figure 4.4.13, North Strand Beach Access Cross-Section. If gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, those regulations or restrictions shall only be allowed in conjunction with the construction, operation and maintenance of a public funicular (inclined elevator) in Planning Area 1, parallel to the North Strand Beach Access, providing mechanized public access from the County beach parking lot to the beach. Signs located at the boarding area of the funicular and visible from vehicles traveling on Selva Road shall indicate the hours of operation, any fee, and notice that if the funicular is out of service for more than 3 consecutive scheduled operating days, public vehicular access through Planning Area 2 for passenger drop-off shall be available during the period of service outage.
- ATwo visitor recreation facilities~~y~~ consisting of new restrooms~~s~~ and shower facilities shall be constructed at the base of the North Strand Beach Access~~r~~, and the South Strand Beach Access, above Strand Beach. As necessary, ~~view~~-fencing shall be provided.
- The Mid-Strand Vista Park Access shall consist of an 8' wide concrete walkway and shall be constructed in approximately the middle of the park, from the park trail to a connection with the Central Strand Beach Access at the intersection of the first residential cul-de-sac street.

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- The Central Strand Beach Access shall consist of a concrete walkway 8' wide which will parallel the spine road for the Strand residential neighborhood, as illustrated in Figures 4.4.15 and 4.4.16. Above the beach, at the same level as the lowest row of lots, the access shall be incorporated into a 50' wide landscaped extension of Strand Beach Park and the minimum 8 foot wide public path that shall be located seaward of the Strand residential development and on top or landward of any shoreline protective device. Within the 50' wide landscaped extension only, the trail shall be 10' wide.
- South Strand Beach Access shall be constructed as a 6' wide "switchback" trail from Selva Road to the southern portion of the beach. An overlook shall be provided at the top of the walkway, adjacent to Selva Road. Additional rest areas/overlooks shall be incorporated into the trail at key locations and safety view fence shall be installed as necessary. The path and associated facilities shall be sited in locations that avoid the degradation of environmentally sensitive habitat areas located on the Strand bluff face. Fencing and/or barrier plantings shall be placed along the perimeter of trails passing through or adjacent to environmentally sensitive habitat areas to prevent human intrusion into sensitive habitat, direct people toward trails and to confine users to the trails. As noted above, a restroom/shower facility will be constructed above Strand Beach near the beach terminus of the South Strand Beach Access.

12. LANDSCAPE DESIGN

- Landscape within Strand Vista Park and the North Strand Beach Access shall be more "manicured" in character yet still tied to the overall landscape theme. Materials will be selected from Table 4.16.1, Landscape Palette. Existing site vegetation shall be selectively removed to create and enhance ocean views. Palm, cypress and other vertical shaped trees will be planted at the pedestrian plazas/over looks but spaced to ensure preservation of views. Low trees and shrubs shall be planted on the slope of the western side of the trail in order to preserve public views.
- Landscape Vegetation along the South Beach Access shall be native shrubs, ground covers and drought tolerant materials appropriate to the habitat type. The landscaping should transition into native materials from Selva Road into the slope area. Vegetation on the bluff face south of the Strand residential and seaward of the Selva Road extension shall be solely native vegetation appropriate to the habitat type. Native trees shall be selectively planted as necessary to screen adjacent uses except that trees shall not be planted along the south access. Selected planting of trees may be used along the south access to provide shade and visual interest. Trees shall be located to minimize conflicts with views from surrounding areas.

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- Within the guidelines identified in Section 4.16, permanent irrigation may be provided within Strand Vista Park, as well as those areas adjacent to the North and South accessways. Slope areas with native materials will require irrigation for plant establishment and possible fuel modification interface.

13. OWNERSHIP, CONSTRUCTION, MAINTENANCE

Strand Vista Park shall be transferred to the City pursuant to Section 4.4(A.) above the Development Agreement. The property shall be conveyed subject to the completion of all improvements, which shall be constructed by the Landowner/Developer. The Landowner/Developer shall enter into a Construction and Maintenance Agreement with the County for those portions of the County Strand Beach parking lot that abut the Strand Vista Park. The maintenance and management costs shall be borne by the Landowner/Developer, as detailed in Section 4.134, Coastal Resources Management Program, for a one year period, and thereafter, by the City. The City reserves the right to trim or remove trees for the preservation of public views. The Landowner/Developer shall enter into a Construction and Maintenance Agreement with the appropriate public agency for the funicular.

162. (Access) Modify Figure 4.4.10 Strand Vista Park/Public Beach Access
Conceptual Plan: Add Location Of Mid-Strand Vista Park Accessway And Funicular.
163. (Access) Figure 4.4.13 North Strand Beach Access Cross-Section: Show Funicular.
164. (Access/Hazards) Modify Section 4.4.B.5, Strand Beach Park:

14. DESIGN CONCEPT

Create multiple public beach access opportunities, which connect to the integrated trail system. Provide numerous scenic overlooks and rest areas. Dedicate the private beach to public ownership and uses. Repair and maintain ~~Reconstruct~~ the existing rock revetment (which lies within Planning Area 2) ~~to ensure public safety and to create public coastal access and move it landward.~~ Utilize project design features such as nuisance water diversion to minimize water quality impacts and beach erosion.

15. PROGRAM

Intensity of Use: Recreation-very high. Multiple recreational activities permitted.

Level of Development: Low. Limited to new coastal access pathways.

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Proposed Uses: Surfing, swimming, volleyball, picnics, walking, hiking, jogging, fishing, kayaking, and other water related activities.

Program Elements: Establish public coastal access, emergency access, ~~reconstruct~~ repair and maintain the existing rock revetment and move it landward to ensure public safety and to minimize coastal erosion.

16. SITE FEATURES

- As identified in Strand Vista Park above, the North Strand Beach Access pathway shall consist of a 10' wide pedestrian sidewalk that connects to Dana Strand Beach Road directly adjacent to the north end of the County parking lot. In addition, a funicular will be constructed parallel to the North Strand Beach Access to convey members of the public from Strand Vista Park to a ramp to the beach.
- Public restrooms and showers serving visitors to Strand Beach shall be constructed within the North Strand Beach Access and the South Strand Beach Access directly above the beach.

[no intervening changes]

- The emergency access and the Central Strand Beach Access will be protected from coastal erosion by incorporating the accessways into the design of the repaired and maintained ~~reconstruction for the~~ revetment.
- In conjunction with any shoreline protective device, an 8 foot wide concrete public access path shall be constructed seaward of the Strand residential development and on top or landward of any shoreline protective device. The path shall follow the entire length of the shoreline protective device from the North Strand Beach Access to the South Strand Beach Access, that shall be a minimum of 8 feet wide, plus any additional width necessary to accommodate benches and picnic tables, between the seaward lot line of the Strand residential lots and the top edge of the shoreline protective device. Benches (minimum 2), picnic tables (minimum 2), and trash receptacles shall be available at regular intervals along the pathway. The location of the public pathway along the top or landward of the shoreline protective device will allow convenient year-round public access and recreational area along the beach which is currently interrupted by seasonal conditions and high tides.

[no intervening changes]

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17. OWNERSHIP, CONSTRUCTION, MAINTENANCE

The Strand Beach Park shall be offered for dedication or donation to the County pursuant to Section 4.4(A.) above the Development Agreement. If the County does not accept the Strand Beach Park, it shall be offered for dedication or donation to the City. The property shall be conveyed subject to the completion of all improvements, which shall be constructed by the Landowner/Developer. Except for the beach, which will be the County's (or City's) responsibility upon acceptance, the maintenance and management costs shall be borne by the Landowner/Developer, as detailed in Section 4.13, Coastal Resources Management Program, for a one year period, and thereafter, by the County (or City).

165. (Access/Hazards) Modify Figure 4.4.14 Strand Beach Park Conceptual Plan: Add A Minimum 8 Foot Wide Pathway Seaward Of The First Line Of Residences Within The Strand, And on top or Landward Of The Shoreline Protective Device, Along The Entire Length Of The Strand Residential Area Between The North Strand Beach Access And The South Strand Beach Access With Connections To Each Access As Well As The Central Strand Beach Access; Show Benches And Picnic Tables Along The Length Of The Accessway; Add A Shower To The Public Restroom At The North Strand Beach Access; Add A Public Restroom And Shower Near The Terminus Of The South Strand Beach Access; Modify 'Rock Revetment' To 'Shoreline Protective Device'
166. (Access/Hazards) Modify Figure 4.4.15 Central Strand Beach Concept Plan: Add A Minimum 8 Foot Wide Pathway Plus Additional Width To Accommodate Benches And Picnic Tables, Seaward Of The First Line Of Residences Within The Strand, And on top or Landward Of The Shoreline Protective Device With Connections To The Central Strand Beach Access; Show Benches And Picnic Tables; Modify 'Revetment' To 'Shoreline Protective Device'
167. (Access) Modify Section 4.5.A, Public Trail/Access Plan, Public Trail/Access Descriptions: ...All proposed visitor recreation facilities shall be located in close proximity to the Public Trail Plan. The Public Trail/Access Plan includes the North, Mid-Strand Vista Park, Central and South Strand Beach pathways, and the pathway paralleling Strand Beach along the top or landward of the shoreline protective device.
168. (Access/Biology) Figure 4.5.1 Public Trail/Access Plan: Modify This Figure Consistent With Prior Modifications; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of Shoreline Protective Device; modify trail alignments through and adjacent to ESHA consistent with Exhibit 26b of the Staff Recommendation dated December 30, 2003.

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169. (Access) Figure 4.5.2 Coastal Access Plan: Modify This Figure Consistent With Prior Modifications; Show Mid-Strand Vista Park Access; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of Shoreline Protective Device
170. (Access) Figure 4.5.3 Coastal View Opportunities: Modify This Figure Consistent With Prior Modifications; Show Mid-Strand Vista Park Access; Show Public Accessway Seaward Of Strand Residential/on top or Landward Of Shoreline Protective Device
171. (Biology) Modify Table 4.5.1, items 1 and 3: 1. Public and coastal access shall be established by a trail and a series of overlooks located near the coastal bluff edge consistent with the NCCP/HCP, subject to the approval of the City, the USFWS and the DFG, and California Coastal Commission, and located where the facilities will not degrade environmentally sensitive habitat area.; 3. The view overlooks may provide seating, interpretive signage, public art, and historical or other relevant information, to the extent such facilities can be located where they will not degrade environmentally sensitive habitat area.
172. (Biology/Access) Modify Table 4.5.2, items 3 – 7: 3. The view overlooks may provide seating, interpretive signage, public art, and historical or other relevant information as determined by the City, to the extent such facilities can be located where they will not degrade environmentally sensitive habitat area.; 4. Any areas disturbed during the construction of the public access trails and overlooks, as well as current areas of disturbance, shall be re-vegetated with appropriate native species from the Headlands Revegetation Palette~~subject to fuel modification requirements.~~ Fuel modification shall be prohibited within environmentally sensitive habitat areas and habitat mitigation/restoration areas.; 5. The Hilltop Park shall contain passive recreational uses that complement the multi-use trail and view overlook, such as seating, fencing, habitat preservation areas, interpretive kiosks, and related landscape features to the extent such facilities can be located where they will not degrade environmentally sensitive habitat area.; 6. The Greenbelt Linkages shall contain passive recreational uses that complement the multi-use trail, such as seating, fencing, preservation areas, interpretive kiosks, ~~a proposed visitor recreational facility (Conservation Center),~~ and related facilities to the extent such facilities can be located where they will not degrade environmentally sensitive habitat area.; 7. Parking shall be accommodated along the Street of the Green Lantern, along Scenic Drive, in the Planning Area 8a parking lot next to the proposed nature interpretive center, and in the County public parking lot adjacent to Selva Road. Six public parking spaces dedicated to open space users will also be provided in adjoining Planning Area 4.
173. (Biology) Modify Table 4.5.3, items 3, 4, 5, : 3. The view overlooks shall provide seating, interpretive signage, public art, kiosks, and historical or other relevant information as determined by the City to the extent such facilities can be located where they will not degrade environmentally sensitive habitat area.; 4. ~~The Harbor~~

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~~Point Park shall include uses that complement the public trail and overlooks, such as the proposed veterans' memorial, and areas appropriate for picnics, weddings, or other public functions in the immediate vicinity of the proposed public visitor facilities.~~ 5. The Harbor Point Park includes ~~three proposed public visitor recreation facilities (a Maritime Historical Visitor Center (lighthouse), Cultural Arts Visitor Center, and a Nature Interpretive Visitor Center to be constructed by the Landowner/Developer. Each The~~ facility shall be designed to encourage public access by implementing educational or recreation programs that are open to the public.; 6. The visitor recreation facilities shall have diversified, low cost public programs to attract visitors ~~and encourage the public to visit more than one facility.~~ The facilities shall be designed as a destination points for the public trail system. 7. The visitor recreation facilities shall be open to the public year-round. The recipient public agency or non-profit entity will determine hours of operation.; 8. ~~The proposed Cultural Arts Visitor Center shall be a multi purpose space of approximately 2000 sq. ft. that accommodates art exhibitions, lectures, presentations, and instructional functions.; 9. The proposed Maritime Historical Visitor Center (lighthouse) shall be designed as a replica of an early California lighthouse and provide historical exhibits related to California maritime activities as well as the history of the local region.~~

174. (Access) Modify Table 4.5.4, items 5-6: 5. The Strand Vista Park shall include ~~three~~ five vertical public beach access pathways—South Strand Beach Access, Mid-Strand Vista Park Access, Central Strand Beach Access, and North Strand Beach Access, and if gates, guardhouses, barriers or other development designed to regulate or restrict public access are approved for Planning Area 2, a public funicular (inclined elevator). Lateral coastal access shall be provided along the top or landward of the shoreline protective device seaward of the Strand residential development.; 6. The Strand Vista Park proposes ~~a two~~ two public visitor recreation facilities ~~(a restroom and shower facilities)~~ to be constructed by the Landowner/Developer as part of the North and South Strand Beach Access, just above Strand Beach.

175. (Access) Table 4.5.5, item 4 and add item 10: 4. ~~Public access to all areas outside of the proposed Strand Beach Access pathways shall be restricted. A program of fencing, signage, and other design features shall discourage visitors from leaving the trails and outlooks.~~; 10. Lateral coastal access shall be provided along a minimum 8 foot wide pathway plus additional width to accommodate benches and picnic tables seaward of the first line of residences within the Strand, and on top or landward of the shoreline protective device, along the entire length of the Strand residential area between the North Strand Beach Access and the South Strand Beach Access with connections to each access as well as the Central Strand Beach Access.

176. (Biology) Figure 4.6.1 Circulation Plan and 4.6.2, Street Sections: Modify These Figures Consistent With Prior Modifications.

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177. (Biology/Access) Modify Section 4.6.C: Green Lantern will be realigned to a traffic circle with Scenic Drive. Metered head-in and/or parallel parking along the realigned Street of the Green Lantern and Scenic Drive provides access to the adjacent parks, open space and public trail system.
178. (Biology/Access) Modify Section 4.6.E: Scenic Drive exists on-site and provides access for the existing residential enclaves. With the implementation of the project, the multi-family residential enclave will take access via the extension of Selva Road (Dana Strand Road). Marguerita Road is a private easement. It will be removed and converted to open space. Scenic Drive will be realigned at the Green Lantern traffic circle. Portions of Planning Area 7, Headlands Conservation Park, Planning Area 8, Harbor Point Park, and Planning Area 9, Seaside Inn Visitor/Recreation Commercial, take access from Scenic Drive.

[no intervening changes]

...Restricted hourly parking (3-hour minimum) is proposed for the new parking lot adjacent to the Scenic Drive cul-de-sac. Metered (3-hour minimum) head-in parking along Scenic Drive provides additional access to the adjacent parks, open space and public trail system.

179. (Water Quality) Modify Section 4.7: The existing site hydrology drains to three primary areas: Strand Beach, the coastal bluff edges, and to Dana Point Harbor. The majority of the drainage flows to Strand Beach where five storm drain outlets were constructed in the 1950s to service the mobile home park, as well as adjacent off-site areas that drain to the Headlands. ~~The Approximately 13 acres of~~ off-site runoff drains through the project to Strand Beach including portions of the County Salt Creek Parking Lot, Selva Road, and adjacent residential homes and condominiums. On-site storm water runoff to Dana Point Harbor comes from portions of the existing Cove Road, Scenic Drive, and the Street of the Green Lantern, which utilize concrete "V" ditches in Cove Road and storm drains in Green Lantern. Approximately 17 acres of offsite development, including portions of Blue Lantern and Santa Clara Avenue and the commercial and residential development associated with those streets, portions of Harbor Drive and the adjoining County parking lots also drain to the west end of Dana Point Harbor.
180. (Water Quality) Modify title to Figure 4.7.1: Conceptual Drainage Plan and Best Management Practices; and modify drawing consistent with prior suggested modifications.
181. (Water Quality) Modify Section 4.7.B.2, Structural Controls (WQ1): Capture and filter the "first flush" (the initial 0.69 inches of rain in a 24-hour period) to reduce sediment, bacteria and other water quality pollution; Locate sand filters or BMPs with equivalent or better treatment capability in locations which will allow the treatment of onsite development areas as well as adjacent off-site, first flush storm

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flows. Add a secondary treatment system utilizing zeolite, clay or similar media filters to minimize nutrients (nitrates/phosphates) from reaching Dana Point Harbor. In conjunction with the City and County, determine the maintenance responsibilities for the filtering devices and similar BMPs.; Incorporate BMP devices that may include separators, sand filtering systems or other features into the storm water conveyance design to reduce oil, grease sediment, debris and other pollutants. All storm drain inlets shall include catch basin filters.

182. (Water Quality) Modify Table 4.7.1, items 7 and 10: 7. Implement water-efficient and environmentally sensitive landscaping where practical. See Section 4.16, Irrigation Guidelines, for specific details of the irrigation requirements. Landscaping plant organization that combines species on the basis of climatic and habitat adaptations, and the incorporation of drought-resistant plants, can reduce irrigation and maintenance requirements. Native species will be adapted to the climate and require little supplemental irrigation.; 10. In the visitor/recreation commercial areas, ensure that all restaurants/food service facilities include grease traps and a wash-down area plumbed to drain to the sanitary sewer system for treatment and disposal.
183. (Biology) Section 4.8, Conceptual Water Plan: The water system is illustrated in Figure 4.8.1, Conceptual Water Plan. The water plan meets the applicable requirements of the City and SCWD for fire flow and the proposed land uses. Adequate water capacity and lines exist on-site and at the property boundary to serve the project. If available, reclaimed water will be utilized to provide irrigation for common area landscaping. To the extent feasible, existing utilities, including water lines, crossing through open space areas containing environmentally sensitive habitat area shall be removed or abandoned in place, provided that any alternative utility alignment wouldn't necessitate impacts upon environmentally sensitive habitat area.; Modify FIGURE 4.8.1 Conceptual Water Plan Consistent With Prior Suggested Modifications; Show Water Line Generally Following The Portion Of Marguerita Road To Be Removed Within The Headlands Conservation Park As 'To Be Removed Or Abandoned In Place, If Feasible'
184. (Biology) Modify Section 4.10: ...New utilities and existing above ground utilities will be located underground as part of project development. Utilities shall be located outside of environmentally sensitive habitat areas. If feasible, utility pedestals, service substations, and utility vaults shall be located in appropriate locations with low visibility, to minimize the need for retaining walls and the potential to block existing or proposed signs or degrade public views.; Modify Figure 4.9.1 Conceptual Sewer Plan Consistent With Suggested Modifications.
185. (Biology/Hazards/Views) Figure 4.11.1 Conceptual Grading Plan: Revise Grading Plan To Reflect Reconfiguration Of Bowl Area Residential To Avoid Esha (Except For Allowable Impact Area Identified In The General Plan/Lue/Ude/Cose); And

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Revise Grading Plan In Strand Residential To Reflect More Landward Alignment Of Shoreline Protective Device.

186. (Biology/Hazards) Modify Table 4.11.1, items 4, 6, 8, 10, 11, 13, 14: 4. Grading adjacent to greenbelt linkages shall, where feasible, blend to match existing natural contours. Disturbed areas adjacent to greenbelt linkages shall be re-vegetated with native ~~or other appropriate~~ vegetation.; 6. ~~Subject to fuel modification requirements,~~ All disturbed areas within Recreation Open Space shall be re-vegetated with appropriate drought tolerant and native plant materials.; 8. Grading or disturbance of areas containing environmentally sensitive habitat area and/or designated Conservation Open Space shall be minimized to accommodate only those uses consistent with avoiding the degradation of environmentally sensitive habitat areas, except as allowed under Conservation Open Space Element Policy [Suggested Mod 78] and Section 3.5.E of the Planned Development District [Suggested Mod 128], and public safety, public access, and management of existing natural resources.; 10. Grading and construction in Planning Areas 7 (Headlands Conservation Park), ~~and 8a (Harbor Point Park), and 9 (Seaside Inn)~~ shall follow the minimum 50 foot bluff edge setback criteria, or greater setback as established in a City reviewed, licensed geotechnical report.; 11. Grading in Planning Area 8a (Harbor Point Park) shall be limited to that necessary to provide public access, the proposed visitor recreation facilities, and public amenities. Grading shall be prohibited in locations that degrade environmentally sensitive habitat areas.; 13. Grading in Planning Area 1 (Strand Vista Park) adjacent to the South Strand Beach Access shall, where feasible, blend into the adjoining natural contours, and disturbed areas shall be re-vegetated with native vegetation identified in Table 4.14.2. Grading shall be prohibited in locations that degrade environmentally sensitive habitat areas, except as allowed under Conservation Open Space Element Policy [Suggested Mod 78] and Section 3.5.E of the Planned Development District [Suggested Mod 128]; 14. Grading in Planning Areas 2 (Strand Residential Neighborhood) and 3 (Strand Beach Park) associated with the ~~reconstruction of the existing sea revetment~~ repair and maintenance of the shoreline protective device shall not encroach seaward of the toe of the existing revetment, except as necessary to comply with Section 3.5.G. of the Planned Development District relative to rock/material retrieval from the beach, at bedrock, unless improvements are specifically necessary to create or enhance public access and/or public safety. The shoreline protective device shall be located at or landward of the existing revetment toe (depicted on Figure 1, Existing Revetment Alignment (TOE), The Keith Companies dated January 8, 2004), such that, the average position of the shoreline protective device is moved at least 5 feet landward or easterly.

187. (Biology) Section 4.13, Coastal Resources Management Program and 4.14 Parks and Open Space Management Plan: Modify entire program as follows: Prohibit fuel modification of any form whatsoever (including but not limited to, thinning, pruning, native vegetation removal, irrigation, or plant palette controls) within retained ESHA and mitigation/restoration areas; change the 3 year monitoring

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program to a minimum 5 year monitoring program with provisions for extension of the monitoring period to address failures to meet performance criteria; require a perpetual maintenance program for all retained ESHA and mitigation/restoration areas weed removal, pest control, and plant replacement, as well as to appropriately manage human encroachment into habitat areas; mandate submittal of complete habitat/open space restoration, monitoring and perpetual maintenance plans in the filing of coastal development permit applications;

188. (Biology) Figure 4.14.1 and 4.14.2, Fuel Modification Plan: Revise Development Plan Such That No Fuel Modification Is Necessary Within Environmentally Sensitive Habitat Areas except as necessary to accommodate the development of a 65-90 room inn within Planning Area 9.

189. (Biology) Table 4.14.2, Revegetation Plant Palette: Revise Plant Palette To Include Only Species Which Have Historically Been Documented On Site, In Coastal Sage Scrub, Coastal Bluff Scrub, Or Native Grassland, Or Could Reasonably Be Expected In Those Habitats Based On Documentation Of Comparable Nearby Habitat.

190. (Biology/Water Quality/Hazards) Modify Section 4.16, Master Landscape and Irrigation Guidelines:... The landscape palette, as identified in Table 4.14.2, Vegetation Plant Palette, include materials that enhance public views, conserve water, reduce risks of fire hazard, and ~~minimize~~avoid invasive plant materials. Natural landscaping and fuel modification requirements shall follow the guidelines outlined in Section 4.14, Parks and Open Space Management Plan, which also include details concerning landscaping in native, indigenous or fuel modification areas.

Utilizing vertical landscape elements such as ~~palms, cypress and similar~~ trees to frame views shall enhance significant public coastal view opportunities. Private homeowners and the commercial development in Planning Area 9 are encouraged to utilize plant species from the following list. However, landscaping for residential lots and Planning Area 9 shall be established at the Site Development Permit approval, and may vary from the list provided any plant utilized is both non-invasive and drought tolerant. In addition to the City approved Site Development Permit, in conjunction with the final maps, an architectural review board and conditions, covenants, and restrictions (CC&Rs) shall be established for the residential neighborhoods and address landscape guidelines. All landscape guidelines shall restrict materials to ensure public views from public areas are maintained permanently. Furthermore, all landscape guidelines shall mandate the use of native plants appropriate to the habitat type throughout the Headlands, excepting landscaping on private residential lots and within Planning Area 9 where use of native plants shall be encouraged but where non-native, non-invasive, drought tolerant plants may be utilized.

[no intervening changes]

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...To support this effort, residential, commercial, common area and slope irrigation systems will include sophisticated technological components and the following guidelines shall be incorporated:

- State-of-the-art Automatic irrigation controllers that incorporate real time weather data via a wireless communications system. These will be adjusted seasonally according to historic weather patterns and water requirements for each specific plant zone. Controllers will have the capacity for manual override to enable landscape maintenance personnel the ability to make informed adjustments to watering schedules based on fluctuations of on-site microclimates and regional rainfall.
- Moisture sensors within sensitive slope areas. These devices monitor soil moisture content and interrupt regularly scheduled watering during cooler climate periods that cause lower plant evapotranspiration and result in reduced irrigation demand.
- For common area landscaping, if not covered by the wireless communication system, Rain gauges shall be connected to irrigation controllers. These will monitor rainfall volume and interrupt watering schedules in response to site specific rainfall conditions. Rain gauges will be located adjacent to controllers to facilitate monitoring by maintenance personnel.
- Multiple valves in plant associations. Plant species with similar water requirements shall be grouped together so that irrigation valves can be zoned according to the optimum water frequency and duration. Additionally, planting areas with similar exposures (i.e. north-facing vs. south-facing) shall be zoned together since similar plants with different sun or wind exposures will have different watering needs.
- Use of drip irrigation, and efficient low-flow irrigation emitters and/or other appropriate technology to minimize irrigation requirements and over-irrigation.

191. (Biology/Water Quality/Hazards) Figure 4.16.1 Landscape Zone Master Plan, Modify Figure To Revised Development Plan; Revise Locations Of 'Native And/Or Indigenous' To Incorporate All Portions Of The Headlands, Excepting The Individual Residential Lots and Planning Area 9; Revise The 'Drought Tolerant' Designation To Read 'Drought Tolerant, Non-Invasive' And Apply That Designation To The Residential Lots and Planning Area 9

192. (Biology/Water Quality/Hazards) Table 4.16.1, Landscape Palette: Modify Plant Palette To Eliminate Invasive Species And Non-Drought Tolerant Species; Modify Types Of Species Allowable Within Respective Planning Areas To Conform With Requirement That All Areas, Excepting The Individual Residential Lots and Planning Area 9, Shall Have Native Plant Landscaping; add following clarification: Additional

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species may be added with approval of the Director of Community Development provided that any addition conforms with the requirement that native plants appropriate to the habitat type are used throughout the Headlands, excepting landscaping on private residential lots and Planning Area 9 where use of native plants shall be encouraged but where non-native, non-invasive, drought tolerant plants may be utilized.

193. (Coastal Resources) Section 9.34.010, Intent and Purpose: A Planned Development District shall comply with the regulations and provisions of the ~~Local Coastal Program when such areas are within the Coastal Overlay District and the General Plan~~ (including, for any Planned Development District or part thereof that is within the Coastal Overlay District, the Coastal Land Use Plan) and shall provide adequate standards to promote the public health, safety and general welfare. The criteria upon which applications for Planned Development Districts shall be judged and approved will include the following:
1. [no intervening changes]
 6. For areas located in the Coastal Overlay District, developments that conform with the Coastal Land Use Plan.
194. (Coastal Resources) Section 9.34.020: ...After initiation of the process to consider an application for a Planned Development District, the procedures identified in this Chapter 9.34 shall be followed. Amendments to Title 9 and to the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the General Plan shall not be effective in the coastal zone for local coastal program purposes unless and until effectively certified by the Coastal Commission as an amendment to the Local Coastal Program. An amendment to the Local Coastal Program shall be processed pursuant to the provisions of Section 9.61.080(e) of Title 9.
195. (Coastal Resources) Section 9.34.030: Approval of the Application of the Planned Development District shall include findings by the City Council that the Planned Development District is consistent with, and provides for the orderly, systematic, and specific implementation of the General Plan. Approval of a Planned Development District in the Coastal Overlay District shall include findings by the City Council that the Planned Development District is consistent with and adequate to carry out the provisions of the Land Use Plan of the City's Local Coastal Program.
196. (Coastal Resources) Section 9.34.040: ...Adoption of the Planned Development District shall include an amendment of the Zoning Map to identify the Planned Development District area, its corresponding Planned Development District number, and inclusion of the Planned Development District as an appendix to the Zoning Code. For Planned Development Districts in the Coastal Overlay District, the procedures for Local Coastal Program amendments described in Chapter 9.61 of this Code shall also apply.

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197. (Coastal Resources) Section 9.34.070: ...If the City Council finds that such application is in conformity with the General Plan (and, for areas within the Coastal Overlay District, the Land Use Plan of the Local Coastal Program), and the intent of this article, and that the property is suitable for the proposed development, it may approve such application. If such application is not in such conformity with any one of those items, the application shall not be approved.
198. (Coastal Resources) Section 9.34.080: 7. For Planned Development Districts located in the Coastal Overlay District, the implementing actions described in the Planned Development District conform with, or adequately carry out, the provisions of the certified land use plan.
199. (Coastal Resources) Section 9.75.120 "L" Definitions and Illustrations of the Zoning Code/IP: Local Coastal Program (LCP) -- a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of the California Coastal Act of 1976 (as amended) at the local level. The Local Coastal Program for the City of Dana Point is comprised of the Dana Point Specific Plan/Local Coastal Program (for all areas within the coastal zone excepting Monarch Beach, the Headlands and Capistrano Beach) and for Monarch Beach, the Headlands, and Capistrano Beach the coastal land use plan consists of the Land Use Element, Urban Design Element, and Conservation/Open Space Element of the General Plan, and the implementation plan for those areas consists of the Zoning Code, the Dana Point Specific Plan/Local Coastal Program, the Monarch Beach Resort Specific Plan, and Sections 3.0 and 4.0 of the Headlands Development and Conservation Plan the Capistrano Beach Specific Plan/Local Coastal Program. (Coastal Act/30108.6).

VI. Findings for Denial of the City Of Dana Point's Land Use Plan Amendment, as submitted, and Approval with Suggested Modifications

The Commission hereby finds and declares as follows. The following pages contain the specific findings for denial of the City of Dana Point Land Use Plan Amendment, as submitted, and approval of the amendment with suggested modifications.

A. ENVIRONMENTALLY SENSITIVE HABITAT

Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values and only uses dependent on those resources be allowed within those areas. Section 30240 also requires that development adjacent to environmentally sensitive habitat areas plus parks and recreation areas will be sited and designed to prevent impacts that would significantly degrade those areas and should be compatible with the continuance of those habitat and recreation areas.

Environmentally sensitive habitat areas are defined in Section 30107.5 of the California Coastal Act as follows:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

1. LOCATION OF ESHA ON THE HEADLANDS SITE

As described more fully in Exhibits 15a and 15b, and incorporated here by reference, the upland ESHA at the Headlands site is defined by the presence of rare vegetation, the presence of special status plant species and the presence of special status wildlife including the presence and habitat required of the Federally threatened California gnatcatcher (*Poliophtila californica californica*) and the Federally endangered Pacific pocket mouse (*Perognathus longimembris pacificus*).

Fourteen special-status plant species have been identified on the Headlands site over time, as follows: Blochman's dudleya, Coulter's saltbush, Nuttall's scrub oak, Cliff spurge, Vernal barley, California box-thorn, Woolly seablight, Western dichondra, Small flowered microseris, Cliff malocothrix, Palmer's grappling hook, Golden rayed pentacheata, and California groundsel. Not all of these special status plants have been observed during each plant survey. The occurrence of some of these species has been influenced by drought and ongoing impacts from recreational uses. However, at one

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time or another each of these species has been observed on the site. This serves to illustrate the point that native communities on-site function as habitat for a large suite of special status species. Floristically, this site is more diverse than sage-scrub found in most locales in the region (Beauchamp 1993). Coastal sites with this much diversity are uncommon (Exhibit 13c). The unusually large number of special status plant species observed on this site over time is an indication of the unique nature of this setting. More rare plants are known from the Dana Point Headlands than from Crystal Cove State Park, which is 20 times the size (Exhibit 13g).

Seven special status wildlife species have been observed on the Headlands property over time, as follows: California gnatcatcher (Federally threatened), Pacific pocket mouse (Federally endangered), Cactus wren (State Species of Concern), Orange throated whiptail (State Species of Concern), San Diego woodrat (State Species of Concern), Coronado skink (State Species of Concern), White-tailed kite (Fully protected), Quino checkerspot butterfly (Federally endangered). Of particular interest, is the presence of the federally protected California gnatcatcher and Pacific pocket mouse.

Native plant communities on the Headlands site include, CSS, southern coastal bluff scrub, southern mixed chaparral, and disturbed southern needlegrass grassland. In addition there are disturbed areas and ornamental plantings. Four of these plant communities are highly threatened; coastal bluff scrub, Diegan coastal sage scrub, maritime succulent scrub and needlegrass grassland. These habitats are inherently rare and/or perform important ecosystem functions at the Headlands site by providing habitat for two federally listed wildlife species and up to thirteen special status plant species. Furthermore, these habitat areas are easily disturbed and degraded by human activity. As such, these areas constitute ESHA pursuant to the Coastal Act.

Factors determining the location of ESHA include the presence of special status species, gnatcatcher territories, present and historical use of the site by gnatcatchers, and contiguity of habitat. The large contiguous patch of coastal sage scrub on the LCP site as well as the coastal bluff scrub, needlegrass grassland, and maritime succulent scrub are ESHA. In addition, the small patch of CSS adjacent to the northern residential enclave where a breeding pair of gnatcatchers was observed in 1991 and again in 2000 is ESHA. The boundaries of the upland ESHA on the HDLP LCP site are shown in Exhibit 15a.

2. LUP EFFECTS ON ESHA, AS SUBMITTED

The proposed LUP amendment eliminates the 1986 LUP and replaces that LUP with the 1996 LUP. Furthermore, under the current proposal, policies would be added to and modified within the 1996 LUP in such a way as would render the LUP inconsistent with Section 30240 of the Coastal Act.

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The policies proposed in the LUP that are most directly related to open space and the protection of sensitive upland habitat on the Headlands site are found in the proposed Land Use Element (LUE) and Conservation Open Space Element (COSE) of the LUP, as follows:

New Policies²³

LUE Policy 5.3: Preserve natural open space within the Headlands, especially along the coastal bluffs, and provide open space areas integrated throughout the development. (Coastal Act/30210-212.5, 30250, 30253)

LUE Policy 5.12: Establish and preserve as public open space, the most unique and significant landforms on the property, which have been incorporated into the Headlands Conservation Park, the Harbor Point Park, the Hilltop Park, and the Strand Beach Park, all as shown on Figure LU-6.

LUE Policy 5.17: Incorporate design elements into private development, such as view lot premiums, which will lower the amount of gross acreage devoted to development, and thus increase the acreage devoted to public recreation, open space, parks and visitor facilities.

LUE Policy 5.25: Comply with the requirements of the Central Coastal Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) approved by the California Department of Fish and Game for the Headlands and avoid duplicative regulatory controls, in particular with respect to wildlife management programs such as the NCCP/HCP. (Coastal Act/30401, 30411)

City-modified 1996 LUP Policies²⁴ (modifications proposed by the City shown in underline)

COSE Policy 3.1: Environmentally sensitive habitat areas, including important plant communities, wildlife habitats, marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1, shall be preserved. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade those areas through such methods as, the practice of creative site planning, revegetation, and open space easement/dedications, and shall be compatible with the continuance of those habitat areas. A definitive determination of the

²³ As noted elsewhere, the proposed LUP amendment would replace the 1986 LUP with the 1996 LUP that the Commission certified for the Capistrano Beach and Monarch Beach areas of the City. When the 1996 LUP was certified, certain policies, groups of policies, and narrative that specifically related to portions of the City that were not being updated, were not certified by the Commission at that time. One example are the policies and groups of policies that related to the Headlands. The City's LUP submittal inaccurately presents these policies as existing certified policies in the 1996 LUP that are being changed, whereas, since the Commission never certified these policies, they are actually entirely 'new' to the 1996 LUP.

²⁴ Portions of these policies were previously certified by the Commission when the 1996 LUP was certified for the Capistrano Beach and Monarch Beach areas. The proposed LUP would certify these policies as applicable to the Headlands and would add the language shown in underline to the policy.

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existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. For the Headlands, the determination of native habitats will be based on the findings of the NCCP/HCP and compliance with CEQA. (Coastal Act/30230, 30240)

COSE Policy 3.7: Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. For the Headlands, a combination of on-site preservation and compliance with the requirements of the NCCP/HCP shall fulfill ESHA requirements. (Coastal Act/30240)

The LUE also contains figures LU-4 and LU-6 that depict the boundaries of land use planning areas, designating certain areas for use as Visitor/Recreation Commercial, Residential, and Recreation/Open Space. In the proposed COSE of the LUP, there is also narrative discussing the NCCP/HCP and the landowners participation in that program. A table (COS-4) is also provided in the proposed COSE that describes proposed open space areas and the uses, in general, contemplated in those areas. Finally, COSE Figures COS-1, COS-4, COS-5, and COS-6 contain depictions of the sensitive resource areas on the site.

Proposed COSE Policies 3.1 and 3.7 include language that closely mirrors Section 30240 of the Coastal Act. However, the proposed policies also contain language that would make no allowance for a site-specific determination of the presence of ESHA based on the Coastal Act definition of ESHA. Rather, the findings of the NCCP/HCP relative to the habitat on the project site –which are not based on Coastal Act standards- would be used for a “determination of native habitats”. It should be noted that the meaning of the phrase “determination of native habitats” within the proposed policies is ambiguous in at least two ways: (1) since the NCCP/HCP does not purport to identify ESHA for purposes of compliance with the Coastal Act, it’s unclear what it means to simply refer to the findings of the NCCP/HCP as if it lists ESHA; and (2) in both proposed COSE Policies 3.1 and 3.7 the first sentence discusses protecting ESHA but then the policy goes on to discuss the identification of “native habitats”, however, neither of the policies states either the relevance of native habitat or how it will define “ESHA”. For purposes of this analysis, the Commission has interpreted this proposed policy language to mean that the areas on the Headlands site identified as sensitive in the NCCP/HCP is the ESHA and that this sensitive habitat and any other habitat on the site may be impacted in the manner allowed in the NCCP/HCP.

The NCCP/HCP findings²⁵ recognize the presence of native habitat and the variety of sensitive plant and animal species found on the Headlands site and state that the site was considered for inclusion within the NCCP/HCP reserve system due to the presence of this habitat (Exhibits 11a, 11b). However, according to the NCCP/HCP and findings

²⁵ U.S. Fish & Wildlife Service and California Department of Fish and Game, et.al. 1996. Findings and Facts in Support of Findings Regarding the Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan Joint Programmatic Environmental Impact Report No. 553 (SCH No. 93071061) and Draft Environmental Impact Statement 95-59. Exhibit A dated April 9, 1996.

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supporting the adoption of the NCCP/HCP (Exhibit 11a, 11b), the site was not included in the NCCP/HCP reserve system because 1) it was isolated from other elements of the Reserve System; 2) due to its isolation from the other elements of the Reserve System the site would not provide any biological connectivity function for the Reserve System; 3) the small size of the site in combination with existing disturbance "make it a poor candidate for long-term management and maintenance of existing biological values"; 4) the high cost of trying to include the site in the Reserve System; and 5) the site does not meet the requirements established in the NCCP/HCP reserve design guidelines for inclusion of a site within the reserve. The criteria used in the NCCP/HCP to determine whether a site should be included in the NCCP/HCP Reserve System are not the same criteria used to identify ESHA under the Coastal Act. Thus, even though the USFWS and CDFG found that the site doesn't qualify to be included in the NCCP/HCP Reserve, doesn't mean that habitat on the Headlands site doesn't qualify as ESHA. As described above and in Exhibits 15a, and 15b, there is habitat on the Headlands site that qualifies as ESHA under the Coastal Act. In order for the analysis required to be undertaken in the LUP policies to comply with the Coastal Act, that analysis would need to consider all the standards which apply when making a determination of ESHA. Proposed COSE Policies 3.1 and 3.7 fail to utilize the Coastal Act definition of ESHA. Thus the policies are inconsistent with Sections 30240 and 30107.5 of the Coastal Act.

Using Coastal Act standards for determining ESHA, the project site contains approximately 49 acres of ESHA (Exhibit 15a). As described above, the LUP would designate 26.7 acres of land within the bowl area of the site for residential land use, another 4.4 acres of land would be designated for visitor/recreation commercial, and another 16.6 acres of land would be designated for recreation open space. The boundaries of these land use areas overlap the boundaries of the ESHA identified by the Commission (Exhibit 15c). The uses authorized by the LUP in these areas would allow grading and clearing vegetation; the construction of residential and commercial structures and appurtenances; roads, utilities and other infrastructure; and thinning and clearing native vegetation for fuel modification purposes, among other development. These uses would significantly disrupt habitat values and would not be uses dependent on the resources. Thus, the uses allowed under the LUP would be inconsistent with Section 30240 of the Coastal Act.

Furthermore, the figures purporting to identify the sensitive habitat known to the City to be present on the site (e.g. Figure COS-1), do not disclose the presence of all the ESHA that is known to exist at the Headlands. Thus, the figures provided in the LUP are inconsistent with Sections 30240 and 30107.5 of the Coastal Act.

COSE Policies 3.1 and 3.7, and relevant figures, would allow impacts upon ESHA on-site, and then allow the impacts to the ESHA to be mitigated either on-site or off-site by the landowners participation in the NCCP/HCP. Section 30240 of the Coastal Act does not provide for such measures in lieu of protecting existing ESHA resources. A recent Court of Appeal decision [Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493, 83 Cal Rptr. 2d 850 (1999)] speaks to the issue of mitigating the removal of ESHA through development by "creating" new habitat areas elsewhere. This case was

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regarding a Commission action approving an LCP for the Bolsa Chica area in Orange County. The Commission determined that a eucalyptus grove that serves as roosting habitat for raptors qualified as ESHA within the meaning of Section 30107.5 of the Coastal Act. The Commission found that residential development was permissible within the ESHA under Section 30240 because the eucalyptus grove was found to be in decline and because the LCP required an alternate raptor habitat be developed in a different area.

In the decision, the Court held the following:

The Coastal Act does not permit destruction of an environmentally sensitive habitat area [ESHA] simply because the destruction is mitigated offsite. At the very least, there must be some showing that the destruction is needed to serve some other environmental or economic interest recognized by the act. 83 Cal.Rptr.2d at 853.

The Court also said:

[T]he language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits carefully controlling the manner uses in the area around the ESHA are developed. 83 Cal.Rptr. 2d at 858.

Thus, the requirements of Section 30240 of the Coastal Act cannot be met by destroying, removing or significantly disrupting an ESHA and attempting to create, restore or preserve commensurate habitat elsewhere. In order to protect ESHA, neither grading, nor construction of houses, commercial structures, roads, public facilities or fuel modification could occur within the habitat. However, the proposed LUP would allow the ESHA on the Headlands site to be partially destroyed for just these purposes. The proposed policies are therefore inconsistent with Chapter 3 of the Coastal Act and cannot be approved, as submitted.

The court's statement that "[a]t the very least, there must be some showing that the destruction is needed to serve some other environmental or economic interest recognized by the act" is a reference to a balancing approach that is discussed separately below (see Section VII). Suffice it to say that there is no overriding Chapter 3 resource protection policy advanced by the current proposal, as submitted, that would authorize the construction of houses, commercial development, public facilities or roads in the coastal zone or the establishment of fuel modification zones within sensitive habitat. Furthermore, any benefits that are provided by this project could be achieved

without the proposed degree of disruption to the ESHA, including degradation of the on-site connectivity of the habitat, as there are alternative locations for the hotel and public facilities that would minimize or avoid impacts to ESHA (as compared with the present proposal), as well as alternative development footprints for the residential development that would minimize or avoid impacts to ESHA.

In sum, the proposed LUP cannot be approved as submitted because it authorizes the destruction of significant, avoidable quantities of ESHA on the Headlands site, in violation of Section 30240 of the Coastal Act as interpreted by the Court of Appeal in *Bolsa Chica*.

3. LUP EFFECTS ON ESHA, AS MODIFIED BY SUGGESTED MODIFICATIONS

As noted above, there are approximately 49.3 acres of ESHA located within the Headlands known to be present at this time. In order for the LUP to be consistent with the Coastal Act, the LUP must both recognize the presence of ESHA at the Headlands and include provisions to identify the location of ESHA at the site at the time of an application for a development permit that could potentially effect ESHA. Thus, the Commission finds that the figures contained in the LUP must be revised to reflect the presence of at least 49.3 acres of upland ESHA on the project site, as depicted in Exhibit 15a. Furthermore, the Commission can only approve the LUP with suggested modifications to relevant LUP policies to incorporate a process to identify the location of ESHA at the time of an application for development, based on the definition of ESHA contained in Section 30107.5 of the Coastal Act and reflected in Section 9.75.050 of the Zoning Code/IP. These modifications include Suggested Modifications 17, 73, 74, and 89.

It must be noted that the City and landowner supplied detailed information regarding the biological resources present at the site in connection with the submittal of the proposed LCP amendment. Although this was an LCP amendment request and not a coastal development permit application, the information submitted is sufficiently detailed to satisfy filing requirements pertaining to biological resources for a coastal development permit application. Thus, if an applicant were to re-submit that information along with a coastal development permit application, the City could accept that information as meeting the requirements of the modified land use plan policies for biological survey coastal development permit application occurs within a reasonable timeframe. However, if a significant amount of time lapses (i.e. more than 2 years beyond the date of effective certification of the LCP amendment), the condition of biological resources at the site may change and the site information may warrant reassessment to assure that accurate information is used on the resources present at the site. In such a case, the City would need to obtain updated biological information for the site from the applicant or other appropriate sources, before allowing the application to be deemed filed. The analysis of the impacts of the proposed project would also need to reconsider the existing condition of the resources at the site.

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As discussed under the balancing/estoppel, public access/visitor serving uses, and water quality sections of these findings, the Commission finds there are unique factual circumstances that require it to allow some impact to ESHA at the Headlands in order to protect a substantial component of ESHA that is presently threatened by impacts from development and to provide public access facilities, visitor serving facilities, and water quality protection benefits offered by the project. In this case, the Commission finds that up to 4.04 acres of ESHA may be impacted to accommodate construction of an inn overlooking the Harbor Point area, up to 6.5 acres of ESHA along the slopes of the bowl may be displaced to accommodate development within the bowl, and up to 0.75 acres of ESHA located upon the bluff face in the southerly area of the Strand may be displaced by development. These acreages represent a strict cap upon ESHA impacts generated by the non-resource dependent components of the project, including but not limited to grading for the residential and commercial development and their associated roads, parking areas, utilities, and fuel modification areas. In order to implement these allowances, the Commission requires suggested modifications that specifically provide for the impacts in the identified areas and defines the circumstances under which the impacts may be allowed. These modifications include Suggested Modifications 4, 30, 37, 40, 75, 76, 77, 78, 81, 83, 84, 85, 86, 87, 90, 91 and 92.

Grading/cut slopes to accommodate construction of the 65-90 room seaside inn will extend beyond the boundaries of the 2.8 acre planning area for that use (i.e. so-identified as Planning Area 9 in the Implementation Program) into the Hilltop Park/Greenbelt planning area (i.e. so-identified as Planning Area 5 in the Implementation Program). Upon completion of construction of the seaside inn, the slopes within the Hilltop Park/Greenbelt will be re-vegetated along with those within the seaside inn. The re-vegetated area within the Hilltop/Greenbelt will be irrigated and the types of native plants allowed to be planted or allowed to colonize the area would be strictly controlled to those that are 'fire safe' (i.e. the area will remain fuel modified). Thus, that area will be highly managed in perpetuity as fuel modification/fire management, not as conserved habitat. This grading and fuel modification constitute adverse impacts to ESHA and must be accommodated within the 4.04 acre ESHA impact cap established for construction of the seaside inn.

Exhibit 26c identifies the general locations where ESHA may be impacted. However, one intent of the modified LUP policies is to assure that the impacts to ESHA are configured in a manner that reduces adverse effects of that impact on adjacent, retained ESHA to the maximum extent feasible. Thus, while Exhibit 26c should be considered strong guidance relative to the configuration of the impact, the configuration depicted is conceptual and minor adjustments to the configuration could be considered at the time of a coastal development permit application in order to protect habitat.

While the Commission has found that up to 11.29 acres of ESHA may be impacted at the Headlands, the Commission cannot find the remainder of ESHA impacts contemplated in the LUP consistent with Coastal Act. For instance, the current LUP contemplates a variety of more intense public uses in the Harbor Point area, including

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parking areas, a maritime historical visitor center/lighthouse, cultural arts visitor center, nature interpretive center, manicured landscape, veterans memorial and decorative hardscape and trails. All of these are examples of visitor-oriented uses that, if appropriately sited, are encouraged under the Coastal Act. However, in this instance, all of these uses are contemplated in locations that would displace or degrade ESHA. In its analysis, the Commission has been able to identify appropriate locations for a nature interpretive center, parking, and limited public trails that would be sited in locations that wouldn't displace or otherwise degrade ESHA. Where locations can be identified for the other uses that wouldn't displace or degrade ESHA, these uses could be considered in those identified areas. However, in order for the LUP to be consistent with the Coastal Act, the Commission requires suggested modifications that eliminate the lighthouse, cultural arts visitor center, manicured landscape, and hardscape/memorial, and re-sites the nature interpretive center, parking and trails in locations that do not displace or degrade ESHA. These modifications include Suggested Modifications 13, 34, 36, 37, 38, 40, 74, 75, 76, 77, 79, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

Furthermore, the Commission finds that suggested modifications are necessary in order to adjust the land use area boundaries within the Headlands in order to capture all of the ESHA, excepting some of the 11.29 acres of ESHA noted above, within recreation/open space land use areas. The types of uses allowed by the proposed LUP in areas designated recreation/open space include active park facilities, such as ball fields, and other uses such as golf courses and museums. These uses wouldn't be consistent with the protection of ESHA. In lieu of creating a habitat-conservation oriented land use designation, the Commission has suggested new policy language further defining the types of uses that could be contemplated in ESHA such as habitat conservation, limited public trails, overlooks, and interpretive signs. These modifications include 34, 37, 38, 40, 74, 75, 76, 77, 79, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

Above, it was briefly noted that fuel modification requirements would necessitate impacts to 'preserved' habitat in the vicinity of the seaside inn. These same types of fuel modification impacts are currently contemplated adjacent to other proposed residential and commercial development within the Headlands. Typically, OCFA requires implementation of a 170 foot wide fuel modification zone adjacent to development that faces upon potentially flammable open space areas. These fuel modification zones would normally require clearing, thinning and strict controls over the types of vegetation located within the 170 foot wide zone. However, in this case, an alternative fuel management plan that is tailored to existing and proposed site conditions is contemplated (Exhibit 28). In place of this 170 foot wide zone, the site specific fuel management plan relies on more narrow irrigated native plant zones adjacent to the development, including within open space areas. The irrigated zones would be planted with fire retardant native plants. These irrigated zones, combined with proposed roads, trails, fire resistant development perimeter walls, a prohibition within residential lots on the placement of combustible structures between primary residential

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structures and the open space areas, and use of fire resistant building design features would minimize fire hazards and the width of the zone within which clearing, thinning or plant palette controls would be necessary. However, based on the latest plan (December 2003) it does not eliminate the need for such controls within habitat identified as ESHA. Fuel modification in these zones would consist of strict controls on the plant palette, clearing of 'volunteer' high fuel volume plant species that unintentionally colonize the zone, confining certain types of plant species (i.e. California Sage Brush, Common Buckwheat, and Black Sage) to irrigated 'habitat islands', clearing, trimming and hand pruning to maintain the defined 'habitat islands' and required plant heights and removal of dead plant material, and yearly mowing of any grasses (native and non-native). The only open space area that wouldn't be subject to fuel modification is the habitat contained in the boundaries of the 'Headlands Conservation Park' located on the Headlands promontory. It should be noted that the fuel modification plan contemplated in the July 2001 and August 2003 editions of the City's submittal differs from a recent (December 2003) plan devised by the landowner. However, in all cases, fuel modification of some type is contemplated in the 'preserved' habitat. These uses would disturb or degrade the ESHA and would not be compatible with the preservation of these areas as habitat. Thus, the suggested modifications require the development to be sited such that no fuel modification of any form whatsoever, including, but not limited to, controls to the plant palette for fuel modification purposes, occur within preserved ESHA.

The landowner has stated that limiting the re-vegetation plant palette to native plants on the Orange County Fire Authority's (OCFA) list of approved 'fire safe' plants for re-vegetation efforts, the removal of deadwood, and the confinement of California Sage Brush, Common Buckwheat and Black Sage to habitat islands, does not constitute 'fuel modification' and would not have adverse impacts upon ESHA. Furthermore, the landowner asserts that the fuel modification/fire management program proposed to be implemented at the Headlands is the same one approved by the Commission in their authorization of development at the Marblehead site in San Clemente (CDP 5-03-013). The Commission does not concur. The limitations in the re-vegetation plant palette, the removal of deadwood, and the confinement of ESHA do constitute fuel modification, that would have adverse impacts upon ESHA beyond those disclosed as 'direct' displacement of ESHA (see Exhibit 26b). Furthermore, there are significant, substantive differences between the fuel modification/fire management plan contemplated at the Headlands and those that were approved at Marblehead.

The proposed fuel modification/fire management plan would have adverse impacts upon existing ESHA and place long term management constraints upon 'conserved' habitat. For instance, the list of plant species described as 'appropriate' to be adjacent to developed areas is missing species that are important to habitat restoration efforts at the site. The list also includes plant species that are inappropriate in a habitat restoration plan (see Exhibit 15f).

Elsewhere, as proposed, the 'conserved' ESHA within the Hilltop Park/Greenbelt area would be subject to deadwood removal on an on-going basis as well as seasonal

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mowing of native grasslands located in that area. Deadwood removal cannot be accomplished without adversely changing the understory character of the habitat, as well as having impacts on the health of individual plants. Furthermore, the deadwood removal would require periodic disturbance to the habitat. The periodic intrusion into the habitat would disturb nesting and breeding of sensitive wildlife as well as present a trampling risk to Blochman's dudleya, a diminutive plant located in the area that is susceptible to such disturbance. Finally, it should be noted that CSS vegetation is woody and seasonally dry. It would be difficult, at best, for trained experts to confine 'deadwood removal' to truly 'dead' wood on these inherently dry, woody plants. Rather, the deadwood removal would amount to trimming and thinning of the habitat and not merely the removal of dead stems from individual plants. These impacts are not compatible with the continuance of the habitat areas and must be prohibited within retained ESHA and any other restored habitat areas on the site for which habitat mitigation credit is granted.

It should be noted that the Commission's prohibition on fuel modification within ESHA to accommodate new development would not preclude fuel modification/fire management in order to protect development that presently exists. For instance, there is an area adjacent to the existing residences along Green Lantern that necessitates fuel modification. The Commission is supportive of the landowner's proposal to re-vegetate the existing non-ESHA area between the ESHA and these existing homes with native plants from OCFA's approved plant list. However, the Commission finds it would be inappropriate to give mitigation credit for this re-vegetation, as the area will be maintained with an emphasis on fuel modification rather than as conserved habitat. Also, the public trails passing through this area should be located so they form a demarcation between the conserved-in-place ESHA within which fuel modification/fire management is prohibited, and the re-vegetated area where such activity is allowable.

Finally, the proposed fuel modification/fire management plan at the Headlands is substantively different from the one approved at Marblehead. While the Marblehead approval did include some limited fuel modification/fire management, all of this is located outside of terrestrial ESHA and ESHA buffers. None of the existing ESHA/CSS at Marblehead were subject to any fuel modification requirements (see Exhibit 28c). In addition, a majority of the restored CSS habitat (about 64.22 acres) at Marblehead would not be subject to any fuel modification requirements. None of the limited fuel modified habitat was credited as mitigation. In contrast, the Headlands proposal would have fuel modification both within existing ESHA and within proposed habitat restoration areas for which the landowner seeks creation/substantial restoration credit. The suggested modifications bring the fuel modification/fire management program into alignment with prior Commission actions, such as at Marblehead, by prohibiting fuel modification within retained ESHA and restored habitat areas for which mitigation credit is sought.

It should be noted that there is a distinction to be made between weed control, pruning, thinning, clearing, plant palette controls and similar activities for habitat management purposes and those for fuel modification purposes to serve adjacent development. The

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prohibition upon fuel modification/fire management within ESHA does not limit the implementation of habitat manipulation measures that are wholly and exclusively for habitat management purposes. However, changes to or discontinuation of those manipulations must be allowed to occur entirely independent from fire safety requirements to serve adjacent new development. The habitat must be allowed to fully develop. Accordingly, new development must be sited with sufficient setbacks (e.g. combustible free defensible space, irrigated zones and thinning zones), buffering elements (e.g. walls), appropriate construction methods and materials, and other fire safety measures contained entirely within the development footprint allowed by the Commission and entirely outside of the existing ESHA to be preserved and any mitigation areas.

The development contemplated in the LUP would necessitate revegetation within the proposed open spaces, landscaping of the common areas within the commercial and residential subdivision, as well as landscaping along proposed roads. The use of non-native and invasive plant species within new development can cause adverse on-site and off-site impacts upon natural habitat areas. Non-native and invasive plant species can directly colonize adjacent natural habitat areas. In addition, the seeds from non-native and invasive plant species can be spread from the developed area into natural habitat areas via natural dispersal mechanisms such as wind or water runoff and animal consumption and dispersal. These non-native and invasive plants can displace native plant species and the wildlife which depends upon the native plants. Non-native and invasive plants often can also reduce the biodiversity of natural areas because –absent the natural controls which may have existed in the plant's native habitat- non-native plants can spread quickly and create a monoculture in place of a diverse collection of plant species.

The LUP contains policies encouraging landscape plans that are substantially comprised of native plant species, however, the policies would allow non-native plants to be planted in some areas such as within the residential lots, interior landscaping in the commercial center and along roads and within medians.

The placement of any non-native invasive plant species within the Headlands (which could potentially spread to the natural habitat areas) is a threat to the biological productivity of adjacent natural habitat and would not be compatible with the continuance of those habitat areas. Therefore, the Commission must ensure LUP policies place strict controls on the use of vegetation within the Headlands. The controls must apply to all landscaping associated with the development.

One method of minimizing impacts is to require that any landscaping within common area lots, open space lots, parks, and vegetated buffer areas consist of plants native to coastal Orange County that are appropriate to the natural habitat type. Strict use of regionally native plants within the common areas lots, open space lots, parks and vegetated buffer areas is particularly important due to the proximity of these areas to sensitive habitat areas and the potential for these plants to disperse into the sensitive habitat areas. Therefore, the Commission requires a policy that mandates use of plants

that are native to coastal Orange County and the habitat type within all vegetated areas located outside of the individual residential lots and the location of the seaside inn. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources on the project site.

Meanwhile, the suggested modification does allow the use of non-native plant species within the residential lots and the seaside inn so long as those non-native species are also non-invasive. Avoiding the use of invasive species within the residential lots and the site of the seaside inn reduces the risk that adjacent habitat areas would be overtaken by non-native plants.

As discussed in the balancing analysis elsewhere in these findings, the Commission is allowing the LUP to contain policies that allow certain types of specific development in locations that, without consideration of other factors, would render those policies inconsistent with Chapter 3 policies of the Coastal Act. However, the Commission is only willing to allow these specific inconsistencies in the context of an overall development plan that encompasses the entire 121 acre Headlands site, retires any potential existing development rights, and secures the perpetual preservation and management of retained habitat areas, the provision of public parks, beaches, and public access amenities, and the provision of adequate water quality mitigation measures. In order to assure these components of the plan are implemented, the Commission has suggested modifications to the LUP that mandate the retirement of pre-existing development rights, re-subdivision of the entire 121 acre site such that ESHA is preserved as open space and public beaches, parks and trails are transferred into public domain. The suggested modifications also mandate a development phasing plan that requires the preservation of open space, transferral of public beaches, parks and trails, and construction of public facilities by the landowner prior to the completion of the private/commercial development at the Headlands.

4. ESHA BUFFERING

The development that is contemplated in the proposed LUP for the Headlands will bring with it significant threats to the integrity and continued functioning of the ESHA that is currently present. Section 30240 of the Coastal Act requires that development adjacent to ESHA be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitat areas. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. Furthermore, buffers may sometimes allow limited human use such as low-impact recreation, and minor development such as trails, fences and similar recreational appurtenances when it will not significantly affect resource values. Buffer areas are not in themselves a part of the environmentally sensitive habitat area to be protected. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. The greater the spatial separation, the greater the protection afforded the biological values that are

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at risk. Buffers may also provide ecological functions essential for species in the ESHA.

Typically, buffers are identified by a certain distance between the resource to be protected and development activities that are prohibited (e.g. 50 foot wide buffer between ESHA and the limits of grading for development). The proposed LUP has policies that contain language corollary to Section 30240(b) of the Coastal Act. However, the proposed LUP policies place limitations on the application of that policy to the Headlands. In addition, the LUP makes reference to certain 'greenbelt buffers' that are to be located between the habitat that is proposed to be conserved (i.e. the Headlands Conservation Park) and other development areas. However, the LUP does not identify specific buffer standards or widths with which development must conform. Furthermore, the LUP identifies the types of uses authorized within the 'greenbelt buffer', as public trails, open space parking, visitor recreational facilities, seating, signage, fuel modification, landscape features, security fencing, public roads necessary to access open space areas. Some of these uses, such as trails, signs, and seating, if sited properly, such as at the outer edge of the buffer away from the ESHA, would be allowable within a buffer. However, other uses, such as buildings, parking lots, roads, and other more intense uses are generally inappropriate within habitat buffers. In order for the Commission to find an LUP consistent with Section 30240(b) of the Coastal Act, the LUP must contain policies that establish appropriate minimum buffers between ESHA and development areas and identify the uses that would be allowed within those buffers, excluding inappropriate uses.

As noted above, the Commission typically requires a physical setback (e.g. 50 feet) between development and ESHA. The physical setback is designed to buffer the habitat against construction-phase and post-construction impacts upon ESHA. Due to unique legal and physical circumstances at the Headlands (described elsewhere in these findings), the Commission has found that up to approximately 11.29 acres of the 49.3 acres of ESHA present at the site may be displaced. Thus, in the areas where impacts to ESHA could be contemplated, a physical setback could not be used to protect ESHA, because incursions into the ESHA will occur. Thus, in this case, it is more appropriate to identify project design features that will provide a buffering effect between the developed area and the ESHA. More specifically, in this case, the Commission finds that the LUP needs to contain policies that implement physical buffering features between all areas designated as ESHA and development. For instance, where there is an interface between ESHA and intense urban uses, such as residential or commercial development, the outer edge of the ESHA should be delineated with a wall or fence that is impervious to dogs. Adjacent to new residential areas, the fence should be constructed of block material with no openings and be at least 7 feet high to deter both dogs and cats. Similarly, the boundaries of trails adjacent to and traversing ESHA must be demarcated with fencing impervious to dogs. The boundary of sensitive habitat near entry points to trails and areas likely to become uncontrolled entry points must have fencing or other barriers (e.g. barrier plantings) that will deter entry. These buffering fences, walls and barriers will inhibit incursions by

people and pets, inhibit the spread of ornamental vegetation, and reduce the intensity of noise, visual stimuli, and light pollution.

Lighting within developed areas can adversely impact sensitive biological habitat. Thus, the Commission also finds that policies are necessary to control lighting within the Headlands area. Finally, all exotic vegetation should be removed and appropriate native species reestablished adjacent to and within the ESHA.

5. MITIGATION

Despite the precautions described under 'ESHA Buffering', the increased human presence will have negative effects on coastal resources. Furthermore, the impacts to 11.29 acres of ESHA will need to be off-set. To mitigate those effects, the Commission would require the creation of replacement habitat, restoration of existing degraded ESHA, and the completion, implementation and funding of a habitat management plan for all of the preserved, created and restored habitat in perpetuity. The habitat management plan would provide a vehicle for public education, informative signs, weed control, trail maintenance, and on-going needs for repair and restoration. The proposed LUP does not contain policies to implement these requirements, thus the LUP cannot be found consistent with Section 30240 or 30250 of the Coastal Act.

For impacts that are allowed to sensitive habitat, mitigation shall include a creation component, which requires establishment of new habitat area at a ratio of at least 1:1 (one acre of creation for every one acre of habitat impact) in order to achieve a no net loss standard. In certain appropriate cases, substantial restoration may also be substituted for creation. Restoration and enhancement will also be acceptable for satisfying any mitigation requirement beyond the 1:1 creation requirement. Onsite or offsite open space preserve areas may be utilized to satisfy required mitigation for habitat impacts, if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of habitat. Habitat mitigation requirements other than the creation or substantial restoration component may be partially or wholly fulfilled by acquisition of existing like habitat that is not already preserved and/or retirement of development credits on existing like habitat with permanent preservation provided they are not subsequently fuel modified.

"Creation" means that habitat will be newly established in an area that does not currently contain that functional habitat type, but where the soils, topography, etc. are appropriate for long-term viability and may have supported the habitat in the past. "Restoration" means that habitat which is recognizable as belonging to a specific vegetation community, but which has been previously disturbed and/or contains exotic invasive species so as to reduce its functional value, will be enhanced to return the habitat area to overall health and typical functional value. "Substantial restoration" is applicable to highly-degraded areas where the effective function of the habitat type has been lost, but which still contains remnant plants of the identified habitat.

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"Revegetation" means replanting with appropriate species, as is applicable to both restoration efforts in existing habitat, and to creation where habitat does not currently exist.

Mitigation outside the coastal zone will be considered acceptable if, in addition to meeting the criteria identified above, the mitigation clearly ensures higher levels of habitat protection and value in the context of a regional habitat preservation program than would be provided by providing all mitigation within the coastal zone, and furthers the goal of concentrating development within the coastal zone.

When impacts to sensitive vegetation are allowed, mitigation shall include a 'creation' component, as previously defined, at a ratio of at least 1:1 (one acre of creation for every one acre of habitat impact) in order to achieve a no net loss standard. In certain appropriate cases, 'substantial restoration' may also be substituted for creation. Onsite or offsite open space preserve areas may be utilized to satisfy required mitigation for habitat impacts if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of habitat. It is important to note that mitigation credit through acquisition, restoration and/or enhancement cannot be allowed on sites which have already been preserved or required as mitigation areas for some other impact or entitlement. Furthermore, revegetated areas that are fuel modified in any form shall not be credited as mitigation for any habitat impacts.

Trails and passive recreation are an allowable use in ESHA, with certain exceptions such as wetlands (of which there are none known to exist at this time on the upland area of the Headlands). The removal of vegetation for new trail construction shall comply with the 3:1 mitigation ratio, except where vegetation removal is necessary to re-align an existing trail or informal footpath in which case the mitigation ratio shall be 1:1.

The proposed LUP contemplates a property subdivision and construction of new residential and commercial development. Section 30250 of the Coastal Act requires that such development occur where it would not have significant adverse effects, either individually or cumulatively, on coastal resources.

The LUP, as proposed and modified, would allow impacts to coastal sage scrub. Notwithstanding the consistency or inconsistency of these impacts with Section 30240 of the Coastal Act, any such impacts that are allowed should be minimized in order to assure that there are not significant adverse effects on coastal resources. Impacts associated with habitat connectivity, edge effects and the need to prevent high intensity development adjacent to sensitive habitat areas, and the change in intensity of use of the site are most significant at the Headlands.

Development must be designed with measures to ensure that there are no individual or cumulative significant adverse impacts. For instance, the presence of new residential

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units as well as the commercial development and other uses will make the site less available for wildlife. In addition to narrowing the area usable by wildlife, the LUP would allow significant intensification of use of the site from an open space area with low levels of human activity to residential and commercial uses as well as passive and active recreational areas that have high levels of human activity. This change in intensity of use of the site would introduce significant vectors of disturbance for wildlife. Impacts from the loss of habitat linkages due to physical impediments (e.g. houses, fences and roads), noise, light, domestic animals, and other human activity will intensify at the site. Measures to ensure the development does not have a significant individual or cumulative adverse impact on coastal resources would include maximizing the quantity of open space provided on the site and improving the quality and function of the wildlife habitat that will remain on the site. Thus, the Commission requires suggested modifications to the LUP that ensure that development undertaken at the site which would have attendant impacts upon sensitive habitat areas is accompanied by conservation of remaining habitat areas, habitat restoration, and a perpetual habitat monitoring and management program.

In order to bring the LUP into conformance with the Coastal Act, the Commission has suggested modifications to modify, and where necessary, add policies to implement the above requirements.

**6. RELATIONSHIP BETWEEN CURRENT PROPOSAL, THE
EXISTING LCP, AND THE EXISTING SUBDIVISION**

The City and landowner have presented their view that the proposed LCP amendment is, on balance, more protective of coastal resources than the existing LCP that pertains to 95.1 acres of the 121.3 acre site. The City and landowner have argued that full build-out under the existing LCP would result in up to 310 single family residences, hotels, commercial structures and other development within areas that under the proposed LCP would be at least partially conserved in either recreation or conservation oriented open space. Furthermore, the City and landowner have argued that the existing LCP fails to identify any ESHA on the project site, and in fact, makes an affirmative determination that the habitat is not ESHA. The City and landowner base this assertion, in part, on non-policy narrative which discusses the general state of coastal sage scrub habitat in the Dana Point area. Specifically, that non-policy narrative states "[t]he Dana Point area contains a mix of native and introduced biotic communities including riparian, coastal sage scrub, and ruderal communities which do not fit into the Coastal Act definition of environmentally sensitive habitat areas."²⁶(Exhibit 3b) The City and landowner also refer to subsequent narrative which states that the regional significance of several coastal strand species found in areas of exposed sand on in the Headlands area is questionable. The City and landowner have argued that the existing LCP affords little protection to existing on-site habitat, and endorses off-site mitigation for impacts to sensitive habitat. The City and landowner

²⁶ Orange County Environmental Management Agency. 1986. Local Coastal Program, South Coast Planning Unit, Dana Point, Volume 3. Section II.B.2.a., pages 5-6.

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have argued that language within the LCP that refers to a mitigation plan suggests that the LCP contemplates impacts to ESHA by development such as houses and commercial structures, and allows those impacts to be mitigated, including off-site mitigation.

The Commission has reviewed and given consideration to the City and landowners arguments regarding the existing versus proposed LCP. Although the City and landowner have raised valid concerns relative to the LCP, the Commission disagrees with the characterization that the existing LCP makes an affirmative determination that the site contains no ESHA. The narrative to which the City and landowner refer is background information discussing the general understanding at the time about the overall habitat mix in the Dana Point area. This is not a specific discussion about the habitat on the subject site or at any given area within the greater Dana Point area. In fact, the LCP contains specific LUP policies, most notably Policy 18, which mandate a site-specific analysis for the identification of any rare, endangered, threatened or especially valuable species and their habitats on a given site at the time of a permit application. The IP (see Policy G.2.L.) contains further details regarding this requirement (Exhibit 3b). The Commission's findings adopting the existing LCP²⁷ (Exhibit 3c) make clear there was information suggesting that habitat at the Headlands site could qualify as ESHA, but that additional surveys and analysis was necessary to make the determination²⁸. Furthermore, the Commission disagrees with the contention that there are no provisions in the existing LCP that would prevent impacts on sensitive habitat. The existing LCP contains policies that substantially conform with the requirements of Section 30240 and in fact directly reference that Coastal Act policy (see LUP Policies 1, 2, 3, 4, 7, 8, 10, 11, 13, 14, and 18, and IP Policy G.2.L.). Thus, there are policies in the existing LCP that could be relied upon to both identify ESHA and protect those areas from development that would disturb the ESHA.

Furthermore, the Commission disagrees with the City and landowners assertion that the reference to 'mitigation' within the existing LCPs policies suggests that impacts for residential, commercial or other development upon ESHA are authorized provided that such impacts are mitigated. The intent of the language regarding 'mitigation' is stated clearly in the Commission's findings relative to approval of the existing LCP (Exhibit 3c). First, Part II of those findings states the intent of the policies is to implement the mandatory protections identified in Section 30240(a) of the Coastal Act and limits the uses within ESHA to those dependent upon the resource. The concept of mitigation is limited to mitigation to offset impacts to ESHA that are produced by uses that are dependent upon the resource and don't significantly disrupt habitat values, and which are therefore allowed. For instance, the Commission has found that construction of nature trails are uses dependent on the resource. Nonetheless, the construction of a

²⁷ California Coastal Commission. 1985. County of Orange, Resubmittal of Dana Point Local Coastal Program for Public Hearing and Commission Action at the meeting of October 22, 1985, that fully incorporate by reference the findings dated December 23, 1983 regarding County of Orange, Resubmittal of Dana Point Local Coastal Program for possible Commission action at the meeting of January 10-13, 1984, as described in the meeting notice.

²⁸ In any event, the standard for the Commission's review of the proposed LCP amendment in this respect is whether it accurately characterizes the ESHA that exists on the ground at the present time, not whether it is more or less protective than the existing system. Thus, even if the existing LCP were to state unequivocally that this area contained no ESHA, that would not alter the task before the Commission. The question before the Commission is whether, as an empirical fact, the area is ESHA.

nature trail may cause impacts that would need to be mitigated. Whereas, development such as houses, a hotel or commercial development are not resource dependent uses, and thus would not be allowed within ESHA. Since such uses are prohibited, the impact wouldn't be allowed and the need for mitigation would be moot. Second, Part IV of those findings reaffirms that "[t]he objective of the Commission's suggested modification for the Headlands sector is to protect environmentally sensitive habitat areas consistent with Coastal Act Section 30240". The findings describe the concept of identifying the location of ESHA and then expanding open space areas to capture and preserve these sensitive habitat areas, at the time a coastal development permit is sought. The findings specifically contemplate reconfiguring the land uses identified in the LCP so that resources are protected from impacts, not impacted and then mitigated. The concept of transplantation is also discussed in the findings, but this is in the context of situations where transplantation is necessary in order to both save the habitat and address an unavoidable hazard (such as a collapsing cliff), or as a means of creating or enhancing habitat elsewhere provided that such transplantation does not significantly disrupt the habitat at the donor site²⁹.

The City and landowner have also pointed out the presence of an existing subdivision of the property that carves the Headlands site into about 300 lots. The City has expressed concern regarding the potential that the bulk of these lots –which are presently commonly owned by a single entity- could be sold and developed in fragments³⁰ (Exhibit 18a). Furthermore, the City expresses concern about the potential for inverse condemnation actions in association with these lots.

The Commission recognizes the landowners rights to some economic use of their property. However, while no evidence has been submitted to the Commission that would call into question the legality of the existing subdivision, there is also no evidence that the landowner has perfected their right to develop each lot (see, e.g., *District Intown Properties v. District of Columbia*, 198 F.3d 874 (D.C. Cir. 1999)). It is also notable that the existing LCP does not mention or recognize any existing subdivision on the property. There is only limited recognizable correlation between the existing lot configuration and the land use areas designated in the existing LCP. In fact, many of the small parcels created by the existing subdivision are designated for use as conservation or other open space under the existing LCP. Furthermore, the landowner would need to reconfigure lots to create a functional residential development and consolidate many of the small parcels into larger parcels in order to reasonably develop that land for the hotel and commercial uses that are designated under the existing LCP. Based on the historic level of community concern over the importance of the Headlands as a resource in Dana Point, it can be reasonably anticipated that the process of obtaining entitlements based on the existing subdivision at the local level (and the State level if appealed) would, at a minimum, be arduous. Nevertheless, barring the surfacing of information that would call the legality of the lots into question, the

²⁹ Of course, as is indicated above, the relative degree of protection provided by the proposed LCP amendment versus the existing LCP is not the standard for the Commission's review of this proposal in any event. The Commission's review of the current proposal is based on the standards established by the policies in Chapter 3 of the Coastal Act.

³⁰ Rutan & Tucker. 2003. Dana Point Local Coastal Program Amendment. Letter dated August 19, 2003 from A. Patrick Munoz, City Attorney, City of Dana Point, to Deborah Lee, Deputy Director, California Coastal Commission.

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Commission would recognize that the landowner does have at least some legally recognizable right to an economic use of its property at the permitting stage. Thus, the existing subdivision represents an interest –albeit of uncertain value- that the Commission should consider and weigh in its decision regarding the present LCP proposal and any alternative development plans for the site. Moreover, as the courts have held, the LCP is not the point in the regulatory process when taking arise. Sierra Club v. California Coastal Commission (1993), 12 Cal. App. 4th 602. While takings concerns need not be ignored, they are more properly addressed at the permitting stage. See Cal. Pub. Res. Code § 30010.

7. RELATIONSHIP BETWEEN ESHA AND NCCP/HCP

The landowner has challenged Commission staff on its determination that the Headlands site contains ESHA. The landowner's primary arguments were set forth most formally in an August 11, 2003 letter from the landowner's counsel.³¹ (Exhibit 18b). That letter raises several issues to which the Commission hereby responds. Most of the issues relate to the NCCP/HCP discussed above, in section III.C.1.d. As indicated above, that plan allows development to impact up to 30 acres of coastal sage scrub habitat on the land at issue in this action. It is against this background that the landowner makes the following arguments.

Citing Sections 30401 and 30411 of the Coastal Act, the landowner asserts that the Commission's identification of ESHA on the project site runs counter to state law in two respects. Because Section 30411(a) recognizes the Department of Fish and Game (CDFG) and the Fish and Game Commission as " the principal state agencies responsible for the establishment and control of wildlife and fishery management programs," the landowner asserts that the Commission must defer to CDFG's conclusion that the Headlands habitat is "of low biological significance."³² However, this is wrong for three reasons. First, there is no declaration in the findings³³ for the NCCP/HCP that the Headlands habitat is of low biological significance as is suggested by the landowner. Contrarily, the findings state the site was considered for inclusion in the reserve system due to the variety of sensitive plant and animal species that are found on the site. Rather, those findings state that the Headlands site is not a viable candidate for inclusion in the NCCP/HCP Reserve System (Exhibit 11a, 11b) largely because of its isolation from the other components of the Reserve System and the difficulty and expense of adequately managing the area as a component of the Reserve System. Furthermore, as is indicated in Exhibit 15a , the NCCP/HCP's failure to include the subject area as part of the NCCP/HCP Reserve System does not mean that CDFG found the area to be of low biological significance. The very essence of such plans is to

³¹ Sheppard Mullin Richter & Hampton. 2003. Headlands Reserve LLC Project, LCP Amendment (1-03) to Dana Point LCP, City of Dana Point, California. Letter dated August 11, 2003, from Joseph E. Petrillo, Sheppard Mullin Richter & Hampton to Ralph Faust, California Coastal Commission.

³² Letter at 3.

³³ U.S. Fish & Wildlife Service and California Department of Fish and Game, et.al. 1996. Findings and Facts in Support of Findings Regarding the Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan Joint Programmatic Environmental Impact Report No. 553 (SCH No. 93071061) and Draft Environmental Impact Statement 95-59. Exhibit A dated April 9, 1996.

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decide which of many ecologically valuable areas are the most important ones in accomplishing the goals of the plan. Moreover, those goals are related to protecting certain target species and communities from extinction.³⁴ Thus, the decision is inherently focused on a narrower subject-matter than the Commission's ESHA analysis (which looks at all rare and especially valuable species and habitats rather than just target ones)³⁵ and on a narrower goal than the Commission's charge under Section 30240 (to protect all ESHA against significant disruption of habitat values and prohibit non-resource-dependent uses in any such area, rather than just the "most important" ones). Second, even if the NCCP/HCP had implied a conclusion by CDFG that the area was not ecologically valuable, that assessment would be pursuant to a different standard from the Commission's standard for identifying ESHA. Indeed, the Coastal Act definition of ESHA requires designation of "rare" as well as valuable species and habitats. In any event, the Commission is statutorily obligated to make its own determination under its own standard, as established by the Coastal Act, and while it can take into account information and opinions expressed by CDFG, the Commission must look at all of the relevant information and come to its own conclusion.³⁶

The other respect in which the landowner claims the Commission's ESHA identification runs contrary to state law flows from the necessary consequences of that ESHA identification. Once ESHA has been identified, Section 30240 of the Coastal Act requires that the ESHA be protected and that only uses dependent on the ESHA resources be allowed within the area. Consequently, the landowner argues that the very identification of ESHA imposes controls that constitute a 'wildlife management strategy.' Section 30411(a) of the Coastal Act prohibits the Commission from establishing or imposing any "controls" with respect to "wildlife and fishery management programs . . . that duplicate or exceed regulatory controls established by [CDFG, among others]." Neither the identification of ESHA nor the development restrictions that flow from that identification, both of which are the responsibility of the Commission under the Coastal Act, and no other agency, constitute the imposition of controls on, or the implementation of, wildlife or fishery management programs within the meaning of Section 30411 of the Coastal Act. Indeed, the Commission has consistently read and applied Section 30411 not to apply to the Commission's basic role in carrying out the land use policies in Chapter 3 of the Coastal Act.

More generally, the landowner's argument is based on the false assumption that the subject of CDFG's regulatory authority and the subject of the Commission's regulatory authority are one and the same. Thus, they conclude, any regulation by the Commission of an area already subject to CDFG's regulation via an NCCP must be duplicative. In fact, the two agencies have complementary roles, with distinct regulatory foci. CDFG enters into natural communities conservation plans ("NCCPs") pursuant to

³⁴ See NCCP/HCP, Part I, § A.3.c.

³⁵ One example of where these two approaches diverge is Coulter's saltbush, a rare plant listed on CNPS list 1B, which was used by the Commission as one indication of ESHA, but which appears not to have been covered by the NCCP. See NCCP/HCP § 4.5.1, Table 4-8.

³⁶ The prior Commission actions that the landowner's counsel cites in footnote six of the letter are inapplicable. In the case of the first one (permit number 6-98-127), the letter cites a February 28, 2002 staff report that did not even go to the Commission. That report was modified, and it was only the revised version that was presented to the Commission. The revised approach, approved by the Commission in May of 2002, relied on other factors in concluding that an area was not ESHA.

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the Natural Community Conservation Planning Act³⁷ ("NCCP Act") and its authority under the California Endangered Species Act.³⁸ While CDFG's focus in entering into NCCPs is on the management of endangered species, the Commission's separate and unique regulatory focus is the use and development of land and the impacts thereof on a whole host of coastal resources. This distinction is made clear by focusing on any one of the many Chapter 3 policies *other than* section 30240. The Commission can and must regulate development in this area on the basis of its impact on any of the coastal resources the Commission is charged with protecting.

The landowner next argues that the NCCP/HCP is binding on the Commission because the chief of the California Resources Agency, the Secretary of Resources, was a signatory to the NCCP/HCP Implementing Agreement, and the Commission is part of the Resources Agency. However, this argument fails for a whole host of reasons, ranging from the statutory language and purpose of the NCCP Act to the very text of the Implementing Agreement itself. To begin with, it is notable that three Resources Agency departments (CDFG, the Department of Forestry, and the Department of Parks & Recreation) are all parties to the agreement. If, as the landowner argues, every department within the Resources Agency were automatically bound by the Resources Agency's execution of the Implementing Agreement, there would have been no reason for these three departments to be signatories to the agreement. Moreover, the statutory scheme explicitly states that the planning agreement, at least, is only binding on agencies that are a party to it³⁹. It is also notable that the phrase "assurances policy" is defined as certainty for private landowners "in [Endangered Species Act] Habitat Conservation Planning" - not all planning-related review of development in the subject area generally. Furthermore, the findings of the agreement state that the U.S. Fish and Wildlife Service ("USFWS") and CDFG find that the agreement "meets the requirements for a habitat conservation plan for purposes of [the state and federal Endangered Species Acts] and the NCCP Act," without any reference to other statutory or regulatory schemes. Finally, Section 8 of the agreement (on mutual assurances) specifically lists commitments made by "County and Cities" (section 8.1), Participating Landowners (section 8.2), USFWS (section 8.3), CDFG (section 8.4), and CDF (section 8.5), and then says, in section 8.6, that the parties "acknowledge that the Participating Landowners may also be subject to permit requirements of agencies not parties to this Agreement." All of the above factors demonstrate that 1) the Commission was not a signatory to the NCCP/HCP; 2) the Commission is not bound by the NCCP/HCP Implementation Agreement simply because the Resources Agency was a signatory to the agreement; and 3) the NCCP/HCP is only designed to carry out the requirements of the NCCP Act and Endangered Species Act requirements, and not the Coastal Act⁴⁰, and thus, that Section 30411 is not applicable here.

³⁷ Cal. Fish & Game Code §§ 2800 *et seq.* (see, specifically, section 2810).

³⁸ Cal. Fish & Game Code §§ 2050 *et seq.*

³⁹ Cal. Fish & Game Code § 2810(b)(1)

⁴⁰ The landowner also argues that the Commission is estopped from designating ESHA on the site based on a 1996 letter from the Commission's South Coast District Director commenting on the proposed NCCP/HCP. Letter from Chuck Damm to Gary Medeiros, Orange County Environmental Management Agency (Jan. 29, 1996). The Commission is not bound by these statements made in this letter, which are, in any event, general statements, see, e.g., page 2 ("Generally speaking, therefore, the NCCP/HCP fulfills [the] two criteria [of Section 30240]"), and explicitly non-committal. See, e.g., page 3 ("However, in some cases the HCCP process may be more liberal than the Coastal Act because it would allow development in some areas that qualify as ESHA"); page

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The landowner also points to Government Code Section 12805.1's requirement that the Secretary of Resources facilitate coordination between CDFG and the Commission. The landowner cites this provision as evidence that her signature on the Implementing Agreement must be assumed to reflect an incorporation of the Commission's role. This argument turns Section 12805.1 on its head. Section 12805.1 was adopted to facilitate such coordination specifically in order to clarify the complementary roles of the two agencies. It was adopted as an *alternative* to a separate proposal that would have curtailed the Commission's authority under Section 30240 of the Coastal Act based on CDFG's actions. The Legislature's rejection of that other bill, and the subsequent failure of the formal attempts at mediating a coordinated approach pursuant to Section 12805.1,⁴¹ left the Commission's 30240 authority fully in tact and unimpaired by CDFG's actions pursuant to the NCCP law.

The underlying principle in all of the above is that the NCCP/HCP process was never intended to, and does not, supplant the Commission's regulatory authority over land use and development. This is clear from numerous disclaimers and references in guidelines and agreements applicable to NCCPs and HCPs. For example, the Habitat Conservation Planning Handbook adopted in 1996 by the USFWS and the National Marine Fisheries Service specifically states in its "Helpful Hints" section (pages 1-17) that the "activities addressed under an HCP may be subject to federal laws other than the ESA, such as the Coastal Zone Management Act. . . . Service staff should check the requirements of these statutes and ensure that Service responsibilities under these laws, if any, are satisfied, and that the applicant is notified of these other requirements from the beginning." Similarly, the California Resources Agency's 1993 NCCP Process Guidelines state that "A variety of state and federal laws may apply to the area subject to a subregional NCCP. Inasmuch as any other law affects land planning and conservation issues, it is desirable that the NCCP anticipate these requirements so as to minimize conflicting purposes. . . . Indeed, the very purpose of legislation such as the federal Coastal Zone Management Act and the California Coastal Act is to provide heightened protection for areas of special significance, beyond that which may be provided by legislation of more general geographic scope.

None of this is to say that the Commission does not respect the NCCP/HCP process or that it does not take into account the information and analyses presented by CDFG or other resource agencies. The Commission has made concerted efforts to integrate its role with these important programs and has repeatedly indicated that the most effective and meaningful way to do so is for the Commission to be involved in the development of NCCPs and HCPs so that NCCP-related provisions can be integrated into LCPs in a coordinated planning process.

5 ("Any plans required by the NCCP/HCP to implement the provisions of the Adaptive Management Program may have to be submitted as amendments to the certified LCPs").

⁴¹ It is also notable that this NCCP/HCP predated the entire mediation process. The Secretary obviously did not believe that her signature on the Implementation Agreements bound the Commission at that time. If she did, she would not have needed to initiate the mediation to work out a means of involving the Commission in future NCCPs.

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Finally, independent of the NCCP/HCP issues, the landowner asserts that the habitat on the Headlands site simply does not meet the definition of ESHA under the Coastal Act. The Commission disagrees with the landowners assertions and –as elsewhere– incorporates herein by reference the response to this assertion provided in Exhibits 15a and 15b. The Commission wishes to place particular emphasis on three points made in that memorandum (Exhibit 15a). First, the Commission's determination of whether any given areas constitutes ESHA under the Coastal Act is based on the totality of evidence it receives, and is always based on site-specific analyses and recommendations made by its staff. Accordingly, in this instance, as in all instances, the Commission's decision to delineating the area listed in Exhibits 13a and 13b as ESHA is not based solely on the presence of coastal sage scrub in the area. Secondly, although the Commission considers the functionality of habitat in determining whether an area constitutes ESHA, it does not consider the concept of viability in the sense put forth by the applicant (i.e., likelihood of long-term survival) as a factor that is directly relevant to the Commission's delineation. Accordingly, in this instance, the Commission's delineation is based on its assessment of the ability of the species and habitat in the delineated areas to function effectively and thereby to serve an especially valuable role in the ecosystem. Finally, the Commission delineates ESHA based on the statutory definition in Section 30107.5. Nothing in that provision allows the Commission to exclude an area from classification as ESHA simply because it has suffered significant disturbance and/or degradation. As long as the area meets the other criteria in that definition and remains susceptible of being easily disturbed or degraded beyond its current level of disturbance or degradation, the area can and will be delineated as ESHA.

8. OTHER ESHA ISSUES

As noted above, the Headlands site is affected by an existing subdivision that created lots that are located partly or wholly within ESHA. The City and landowner have argued that the proposed LCP would eliminate adverse impacts to sensitive habitat by designating significant areas of sensitive land within the Headlands area as open space. However, the designation of open space may not be an adequate means of assuring that the lots within those designated areas will be preserved in perpetuity as open space. The owner of any lot within the area designated open space could assert a takings claim if some type of development is not authorized on that lot. If development were to occur, it would cause significant adverse impacts upon ESHA. Other impacts from developing each lot would also occur, including significant visual impacts. In order to minimize or avoid this situation, the LUP must contain provisions to eliminate the underlying land division within the 121 acre Headlands area, in favor of a land division that consolidates the open space/ESHA areas into single or groups of lots that are designated as open spaces. The LUP contains no such program, thus, the LCP does not adequately protect ESHA. Thus, the Commission finds the proposed LUP cannot be found consistent with Section 30240 of the Coastal Act. In order to address this issue and bring the LUP into conformance with the Coastal Act, the Commission has suggested modifications that, among other measures, require the first application for land division of the 121 acre Headlands area to encompass the entire site and that the land division create lots that conserve the open space/ESHA, and

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convey these areas along with parks and trails into the public domain/or non-profit entity in exchange for allowing development in the Strand and a portion of the bowl.

The landowner has indicated they may wish to transfer the Headlands Conservation Park (i.e. Planning Area 7) to a public or non-profit entity (e.g. Steele Foundation) in advance of proceeding with development elsewhere on the site. In order to do so, the landowner has indicated this transferal would be carried out in conjunction with a lot merger, lot line adjustment or other form of land division (all of which would necessitate a coastal development permit) in advance of the re-division of the remainder of the property. Suggested Modification 85 contains a provision to allow this transferal of land to occur prior to other land divisions on the site.

In their letter with attachments dated January 8, 2004, the City indicates their opposition to the language in the Suggested Modifications relative to requirements for an alternatives analysis as well as biological studies/ESHA mapping. The City states there is no need for these policies as the referenced studies have already been completed. It must be emphasized that the action before the Commission is an LCP amendment, not a coastal development permit (CDP). The policies requiring submittal of studies will be one standard the City must apply when they process a coastal development permit for the project. The policies simply require the City to obtain appropriate studies from an applicant at the time of an application for a coastal development permit. To date the City and landowner have supplied an unusual degree of specificity for an LCP. The kind of information submitted is more typical of a CDP application. It would be problematic to memorialize the studies the City and landowner have conducted to date for a specific project in an LCP policy because conditions can change over time. If for some reason there is a significant lapse of time between the approval of this LCP amendment and the application for a CDP, the studies prepared now may be out of date and need to be updated to reflect current conditions. However, without the policy language requiring current studies, the decision-making body would be denied current information on the existing resources. Furthermore, there is nothing in the policies that prevents the landowner/applicant from using the studies that have already been prepared when they actually apply to the City for a coastal development permit, nor is there anything in the policies that would prevent the City from accepting those studies as meeting the requirements of the policies, provided those studies are still current and reflect conditions on the ground and they are expanded upon to fully comply with the requirements of the policies (e.g. biological studies/ESHA analyses need to address avoidance of fuel modification within ESHA, mitigation for allowed ESHA impacts needs to be identified, among other requirements). However, in recognition of the adequacy of the detailed biological inventory of the site prepared by the City and landowner in conjunction with the LCP amendment submittal, the Commission has included a specific acknowledgement in Suggested Modification 17 that any coastal development permit application for the Headlands submitted on or prior to two years from the date of effective certification of this LCP Amendment, shall utilize the ESHA delineation (for upland habitat purposes) identified by the California Coastal Commission in its January 2004 approval, with suggested modifications, of the HDCP and not require additional

species surveys; however, for applications submitted thereafter an updated or new detailed biological study shall be required.

As modified by the suggested modifications, the Commission finds the LUP conforms with the Chapter 3 policies of the Coastal Act.

9. ANALYSIS OF REVISED INFORMAL SUBMITTAL

The City staff has submitted some proposed changes to the LUP that respond, in part, to the issues raised above⁴². Most notably, the proposal reduces the 26.7 acre residential area that overlaps ESHA to 20.2 acres, and it places the remainder acreage into the areas designated recreation open space (Exhibit 6b). Nevertheless, the 20.2 acres of residential area would still overlap approximately 6.5 acres of ESHA within the bowl area. Furthermore, the LUP contains fuel modification provisions that would necessitate a fire-resistant plant palette, irrigation, trimming, thinning and mowing within ESHA. These fuel modification activities would disturb the habitat and degrade the ESHA, beyond the 6.5 identified acres. In addition, no changes are made to the siting or configuration of the commercial areas. Thus, commercial retail and hotel uses would still be allowed by the proposed LUP within ESHA. Finally, no changes were made to the types of uses contemplated in the Harbor Point promontory area. Roads, parking lots, community structures such as a lighthouse, among other development, could still be constructed within ESHA under the proposed LUP. Construction and operation of these uses within the ESHA would remove or degrade an additional approximately 5 acres of ESHA, not including fuel modification impacts which would result in additional impacts. Therefore, additional changes to the LUP, beyond those identified by the City, are necessary in order for the Commission to find the LUP consistent with Section 30240 of the Coastal Act.

B. HAZARDS

The principal Coastal Act policy relative to Hazards is Section 30253. Another applicable policy is Section 30235 of the Coastal Act. These policies along with other applicable policies will be used to evaluate the conformance of the LCPA with the Coastal Act. Section 30253 of the Coastal Act mandates that development minimize risks to life and property in areas of high geologic, flood, and fire hazard. It also requires that development assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs. Section 30235 requires the Commission to permit the construction of protective devices to serve coastal dependent uses, to protect existing structures, and to protect existing beaches in danger of erosion, despite the conflict that such construction might present with other Coastal Act policies; however, Section 30235 limits its mandate to the three instances

⁴² Although these changes are not formally submitted, the Commission provides this guidance in response to the submittal in order to clarify the Coastal Act's requirements for an approvable program

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listed above and even then to situations in which the project is designed to eliminate or mitigate adverse impacts on local shoreline sand supply and where there are existing structures in danger from erosion.

The proposed LUP would allow the development of approximately 50 lots for private custom homes in a depression ("the Bowl") area, and now containing a greenhouse and nursery; and approximately 75 lots for private custom homes on a sloping site consisting of an ancient landslide complex above Strand Beach and previously occupied by a trailer park. Approximately 2.2 million cubic yards of grading would be required to implement the development contemplated. The majority of the grading would take the form of the removal of about one million cubic yards of material from the upper portion of the landslide complex above Strand Beach, the removal and re-compaction of 33,000 cubic yards of material in the lower portion of this landslide complex, and the addition of approximately one million cubic yards of fill to the Bowl area. Together, this grading is proposed in order to accomplish two main purposes: it would balance the landslide forces to yield acceptable factors of safety against sliding for the Strand, allowing development there, and it would elevate building pads in the Bowl to provide better coastal views from the development that would be allowed to be constructed there. To protect the development of the Strand area, and as part of the stabilization plan for the ancient landslide complex, the proposed LUP amendment would allow the rebuilding and enlargement of an existing approximately 2,240 foot long revetment that extends nearly the length of Strand Beach, and is contiguous with several thousand feet of revetment protecting development upcoast of the Headlands area.

In order to allow for this type of development, the proposed LUP amendment includes the following policies:

COSE Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from 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. For the Headlands, minimization of risk to life and property and preservation of the natural environment is met by a requirement that new development be sited and clustered into areas determined by geological feasibility studies to be suitable, such as by remediation of unstable slopes impacted by such new development. (Coastal Act/30233, 30253)

COSE Policy 2.14: Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. For the Headlands, the

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potential for coastal slope erosion shall be minimized and public safety and coastal access protected by reconstruction of the existing revetment. Such reconstruction must not encroach seaward of the toe of the existing revetment at bedrock unless improvements are necessary to create or enhance new public access and/or public safety. (Coastal Act/30210-12, 30235)

The proposed LUP also contains narrative and un-numbered 'policies' in the UDE that call for the re-construction of the revetment.

The proposed narrative and policies would explicitly allow the reconstruction of a shoreline protective device along the Strand without any analysis of the negative impacts of the device or a showing that the device is necessary to serve the purposes listed in Section 30235. Furthermore, COSE Policy 2.8 and 2.14 are designed to allow the construction of homes along the Strand, relying on that rebuilt revetment, even though it would be new development that required the construction of the revetment, in violation of Section 30253. Thus, the proposed policies are inconsistent with Sections 30235 and 30253 of the Coastal Act.

The City and landowner have asserted that the existing revetment can be upgraded in a manner that constitutes a 'repair and maintenance' activity, thus the upgraded revetment would not be 'new' and would not be subject to any prohibitions the Coastal Act may contain relative to the construction of new shoreline protective devices. Similarly, the proposed residential development in the Strand that relies on the revetment would not be subject to prohibitions in the Coastal Act against new development that requires construction of protective devices. Within certain boundaries of allowable work and under specified circumstances that were not identified in the City's proposed LUP amendment, the Commission concurs that the existing revetment can be upgraded in a manner that constitutes 'repair and maintenance' as described more fully below. Accordingly, the Commission has found that sections 30235 and 30253 of the Coastal Act do not prevent the adoption of an LUP amendment that allows for this limited form of upgrading of the revetment and the construction of new homes in reliance thereon, as the revetment work could be carried out in a manner that would not constitute new development or the "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs" (emphasis added).

In addition, even if the shoreline protective device were to be considered 'new', the City and landowner have argued that the shoreline protective device is not prohibited in this case because the area where the shoreline protective device would be located is neither a bluff or natural landform, thus the prohibitions regarding protective devices incorporated into Section 30253 don't apply. Furthermore, the City and landowner have argued that there are existing structures in the Strand that necessitate protection by a shoreline protective device, thus the allowances within Section 30235 do apply. The Commission disagrees with the City and landowner regarding these assertions. The basis for this determination is described below and further detailed in Exhibits 10a-10d (incorporated here by reference).

**1. CERTAIN METHODS OF UPGRADING THE SHORELINE
PROTECTIVE DEVICE ARE 'REPAIR AND MAINTENANCE'**

The City and landowner have made various claims that the work upon the existing revetment that the landowner intends to propose would qualify as a form of repair or maintenance^{43, 44, 45}. In their December 11, 2003 letter, the landowner states that "[t]he proposed Strand revetment repair is not dissimilar from the 1983-1984 Strand revetment repair or the 2003 Encinitas revetment repair and can be authorized by the Coastal Commission, consistent with the requirements of repair and maintenance projects, and all other relevant regulations." Key aspects of the Encinitas project and the 1980's Strand project that are used to claim that the work at the Strand can be considered repair and maintenance are (1) justification for the repair and (2) whether the project covered repositioning of all the riprap into an engineered position. For the Strand, the justification for that work, while noting that all the rock will be repositioned, is to "repair slumped rip-rap stone into an engineered structure of uniform height to minimize the potential for erosion from wave damage." This same analysis states that the work at Encinitas would require that all the rock be repositioned to repair slumped riprap. In fact, for the Encinitas revetment, only a small part of the rock in the Encinitas revetment will be repositioned, and the work is being undertaken to prevent erosion and to improve flood protection along Highway 101. The landowner's analysis correctly notes that as part of the permit for repair and maintenance of the Encinitas revetment there was an after-the-fact approval of 800 tons of revetment placed in 1998. The Encinitas project did not change the revetment foundation, nor did it reposition all the rocks along the full 2,500-foot length. The applicant for the Encinitas project estimated that approximately 180 tons of material would be redistributed. For the most part, this would entail taking a few rocks from the high points on the revetment, repositioning a few rocks at those high spots so that 3-point contact can be achieved for that section, and then moving the extra rocks to a part of the revetment where the elevation is too low to provide adequate flood protection. Riprap stone that has migrated seaward of the toe of the structure will be taken from the beach and either removed, or placed back into the revetment structure. Concrete blocks that were placed on the revetment in 1998 without a permit will be removed and none are to be incorporated into the revetment structure.

According to the landowner, the existing revetment at Strand Beach was constructed in the 1950's and 1960's to protect a residential mobile home park and associated appurtenances. As noted in the landowner's letter dated December 11, 2003, the existing revetment at Strand Beach was previously repaired and maintained under an exemption issued by the Commission on November 15, 1983 (see Exhibit 27a). That work was described by the exemption as "[r]epair those areas of the revetment and

⁴³ Headlands Reserve LLC 2003. Letter from W. Kevin Darnall to California Coastal Commission regarding Headlands Development and Conservation Plan ("HDCP")-September 19, 2003 Memorandum from Lesley Ewing to Karl Schwing, Subject: City of Dana Point LCP and Dana Strand Beach. 11 December 2003.

⁴⁴ AMEC 2003. Summary of Observations and Associated Photographs 1983-84 Repair and Reconstruction Rock Revetment and Shorefront Slope Dana Strand Club Mobile Home Park Dana Point, California. 2 December 2003.

⁴⁵ Sheppard Mullin 2003. Letter from Joseph E. Petrillo to California Coastal Commission regarding Dana Point Headlands LCP Amendment No. 2-02 [sic], Headlands Development and Conservation Plan, Strand Revetment Coastal Act Consistency. 10 December 2003.

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slope which have been storm damaged by wave run up and erosion by rain run-off. The development will be at the same place and in kind as existed prior to the storm and will also include an existing damaged 42" storm drain with the same size pipe." A letter by Williamson and Schmid dated November 9, 1983, requesting the exemption, further describes the work as "...remove and replace 5,500 cubic yards of existing rock and dirt in those areas of the revetment and slope that have failed or deteriorated due to past storm activity. 3,400 Cubic yards of dirt and 789 cubic yards of rock will be imported to replace that amount of material lost due to deterioration and slope failure from storm action. Landward of the rock revetment, the areas of failed slope will be benched as required by the soils engineer to provide a foundation for replacing the dirt material in a slope configuration similar to existing prior to storm damage." The plans submitted along with the request for exemption, titled "Plans for Emergency Slope Repair and On-Site Storm Drain Construction for Dana Strand Club", prepared by Williamson and Schmid and dated 9-29-83, depict the work described in the November 9th letter, and also identify the installation of filter fabric underneath the rock to be removed, augmented and replaced. The landowner's letter dated December 11, 2003, describes the work exempted by the Commission in 1983 as "...extensive and comprehensive and similar in scope to the current repair proposed [at Strand Beach]..."

The Commission also finds the work contemplated on the existing revetment at Strand Beach constitutes repair and maintenance of the existing structure. The work at the Strand contemplated by the landowner would incrementally reposition a substantial amount of the rock that is in the revetment, it would excavate and rebuild the foundation and it would excavate and rebuild much of the back slope. The applicant has not provided details of the construction process or schedule. As currently contemplated by the landowner, the Strand project probably will not excavate any of the rock that has migrated from the main revetment structure and will neither remove that material from the beach nor incorporate it into the reconstructed revetment⁴⁶. The rock that has migrated from the revetment structure most likely would be left on the beach –as stated by the landowner- to minimize disturbance to the beach, and to avoid the potential export of the rip rap that would not be suitable for use in the new structure. There also will be importation of an as yet unidentified volume of suitable riprap rock as part of the work at the Strand⁴⁷. This would be in addition to the 789 cubic yards (approximately 10% augmentation) of riprap stone that occurred in 1983. And, unlike the situation in Encinitas, there are no plans to consider future modifications to the landward uses that could one day allow the revetment to be removed, but rather at the Strand, there are plans to construct 75 permanent residential structures that would require protection for many years to come.

⁴⁶ At the present time, the applicant seems to have some internal disagreement concerning the rock on the beach. In a letter from Joseph Petrillo to Ralph Faust concerning the revetment, Mr. Petrillo states that "The current plan calls for the existing structure to be fixed, and all of its materials reused..." (December 10, 2003 letter, page 7). However, in a letter from Mr. Darnall to Ms. Ewing, Mr. Darnall states, "It should be noted that not all of the existing rip-rap revetment is proposed for salvage and reuse. This includes the most southerly 140 feet of the 2,240 foot long revetment and a portion of the slumped revetment toe that extends beyond a 2:1 profile." (December 22, 2003 letter, page 1)

⁴⁷ "During the revetment repair, augmentation with new stone to make up for stone that isn't salvageable or that is undersized will still need to occur. However, the amount of the augmentation will be significantly less than that 50 percent replacement standard in Section 13252 (b) that governs repair and maintenance projects." December 22, 2003 letter from Kevin Darnall, Headlands Reserve, to Ms. Lesley Ewing

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The proposed addition to LUP policy 2.14 in the COSE, which would essentially provide blanket authority to reconstruct the revetment without any review or any guarantee of consistency with other LUP policies, is un-approvable. However, it is conceivable that the revetment could be upgraded in a manner that would constitute repair and maintenance. For example, as indicated above, some of the proposals described by the landowner place the upgraded structure in approximately the same location and would serve the same purpose as the existing structure. In addition, an increase to the size of the footprint and the height could be avoided. Thus, Section 30610(d) of the Coastal Act, which limits repair and maintenance to cases where the object of the work is not enlarged or expanded does not prevent that object from being repaired and maintained. Furthermore, Section 13252(b) of the Commission's regulations clarifies that "replacement of 50 percent or more of ...revetment...is not repair and maintenance..., but instead constitutes a replacement structure requiring a coastal development permit." However, the landowner has stated a project can be proposed that uses a substantial amount of rock that was part of the existing revetment and that has simply migrated away. Such reuse would not constitute replacement for purposes of Section 13252(b). Only the addition of truly new rock would constitute replacement. Thus, one compelling reason to treat the work contemplated as repair and maintenance is the intent to re-use existing material where possible, and to use the same or like materials in places where existing material cannot be re-used. Another compelling reason to treat the work contemplated now as repair and maintenance is the history, described above, of the issuance of an exemption in 1983 for extensive repair of the revetment. Accordingly, the Commission finds that the establishment of a revetment of the same height and footprint size as the southerly 2,240 feet of the existing revetment, along Strand Beach, through the repositioning of rocks that were once part of the existing revetment, and are still in the vicinity thereof, and the importation of up to 50 percent new rock by volume, including excavation and new bedding material and foundation shall constitute repair and maintenance of the existing revetment. This finding would allow the City to treat a coastal development permit application requesting removal of the existing rock, removal and re-compaction of the supporting earthen slope (including cut, rework, fill), construction of a 20 foot thick surface of geosynthetically-reinforced compacted fill seaward and down slope of the compacted earth fill, and finally replacement of rock rip-rap, including retrieval of existing rock that has migrated from the existing structure and the importation of up to 50% new rock by volume, as a 'repair and maintenance' activity.

Although the Commission has found that the above described work may be characterized as repair and maintenance, the actual work would require a coastal development permit. 14 C.C.R. §13252(a)(1)(A) requires a permit for repair or maintenance involving substantial alteration of the foundation of the protective works. In this case, an entirely new foundation consisting of newly compacted soil and geotextile fabric will be constructed. 14 C.C.R. §13252(a)(1)(B) requires a permit when there is temporary or permanent placement of rip-rap, berms of sand, or other materials on a beach, and 14 C.C.R. §13252(a)(1)(D) requires a permit when mechanized construction equipment is placed on a beach. In this case, during construction the rock would be lifted from its present location with mechanized equipment likely staged at

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least part of the time, on the beach, and then possibly stored on the beach as a cofferdam to protect the slope and the workers from possible flooding, stored on a sand area, or stored on another part of the revetment. Similarly, it would certainly be the sort of "extraordinary method" of repair and maintenance envisioned in 30610(d), both because it involves a seawall revetment (see 14 C.C.R. § 13252(a)(1)) and because of the work on the beach (id. at § 13252(a)(3)). Thus, the work would necessitate a coastal development permit and be subject to applicable policies in the certified Local Coastal Program to ensure that the work itself (the "extraordinary method") would not have impacts inconsistent with Chapter 3 policies. However, only the method of achieving the repair and maintenance would be subject to review against applicable policies in the LCP; any issues associated with the perpetuation of the object of that repair and maintenance (i.e. the existing and repaired/re-aligned revetment) would not be subject to any review under the LCP. The certified LCP and proposed amendment lack this clarification, thus the Commission includes Suggested Modifications 63 and 64.

The landowner has argued that, even if the work related to the revetment would not be exempt from permitting requirements under Coastal Act section 30610(d) as repair and maintenance, the nature of the work is still that of repair and maintenance, and that renders Coastal Act Sections 30235 and 30253 inapplicable, as they apply only to "new" development. The Commission agrees that the repair and maintenance activity identified above would not constitute the sort of "new development" governed by Section 30253 of the Coastal Act, and the construction of residential development reliant upon the revetment would not violate the prohibition in Section 30253 of the Coastal Act regarding new development that requires the "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs" or to the analogue to this section that already exists in the current LCP (see, e.g., COSE policy 2.12). However, proposed LUP policy COSE 2.8, in combination with proposed LUP policy COSE 2.14, would inappropriately pre-judge an analysis that should occur at the time an application for a permit is made by adding language to the LUP policies which would, again, provide an automatic, blanket approval for any form of remediation of unstable slopes including one that involves complete reconstruction of the existing revetment. Furthermore, if a proposed shoreline protective device can't be classified as 'repair and maintenance' as defined above, the prohibitions contained in Section 30253 of the Coastal Act and analogue LUP policies would be engaged. Only an analysis performed at the time of an actual application can disclose whether the proposal is a 'repair and maintenance' or a 'new' shoreline protective device.

**2. FACTORS RELATIVE TO CONFORMANCE WITH COASTAL
ACT SECTION 30253**

a) The Presence of Bluffs At the Strand

The Headlands owes its prominence in large part to the resistance nature of the rock underlying the Headlands portion of the site. This rock, the San Onofre Breccia, is a resistant conglomerate unit that also forms headlands along the coast to the north. Although generally very resistant to erosion (bluff retreat rate is approximately 1.7 inches/yr) and relatively stable, landslides do occur. In contact with the San Onofre Breccia is the Monterey Shale, which forms the slopes in the Strand area, and underlies portions of the Bowl and properties offsite to the south and east. Throughout California, the Monterey Shale is susceptible to landsliding. Despite a relatively favorable bedding orientation, the coastal bluff in the Strand area is characterized by a complex of ancient landslides, none of which have shown any recorded historic movement.

The City and landowner have questioned whether the slope above the Strand should be considered a coastal bluff. They argue that the slope, which has an overall gradient of approximately 22%, is not steep enough to be considered a bluff. Further, they argue that previous grading on this slope has resulted in its alteration to the extent that it can no longer be considered a natural landform. Accordingly, they do not consider the proposed development at the Strand area to lie on a bluff face, and have declined to identify a bluff edge line in the Strand.

Although the slope below this upland is much less steep at the Strand than at the Headlands, the geomorphic features—bluff top and bluff face—are continuous. The difference in slope between the Headlands and the Strand is explained by the underlying geology and geologic processes that have been operating on the coastal bluff. The San Onofre Breccia is much stronger, and accordingly capable of standing at steeper slopes, than is the Monterey Formation. Further, at the Strand, the bluff must have been steeper at some point in the past, to provide a driving force for the creation of the large landslide complex that exists there today. The scalloped plan view of the bluff edge, the gentle slope of the bluff and to some extent the hummocky, irregular, slope of the Strand area itself, are the results of these slope movements in the past. Thus, while the slope of the landform is less steep than at other locations in the Headlands, the landform is unquestionably a bluff. The Commission's geologist has been to the site and in his professional opinion, the area constitutes a bluff. This determination is consistent with the Commission's prior characterization of the area as a bluff contained within the existing certified LCP. Thus, the controlling language in Section 30253 relative to bluffs is applicable to the Strand, as it is equally applicable to the undisputed bluffs located elsewhere at the Headlands. Accordingly, the LUP must be revised to recognize that the landform in the Strand is a bluff. Therefore, the Commission has suggested modifications to the LUP to implement this change.

The Coastal Act definition of bluff edge is contained in California Code of Regulations, Title 14, § 13577 (h) (2). In keeping with this definition, the bluff edge would be defined under the Coastal Act to lie at "the landward edge of the topmost riser." Thus, the bluff edge line would be drawn at the demarcation between the relatively flat bluff top and the much steeper bluff face. The LUP must define bluff edge and demarcate its location consistent with the Coastal Act. Therefore, the Commission has suggested modifications to the LUP to implement this requirement.

b) The Strand as a Natural Landform

The landowner also questions whether the slope above the Strand can be referred to as a "natural landform" due to the fact that it has been previously graded. According to the landowners, beginning in the mid 1920's roads, parking lots, a mobile home park, and other appurtenances have been constructed and have modified the landform. Grading has occurred over much of the northern portion of the Strand. However, the geologic cross sections supplied show that cuts and fill slopes generally were on the order of less than 5-10 feet. The southernmost part of the Strand was not graded extensively, as is apparent from aerial photographs.

Although the grading of the Strand created a stepped surface topography that allowed the construction of roads, mobile home pads, and parking areas, the overall form of the slope was little altered. Despite the grading at the site, the area is still recognizable as a bluff, a natural landform. In contrast, an artificial landform is a topographic feature that did not exist prior to grading or construction activities, such as a quarry pit excavation, a landfill, a freeway ramp, or a causeway. The Commission generally has recognized that natural landforms may be altered by grading—both cut and fill—but that they do not cease to be "natural landforms" because of such alteration. In this instance, it is also notable that the Commission's geologist has been to the site and unequivocally recognized the topography as being characteristic of a landslide complex (Exhibit 10c), which is a natural landform. The Commission finds that the Strand represents a natural landform that has been altered, but fundamentally remains a natural landform nonetheless. Thus, the controlling language in Section 30253 relative to natural landforms is applicable to the Strand, as it is equally applicable to the undisputed natural landforms located elsewhere in the Headlands area.

c) Effects of a Revetment on those Landforms

The Strand is a natural landform that consists of a bluff containing a landslide complex. As is discussed below, in order to develop the Strand in the manner proposed in the LUP, a significant quantity of geologic remediation will need to be implemented, and either a new shoreline protective device will need to be constructed, or the present one will need to be repaired and maintained, to protect the newly remediated landmass. The shoreline protective device will halt the erosion of the toe of the landslide, preventing the slide mass from slipping as buttressing forces at the base of the complex

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are reduced by erosion of this material. Since the shoreline protective device would prevent the landslide from its natural tendency to reactivate and slide over time, the shoreline protective device would alter the natural landform.

d) Hazard Constraints at the Strand

The Strand is characterized by an ancient landslide complex. These landslides and their stability were investigated extensively as part of the preparation of the proposed LUP amendment. Although there is no evidence of historic movement on any of the ancient slide planes, the overall global factor of safety against sliding (static) for this complex ranges from 0.83 to 1.67. Notwithstanding the fact that a mobile home park previously occupied this area, the site is not suitable for the construction of fixed, permanent structures for human habitation without remedial work to stabilize these landslides.

Development on this landslide complex with permanent structures for human habitation requires that the stability of the site be improved, as required by City and County grading codes, and Section 30253 of the Coastal Act. Stabilization of the site could presumably be achieved through several means, but the approach proposed by the landowner, and contemplated in the LUP, is mass grading to balance the landslide forces and a revetment to protect the toe of the proposed manufactured slope from marine erosion, ensuring that the forces balanced by the grading operation remain balanced. The grading plan contemplated results in slopes that meet standards-of-practice stability guidelines for all reasonable failure modes, and can be constructed with slopes that are at or near that factor-of-safety of 1.2 that is standard-of-practice for temporary construction slopes.

The analysis above demonstrates that the slopes contemplated in the LCP will stabilize the Strand area and can be constructed safely. They do not demonstrate the stability of the site given ongoing marine erosion at the toe of the manufactured slopes. Just as for the ancient landslide complex, marine erosion of the proposed manufactured slope would lead to decreased slope stability over time. Accordingly, the design requires that marine erosion at the base of the manufactured slope be prevented. Given the environment at the site and the fact that sea level is currently rising, preventing the erosion of the toe of the manufactured slope requires that a shoreline protective device protect the site from marine erosion. The proposed LUP would allow the existing revetment, which currently is in a state of disrepair, to be reconstructed to accomplish this task⁴⁸.

Section 30253 of the Coastal Act requires that new development not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." The proposed LUP would authorize the construction of 75 homes that, in order to achieve accepted standards of geologic stability, would

⁴⁸ Without an upgrade, the existing revetment is not adequate to provide the kind of protection necessary to protect the new development contemplated in the proposed LUP (see Exhibits 10a-10d). However, contrary to the statements contained in Exhibits 10a-10d, the landowner has asserted and the Commission has concurred that this upgrade can occur in a manner that qualifies it as 'repair and maintenance'.

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require either the construction of a new shoreline protective device, a revetment, which, as shown above, would substantially alter natural landforms along the bluffs, or repair and maintenance of the existing one. By allowing a new shoreline protective device the LUP policies would be inconsistent with Section 30253, whereas the repair and maintenance of the existing shoreline protective device would not constitute new development, so it would not constitute the "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs" and thus, would not be inconsistent with Section 30253. If the LUP policies are changed, as identified in the suggested modifications, to allow repair and maintenance of the existing shoreline protective device under certain circumstances, the Commission can approve the LUP amendment.

The City and landowner were asked to consider whether development could occur in the Strand area without reliance on a revetment, or with reliance only on the existing revetment in its current condition. In response, the landowner supplied an analysis of an alternative that contained a soft "sacrificial" artificial slope fronting the development, and setting the development back sufficiently to assure its stability for its assumed design life of 75 years. The analysis predicts that the removal of the revetment would cause 29 to 87 feet of bluff retreat over the next 75 years, that this would result in the destabilization of the site such that by the end of the 75 year design life slope stability would be severely compromised, and that public safety, water quality, and existing and proposed development would be impacted. These impacts are similar to those expected of a naturally eroding shoreline. It could be concluded from these reports that the "sacrificial" artificial slope would protect the development for the required 75 years, but that at the end of that time the first line of development would be compromised. However, the impacts identified by these references are not consistent with good engineering practice, and could be construed as construction with the intent of "benign neglect." In meetings with staff, the City has indicated that they would not issue a building permit that assumed the continued erosion of the new development.

It is clear from the City and landowners' submittal that developing the site in the manner proposed would necessitate both the geologic remediation of the site and the construction of a new shoreline protective device, or repair and maintenance of the existing device, to protect that development. There are no Chapter 3 Coastal Act policies which would compel the Commission to approve a land use plan which would allow the construction of residential development in a location that is subject to significant hazards which can only be remediated through significant grading and the construction of a new shoreline protective device. Other less intense densities of the proposed use, or less intense uses could be accommodated in this area without relying on the stabilization scheme contemplated in the LUP. On the other hand, if the development contemplated in the LUP can be accommodated with simply the repair and maintenance of the existing revetment, the Commission could approve an LUP that would allow that development. In this case, the City and landowner have demonstrated that the existing revetment can provide sufficient protection to the new development by repairing and maintaining that existing revetment.

As proposed, the LUP would allow a new shoreline protective device to protect new development. This new shoreline protective device would be inconsistent with a prohibition against such development contained in Section 30253. Thus, the proposed LUP must be denied, as submitted. However, the Commission can authorize the proposed LUP with provisions to approve the repair and maintenance of the existing shoreline protective device.

3. FACTORS RELATIVE TO CONFORMANCE WITH COASTAL ACT SECTION 30235

Section 30235 of the Coastal Act requires the authorization of shoreline protective devices that alter natural shoreline processes "when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." The proposed LUP amendment would allow the existing revetment to be reconstructed to minimize the potential for coastal slope erosion in the Strand. The LCP amendment also states that the revetment should be rebuilt to ensure public safety and coastal access. Neither of the reasons identified in the proposed policies -as justifying the reconstruction or repair and maintenance of the revetment- is contained in Section 30235 of the Coastal Act. Furthermore, there are no other Chapter 3 policies in the Coastal Act that supply a basis for allowing a new shoreline protective device.

In order for the Commission to find the proposed LUP policies consistent with Section 30235 of the Coastal Act, the Commission would need to determine either that the reconstruction of the protective device is generally consistent with the Chapter 3 policies of the Coastal Act or that, despite inconsistency with at least one of those policies, there are coastal dependent uses, existing structures, or public beaches in danger from erosion that override the other inconsistencies and necessitate approval of a shoreline protective device. The primary reason for constructing a new shoreline protective device is to protect the proposed new residential development in the Strand from erosion hazards. Residential development is not a coastal dependent use. In addition, the residential development would be new, not existing. Finally, there are no identifiable public beaches in danger from erosion that the shoreline protective device would protect. Thus, the proposed policies, which would allow the reconstruction of a shoreline protective device to protect new residential development, are inconsistent with the requirements of Section 30235 of the Coastal Act.

The City and landowner have urged that the proposed LCP is consistent with Chapter 3 Coastal Act policies (Exhibits 18b-18d). In summary, these arguments include: 1) there are existing structures in need of protection in the Strand associated with the former mobile home park such as roads, foundation pads, septic sewer system, storm drains, utilities, tennis courts, and five community structures (all highly dilapidated), and other development including a public accessway, sewer pump station, emergency vehicle beach access, lifeguard station and upcoast and downcoast residential development; 2) coastal processes will not measurably change/be affected by the shoreline protective

device; 3) the shoreline protective device is needed to protect offshore marine habitat including kelp beds; 4) new water treatment and anti-erosion devices that will improve water quality could be constructed if a new shoreline protective device is constructed; 5) new coastal access will be accommodated by the new shoreline protective device. The Commission's response to these claims follows. However, before assessing the City and landowners' arguments, it should be briefly noted that new shoreline protective devices are inconsistent with several Coastal Act policies. For instance, as described above a new shoreline protective device at the subject site will alter natural landforms along the Strand bluffs, thus it will be inconsistent with Section 30253. Furthermore, a new shoreline protective device will contribute to erosion of the beach in front of the device, another factor rendering the device inconsistent with Section 30253. On the other hand, a repaired or maintained shoreline protective device in the Strand would not be 'new development' thus it wouldn't be subject to the prohibitions in Section 30253. The new shoreline protective device contemplated in the LUP, a revetment, will occupy significant beach area. In addition, over time, as sea level rises, the width of the beach will shrink because the back beach has been fixed, making the beach less usable, or unusable by the public. These factors render a new shoreline protective device inconsistent with Section 30213 of the Coastal Act. Finally, new shoreline protective devices, including that contemplated under the proposed LUP at the Strand, have adverse visual impacts to and along the shoreline, thus rendering the development inconsistent with Section 30251 of the Coastal Act. On the other hand, the perpetuation of an existing revetment (or any other existing structure) through repair and maintenance, as described elsewhere in these findings, would not run afoul of the requirements of these Coastal Act policies, because only the method of achieving the repair and maintenance would be subject to review; the object of the repair itself would not be subject to review against these policies. Thus, the modified policies suggested by the Commission, which are consistent with Coastal Act Section 30610(d) and implementing regulations, would recognize the limits of such repair and maintenance in this case including that any extraordinary methods that involve a risk of substantial environmental impact are regulated. These issues are discussed elsewhere in these findings.

a) The Presence of Existing Structures

A majority of the existing development cited by the City and landowner as necessitating protection by a new shoreline protective device would be completely demolished with the development of the Strand for residential purposes. The Commission has generally not considered development 'existing', for purposes of Section 30235 of the Coastal Act, and not allowed 30235 to be invoked to "protect [such] existing structures" if the structures will be demolished as part of the ultimate development plan. Also, it should be noted that the Commission has traditionally taken the position that Section 30235's mandate to permit shoreline devices to protect existing development is limited to the protection of existing development that is substantial.

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The City and landowner have not submitted substantial evidence that the other development, such as the remains of a mobile home park including a road network, retaining walls, abandoned buildings in severe disrepair and a storm drain system; County public accessway; County parking lot inland of the Strand; sewer pump station; emergency access; lifeguard station and residential development are in need of shoreline protection. Nevertheless, for illustrative purposes to assess whether the City and landowner have a meaningful argument relative to the need to protect the existing structures, it is useful to place the existing structures into two categories, those that can continue to be used without significant repair or upgrade, and those that are in such a severe state of disrepair that their use would necessitate significant re-construction.

For instance, the existing storm drain system could continue to be used (however, some minor repair and maintenance may be necessary). However, if protection of the storm drain system is the only goal, then there would likely be some shoreline protection options for this purpose that are far less extensive than a new shoreline protective device, including no present action at all.

The other structures in the Strand area, such as the abandoned buildings, and perhaps the roads and retaining walls, would fall in the other category, those requiring significant upgrade. The kind of upgrade likely needed would be so significant that their reconstruction would be considered 'new development' under the Coastal Act. In the case of these structures, as with any new development, the new development should be designed in a manner that does not require a new shoreline protective device.

With respect to off-site structures that may necessitate some type of new shoreline protection along the Strand, there are the County facilities inland and upcoast of the site and the residential neighborhood upcoast of the site. For the inland County facilities, due to their significant setback, there is likely little need for a new shoreline protective device at this time. As for the upcoast County facilities and residential area, there may be some argument that some kind of new shoreline protection is needed on the site to protect this existing development, however, as with the storm drain system, there would likely be options that are far less extensive than a new shoreline protective device. For instance, portions of the existing revetment could be repaired or a much smaller new shoreline protective device (e.g. a few hundred linear feet rather than 2,100 linear feet) could be considered.

b) Effects of Shoreline Protective Device on Coastal Processes

The City and landowner argue that coastal processes will show no measurable change compared with current conditions. The intent of this statement appears to be an assertion that the shoreline protective device will not 'alter shoreline processes' within the meaning of Section 30235. The Commission disagrees with the conclusion that the existing revetment is not altering natural shoreline conditions. The City and landowner have indicated that removal of the existing revetment could cause property damage and

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may alter the marine areas, however, these changes would result from returning this section of shoreline to a more natural, unaltered condition. Erosion, slides and slumps are part of the unaltered condition for this shoreline and options to perpetuate current conditions are options that perpetuate an "altered" shoreline. Thus, it is clear that the existing revetment or a new shoreline protective device alter shoreline conditions. Quoting from an analysis submitted by the landowner⁴⁹ (Exhibit 8d):

In absence of structural shore protection, the shore fronts slopes in either the pre- or post-project configuration are made up of unconsolidated sedimentary material that is easily eroded by high energy wave events, and by moderate wave events if they occur during spring tides. There is no natural form of shore protection (eg. wide equilibrium sandy beaches, cobble berms, or consolidated formations interior to slope) to prevent or arrest progressive erosion of pre-or post-project shore front slopes if structural shore protection is removed from the site.

In its natural condition, prior to construction of the riprap revetments and the harbor, this shoreline may or may not have been in dynamic equilibrium. Progressive erosion and resulting sedimentation and turbidity would be the natural conditions that would exist in this location if there were no shore protection. The continued maintenance and reconstruction of shoreline protection in this location will maintain the current, modified conditions at this location⁵⁰.

The above analysis assesses whether the revetment would "alter" shoreline processes from their natural state. Another baseline the Commission could use for determining whether the revetment "alters" shoreline processes are existing conditions. The existing conditions are not the same as natural conditions. Furthermore, the existing conditions involve ongoing, progressive deterioration of the existing revetment. The coastal condition with the existing revetment and with a reconstructed revetment will be different over time. The reports by Noble Consultants^{51, 52} and Jenkins and Wasyl show that a new riprap revetment can be constructed in essentially the same footprint as the existing revetment and such construction should be possible to accomplish in the field. Noble Consultants and Jenkins and Wasyl further conclude that since there will be no significant seaward encroachment by a new revetment, there will be no significant changes from the existing coastal condition if the revetment is reconstructed. This is a valid conclusion for the short-term. However, over the long-term, the existing condition is that the revetment will continue to deteriorate. Eventually the natural slides, slumps and erosion will occur as part of the existing condition. A reconstructed revetment would prevent these conditions from developing over the long-term. Over time, the coastal conditions that would exist with a new riprap revetment would differ more and more from what would exist if the existing revetment were allowed to deteriorate. Just

⁴⁹ Scott A. Jenkins, PhD & Joseph Wasyl. 2002. Constraints and Unique Characteristics Effecting Non-Structural Shore Protection Alternatives for the Dana Point Headlands Development and Conservation Plan. 17 November 2002.

⁵⁰ California Coastal Commission. 2003. Memo from Lesley Ewing to Karl Schwing dated July 21, 2003.

⁵¹ Noble Consultants, Inc. 2001. Coastal Processes Assessment for Headlands Development and Conservation Plan. In Appendix J, Final Environmental Impact Report prepared by LSA Associates September 2001.

⁵² Noble Consultants, Inc. 2002. Headlands Development and Conservation Plan, Supplemental Assessment for Shorefront Protection Alternatives, Dana Point, CA. May 2002.

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because the new revetment would occupy the same footprint, does not mean that the new revetment would have the same performance or result in the same future coastal conditions⁵³.

In the evaluation of projects, the Commission often needs to consider not only the immediate impacts from a possible action, but the longer-term effects. For new development on bluffs and for shoreline protective structures, that is often assumed to be 50 to 75 years, however, as noted by The Headlands Reserve LLC in its November 21, 2002 memo, "While a typical home may only have a useful life for 50 to 75 years (or longer) the development, i.e. legal lots, infrastructure, etc. have an indefinite life as long as improvements are maintained." Examination of The Strand Beach with and without the proposed revetment reconstruction should begin by considering the next 50 to 75 years, but this may, in actuality, greatly underestimate the time period over which this section of coast would be altered by the reconstruction of the existing revetment.

Even if the volume of sand at The Strand Beach has remained relatively constant from the 1920's to present, this is no guarantee that this condition will continue for the 75 or more years that this beach could have an armored back shore. As stated by Robert Wiegel in his review of the submitted material⁵⁴, "Many uncertainties are involved in trying to predict the future, such as decadal changes in wave climate, based on a relatively short length of time of observations; trying to know these quantitatively." In part, because of this uncertainty, Robert Wiegel concludes that a structure should be used along the boundary between the beach and the upland to insure long-term protection of the upland development. This conclusion was provided within the context that the site will be used for permanent development and that these forms of shore protection are the most effective engineering options of the 6 proposed alternatives. It would be equally appropriate to conclude that since "(m)any uncertainties are involved in trying to predict the future" that it is difficult to predict whether or not shore protection will alter shore processes in the future. Such changes could reduce shoreline sand supply and most likely reduce access and recreational opportunities.

Shoreline change is far more common both geographically and temporally than shoreline stasis. Acceleration in the rise in sea level or higher high water would inundate larger amounts of the narrow wave-cut platform. Without increased sediment inputs, the width of dry beach would be reduced in the future. This will be worsened slightly by the cumulative reduction in sediment (averaging 1,800 cubic yards annually) due to the armoring throughout this mini-cell.

During the times that the revetment is exposed to wave attack (i.e. when it is really needed to protect the backshore), the revetment will interact with waves and alter wave energy dissipation and reflection from what it would be if the revetment were not in place. When the revetment is exposed to wave attack there will be changes in the mobilization of beach sand, a reduction in beach access and impairment of recreational

⁵³ California Coastal Commission. 2003. Memo from Lesley Ewing to Karl Schwing dated July 21, 2003.

⁵⁴ Robert L. Wiegel. 2003. Peer Review of Reports on Coastal Engineering Aspects of the Headlands Development and Conservation Plan, Dana Point, Orange County, California" 20 March, 2003, as amended on March 21, 2003 letter from Kevin Darnall.

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opportunities from what exists when the revetment is not exposed to wave attack. Noble Consultants (May 2002) have estimated that the new revetment will be exposed to wave attack, on average, 21.94 days per year if the sand level stays at +8.0 feet, MLLW. If the sand level fronting the revetment drops by one foot, the potential annual exposure would increase to 48 days. With a two-foot drop in sand level, the potential annual exposure would increase to almost 60 days. The drop in sand level could occur from a continued reduction in the amount of sand getting to the beach. An apparent drop in sand would occur if there were a rise in sea level. Either condition would increase the amount of time that the revetment is altering coastal processes.

Surfrider Foundation has submitted photographs of the beach taken on 9 November 2002 when there was a 5.5-foot high tide. It is clear that during times that the revetment is being impacted by waves, the beach is inundated and impassible. (Attachment to 26 December 2002 letter from Michael Lewis) These impacts will increase in frequency and significance if the sand levels drop and the revetment is exposed more regularly to wave attack. The impacts will also increase in frequency and significance if there is a rise in sea level or high and higher high water.

The existing revetment does alter coastal processes, local sand supply, beach access and opportunities for coastal recreation when there are wave structure interactions. These will continue in the future with either the existing revetment or a new structure. These impacts will worsen if there is a drop in sand level or an increase in sea level. Thus, the contemplated reconstructed shoreline protective device would alter coastal processes and is subject to the requirements of Section 30235 of the Coastal Act. However, contrasting the above circumstance is one where the existing revetment can be repaired and maintained. If upgrades to the existing revetment can be accomplished through activities that qualify as repair and maintenance, the object of that repair and maintenance, the revetment, would not be subject to review against Section 30235 of the Coastal Act. Rather, only the method of repair and maintenance would be subject to such review. Similarly, a policy that allows repair and maintenance of the existing revetment wouldn't be inconsistent with Section 30235 of the Coastal Act.

***c) Necessity of Shoreline Protective Device to Protect
Offshore Habitat***

The City and landowner have asserted that the existing or a repaired and maintained shoreline protective devices are necessary to protect existing marine habitat offshore of the Strand. The study submitted⁵⁵ hypothesizes a catastrophic landslide as a possible result of revetment removal, followed by high turbidity from the erosion of the Strand area, and that this turbidity would have a negative impact on the kelp beds. Although turbidity associated with the erosion of landslides such as these certainly is likely, the event hypothesized is the largest, most severe event that could be contemplated; more

⁵⁵ Scott Jenkins Consulting. 2002. Evaluation of coastal processes effects associated with removal of the revetment from the Headlands Development and Conservation Plan. 72 p. report dated 2 May 2002 and signed by S. A. Jenkins and J. Wasyli.

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likely is the gradual failure of the Strand area though repeated, smaller landslide events. Aerial photographs taken in 1952⁵⁶, before the revetment was constructed at the site, show thriving kelp beds immediately offshore. Apparently, the erosion of the landslide complex that must have been occurring prior to the construction of the revetment did not interfere with the growth of healthy kelp beds.

Furthermore, even if a landslide were to occur, the City and landowner have provided no empirical evidence that the landslide would in fact cause adverse impacts to the kelp beds located offshore of the Strand. Surfrider Foundation has submitted a letter (Exhibit 9d) indicating the City's and landowner's analyses of the kelp forest impact issue was reviewed by several well renowned researchers who concluded the reports submitted by the City and landowners do not substantiate the claim that a shoreline protective device is necessary to protect the kelp beds. The Commission concurs that no compelling evidence has been submitted that a new shoreline protective device is necessary in order to protect the kelp beds.⁵⁷

It should be noted that CDFG has submitted comments regarding alternatives to the reconstruction of the revetment and potential effects on the off-shore reefs⁵⁸ (Exhibit 14a). The letter identifies potential issues regarding beach nourishment, in-lieu of a shoreline protective device, and removal of the revetment, including the potential for a sacrificial dune in lieu of a hardened shoreline device. In these instances, CDFG expresses some concern regarding potential adverse effects due to turbidity and sedimentation upon the reef and associated marine life. Given the alternatives identified in the letter, CDFG concludes that reconstruction of the existing revetment would be the least environmentally damaging alternative and urges the Commission to consider impacts to marine resources in its review of alternatives for shoreline protection.

The Commission notes that the letter does not make any assertion that a new shoreline protective device is necessary to protect the off-shore reefs. Rather, the letter simply states that if some kind of shoreline protection is found to be necessary, that the alternative chosen should be one that would not lead to significant increases in turbidity and sedimentation that would adversely impact the off-shore reefs. Furthermore, the letter does not attempt to analyze any alternatives other than the ones specifically mentioned in the letter. The letter does not attempt to analyze alternatives such as other hardened structures, such as vertical walls, nor does it analyze alternatives that may include more landward alignments of shoreline protective devices.

⁵⁶ Continental Aerial, date 12.12.1952, images 3K49 and 3K50

⁵⁷ Furthermore, the Commission notes that Section 30235 of the Coastal Act requires the permitting of protective devices in a very limited, enumerated set of circumstances, and the protection of offshore habitat is not within that list.

⁵⁸ California Department of Fish and Game. 2003. Alternatives to Reconstruction of the Existing Rip-Rap Revetment for the Dana Point Headlands Development and Conservation Plan. Memorandum from Eric J. Larson, CDFG, to Karl Schwing, CCC.

d) Shoreline Protection, Water Quality & Erosion

The City and landowner have argued that new water treatment and anti-erosion devices that will improve water quality could be constructed if a new shoreline protective device is allowed at the Strand. The City and landowner indicate that storm water and low flow nuisance water from inland areas presently travels through an existing storm drain system that passes through the former mobile home park and discharges at the revetment onto the sandy beach at the Strand. The City and landowner indicate that these storm water flows are presently untreated. Further, the City and landowner indicate that the existing discharge locations are dilapidated and are causing erosion on the beach. The City and landowner state that under the proposed LCPA, the water flowing from inland areas, and water discharged from the new development that would occur under the LCPA in the Strand, would be treated and discharged in a non-erosive manner at the beach. The City and landowner assert this is only possible with a new shoreline protective device or the repair and maintenance of the existing one.

The Commission notes that Section 30235 of the Coastal Act requires the permitting of new protective devices in a very limited, enumerated set of circumstances, and the protection of water quality is not within that list. However, if upgrades to the existing revetment, and the associated water quality benefits, can be accomplished through activities that qualify as repair and maintenance, the object of that repair and maintenance, the revetment, would not be subject to review against Section 30235 of the Coastal Act. Rather, only the method of repair and maintenance would be subject to such review. Thus, a policy that simply recognizes the sort of work that would constitute repair and maintenance of the existing revetment, so that it would be allowed under the repair and maintenance exemption in the Coastal Act, and on that basis, explicitly authorizing such work, wouldn't be inconsistent with Section 30235 of the Coastal Act.

e) Shoreline Protection & Public Access

The City and landowner have argued that significant public access benefits will be conveyed to the public in conjunction with the construction of the residential development and a new shoreline protective device in the Strand. These public access benefits would include a re-constructed public access stairway along the upcoast boundary of the Strand, a new pedestrian accessway through the residential development including a new path directly to the beach, a new emergency vehicle access at the southerly portion of the Strand, various beach support facilities including restrooms, and dedication of Strand Beach to the public. The City's informal revised submittal also includes a proposal for a public walkway lateral to the beach along the top or landward of the shoreline protective device/revetment. Again, the Commission notes that Section 30235 of the Coastal Act requires the permitting of new protective devices in a very limited, enumerated set of circumstances, and the provision of access

to and along the beach is not one of them (except to the extent that the protective device protects the beach from erosion). Alternatively, if upgrades to the existing revetment, and the associated access benefits, can be accomplished through activities that qualify as repair and maintenance, the object of that repair and maintenance, the revetment, would not be subject to review against Section 30235 of the Coastal Act. Rather, only the method of repair and maintenance would be subject to such review. Thus, a policy that simply recognizes the sort of work that would constitute repair and maintenance of the existing revetment, so that it would be allowed under the repair and maintenance exemption in the Coastal Act, and on that basis, explicitly authorizing such work, wouldn't be inconsistent with Section 30235 of the Coastal Act.

4. OTHER ISSUE AREAS RELATED TO HAZARDS

a) Geologic stability and coastal erosion at the Headlands

The City and landowner have investigated long-term coastal erosion rates for the Headlands. The investigation found that erosion in the Harbor Point Area was about 10 feet during the previous 70 years. Based on this, the expected bluff retreat in this area, over the 75-year useful economic life of the development, is less than 11 feet. Accounting for slope stability and ongoing bluff retreat over the expected economic life of the development, the Commission finds that a 50-foot setback from the bluff edge would be required for any structures in the Headlands area. Other than COSE Policy 2.10, which describes a minimum 25-foot setback from bluff edge or a setback that accommodates 50 years of erosion, the proposed LUP does not implement the required 50-foot setback. In order to find the LUP consistent with Section 30253 of the Coastal Act, the LUP would have to include policies that implement a minimum 50-foot structural setback from the bluff edge, or a sufficient setback to avoid anticipated erosion/bluff retreat over a minimum 75-year timeframe, at the Harbor Point Area. Thus, the Commission requires Suggested Modification 9. It should be noted this policy pertains to significant structures only. Minor, ancillary development that can be easily relocated to avoid erosion hazards, such as trails, signs, benches and similar development would not be required to conform with the minimum 50-foot/75-year setback, provided they are sited and designed to be safely utilized without necessitating bluff or shoreline protection (notwithstanding the allowance for such bluff or shoreline protection provided in Suggested Modification 62).

b) Infiltration at the Headlands and the Strand

Although slope stability is of limited concern in the Headlands/Harbor Point promontory area, at least as compared to the Strand area, the relatively low global factors of safety for the Headlands/Harbor Point promontory bluffs, the presence of the two moderately large, active, landslides at the northern and southern end of the site, and on-going surficial slumping all indicate that caution is in order. Accordingly, development should

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be set back at least 50 feet from the bluff edge as recommended above. In addition, it would be prudent to limit the infiltration of ground water throughout the site, but especially close to the bluff edge and in the vicinity of the mapped inactive faults. In these areas, especially, the use of infiltration as a water quality BMP is not appropriate. Further, irrigation should be kept to a minimum to limit the increase in ground water levels that commonly accompany residential development in southern California. The LUP must include policies that directly address these issues. Similarly, due to the instability of the Strand area, it is especially important to limit the build up of ground water in either the natural landslide deposits or in any fill slopes constructed at the site. Fill slopes should have adequate drain systems, and the infiltration of ground water should be kept to a minimum. In the Strand area, the use of infiltration as a water quality BMP is not appropriate. Further, irrigation should be kept to a minimum to limit the increase in ground water levels that commonly accompany residential development in southern California. To be approvable, any proposed LUP amendment must include policies that directly address these issues. Thus, the Commission requires Suggested Modifications 9, 54, and 82.

c) Other Revisions

Furthermore, to address hazards issues, the LUP would need to incorporate revisions, including but not limited to, the following:

- Prohibit new development in hazardous areas where adequate factors of safety cannot be achieved;
- Only the least environmentally damaging feasible alternative should be used for hazard remediation and stabilization;
- Land divisions should be prohibited that would create lots that are subject to flooding, erosion and geologic hazards or that would have other significant adverse, including cumulative, impacts upon coastal resources (notwithstanding the allowance for such development in the Strand provided in Suggested Modification 62);
- All applications for new development on a beach, bluff or bluff top should be accompanied by a geologic and wave uprush hazards analysis;
- Hazards analyses for shoreline development should incorporate anticipated future changes in sea level;
- New development on a beach or bluff should be sited outside the anticipated hazard area;
- The construction of new shoreline and bluff protection structures to protect new development should be prohibited;
- Shoreline and bluff protection to protect ancillary or accessory development should be prohibited (notwithstanding the allowance for such development in the Strand provided in Suggested Modification 62);
- Where shoreline protection structures can be justified, the feasible alternative that minimizes impacts upon sandy beaches must be used;

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- Property owners voluntarily developing in hazardous areas should be required to record deed restrictions against their property that prohibit future shoreline protection and require the landowner to assume the risks of developing in a hazardous area.

Thus, the Commission requires Suggested Modifications 18, 61, 62, 65, 66, 67, 68, 69, 70, 71 and 72.

5. HAZARDS - CONCLUSION

The discussion above has highlighted the inconsistencies the proposed LUP would have with Coastal Act policies pertaining to hazards. For instance, an LUP that would allow a new shoreline protective device to protect new development cannot be found consistent with Section 30253 of the Coastal Act nor would the Commission be compelled by Section 30235 of the Coastal Act to approve such policies. On the other hand, if the development in the Strand would only necessitate repair and maintenance of the existing revetment, an LUP policy that simply recognizes the sort of work that would constitute repair and maintenance, so that it would be allowed under the repair and maintenance exemption in the Coastal Act, and on that basis, explicitly authorizing such work, could be found consistent with Section 30253 because it would not authorize any new development that results in increased erosion (a new revetment) or any new residential development that relies on the "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs". Similarly, if the existing revetment can be repaired and maintained, the continued presence of that revetment would not raise any issue about the applicability of Section 30235 of the Coastal Act because only the method of repair and maintenance would be subject to review under a coastal development permit application. In order to ensure that the work contemplated for the revetment is recognized as repair and maintenance and to ensure that the upgraded revetment can be used to support the new development in the Strand, but not to allow a new shoreline protective device to protect new development, the Commission has required Suggested Modifications 58, 59, 62, 63, 64, 65, 66, 67, 68, and 69. Among other requirements, these suggested modifications prohibit new development that requires a new shoreline protective device, limit the height of the repaired and maintained protective device to the existing height (+17 feet NGVD), identify the scope of work that may be considered repair and maintenance, identify the minimum factor of safety required for new development, and identify required analyses. Thus, the Commission has been able to resolve all the issues relative to hazards through suggested modifications to the proposed LUP policies and can find the LUP, as modified, consistent with the Chapter 3 policies of the Coastal Act pertaining to hazards.

The suggested modifications noted above incorporate a proposal by the City and landowner to require the repaired and maintained shoreline protective device be aligned, on average, 5 feet landward of the present alignment and must include at least a 10-foot readjustment at some points. This suggested modification isn't one that the

Commission is requiring in order to find the LUP consistent with the Chapter 3 policies of the Coastal Act pertaining to hazards. However, the re-alignment is one of the factors (i.e. HDCP Elements) the Commission has relied upon in its finding, described more fully in the Balancing/Estoppel section (see Section VII), that the LUP, as modified, would be most protective of coastal resources in the Headlands area overall by allowing some development that impacts ESHA.

C. SHORELINE AND COASTAL RESOURCE ACCESS

Coastal Act Sections 30210 through 30214 are the predominant policies that will be used to evaluate the conformance of the LUP with the access requirements within the Coastal Act. Sections 30210 through 30214 of the Coastal Act establish, among other things, that public coastal access opportunities must be maximized, that development must not be allowed to interfere with certain rights of public access, that public facilities must generally be distributed throughout the City's coastal zone, that lower cost visitor serving opportunities must be protected and encouraged, and that public access can be regulated in terms of time, place, and manner. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast.

The proposed LUP contemplates providing public access to the coast in a variety of ways including a trail network linking the major land use areas on the site, public pedestrian access from the existing County parking lot in the Strand to Strand Beach, the dedication of the presently privately owned area of Strand Beach to the public; and the dedication of other open space. The public access components contemplated in the LUP would significantly enhance public access to the coast. However, there are components of the proposal that raise significant public access issues under Chapter 3 of the Coastal Act. First, the proposed LUP contemplates the construction of a new shoreline protective device to protect new development in the Strand that could cause immediate and long-term adverse impacts upon the public's ability to access the shoreline. Second, the proposal contemplates the prohibition of public vehicular access to the beach through the residential development in the Strand. Third, the proposed LUP raises concerns relative to the absence of procedures and timing to control implementation of the public access components of development in the Headlands area.

1. SHORELINE PROTECTIVE DEVICES & PUBLIC ACCESS

Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea where such rights were acquired through legislative authorization or use. Section 30210 of the Coastal Act requires that access be maximized and recreational opportunities provided. Section 30213 of the Coastal Act requires the protection and, and where feasible, provision of lower cost visitor and recreation facilities. Shoreline protective devices can have adverse impacts upon public access in several ways. First, the shoreline protective device can occupy sandy

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beach area, prohibiting the use of that area by the public. Second, shoreline protective devices permanently fix the back of the beach, which leads to narrowing and eventual disappearance of the beach in front of the structure. Third, shoreline protective devices contribute to the sustained erosion of the beach during the winter season and impair the ability of the public beach to rebuild through accretion during the summer season. Fourth, shoreline protective devices can exacerbate erosion of the resultant narrow public beach area by accelerating erosion of the beach and by increasing the time that the public beach is covered by ocean waters.

The proposed LUP would allow the construction of a new shoreline protective device along the Strand. There presently is an existing revetment along the Strand that was constructed in the 1950s. The development contemplated in the proposed LUP necessitates either repair and maintenance of the existing revetment or the complete removal of the existing revetment and the construction of a new one. The LUP specifically calls for a new revetment, with no allowance for the consideration of repair and maintenance of the existing revetment or any realignment thereof. The LUP would prohibit seaward encroachment of the new shoreline protective device, compared with the footprint of the existing device, except for public access and public safety.

It should be noted that the beach above the mean high tide line is presently privately owned. The proposed LUP would designate the beach as public recreation open space, thus, the City intends for the beach to be transferred into the public domain in association with allowing the development contemplated in the proposed LUP. However, as will be more fully explained below, the LUP contains no strong mechanism to ensure that this transferal occurs. Furthermore, the proposed LUP, which would allow a new shoreline protective device to be constructed to protect new development, is inconsistent with Section 30253 of the Coastal Act.

The policies in the LUP that contemplate a new revetment are also inconsistent with Section 30213 of the Coastal Act. By allowing a revetment to be newly constructed to protect new development, the LUP policies will extend the period of time over which the back beach will be fixed by a shoreline protective device. According to The Coast of California Storm and Tidal Waves Study for Orange County the beach retreat rate in this area is about 0.07 to 0.19 ft/yr. The Strand beach is at about its maximum holding capacity for sand, meaning that the beach cannot widen by moving seaward. The beach has been held at its current location since the 1950's when the current revetment was installed. Assuming that the shoreline had not been armored, and assuming that there would not have been a massive slide during the past 50 years, the current back beach line would be approximately 10 feet further landward than it is now ($0.2 \text{ ft/yr} \times 50 \text{ years}$). Over the next 75 years, which is the anticipated economic life of development, the shoreline could be expected to retreat an additional 15 feet, with the same assumptions (Exhibit 10a). However, with the back beach fixed by a new shoreline protective device, the beach cannot grow landward.

Furthermore, changes in sea level can affect beach width. Estimates for future inundation by a change in sea level depend upon the existing slope of the beach

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seaward of the revetment and the amount that sea level is expected to change. Based on information provided by the 26 March 2002 survey by Hunsaker and Associates, the applicant has updated the information on shoreline slope from 1:20 or 1:30 (as presented in the FEIR, Appendix J) to only 1:10. A steeper beach will have less beach lost to inundation than will a more gently sloping beach, for the same amount of sea level rise. For example, a 1 foot rise in sea level would inundate a 30 foot wide strip of beach if the beach slope were 1:30, but only 10 feet for a slope of 1:10. In the earlier staff report, it was noted that a 0.66 feet rise in sea level would result in a loss of 20 feet of active beach; however, using the Hunsaker survey results, this same rise in sea level would inundate a strip of beach only 6.6 feet wide. As stated in the December 3, 2003 letter from Noble Consultants, "Assuming for sake of argument staff's estimate for design sea level rise of 0.6 feet over the next 75 years, ...the potential additional "inundated" beach width is merely 6 feet."

The amount of beach that will be inundated is sensitive to the beach slope, as just noted, and also to the vertical change in sea level. There is a high amount of uncertainty as to future sea level rise. The 0.6 or 0.66 foot rise over the next 75 years was used for the design component of the revetment, to provide some assurance that the revetment will be stable for foreseeable future conditions. However, the current projections for future sea level rise, from the 2001 International Panel on Climate Change, estimates that by 2080 there could be a global change in sea level between 0.24 and 2.05 feet⁵⁹ (Footnote 1). For the 1:10 beach slope at Dana Point, a rise in sea level would inundate a strip of beach, ranging in width from 2.4 feet to 20.5 feet, depending on the extent of future sea level change. This range is based on model results from 7 different models and 35 different emission scenarios. The average of the models for all scenarios for 2080, ranges from 0.65 to 1.18 feet, resulting in the future inundation of a beach strip between 6.5 and 11.8 feet wide. The possible change in sea level rise by 2080 is dependant upon numerous factors (population growth and fuel consumption are two key unknowns) and it is not possible to put a higher certainty on one amount of sea level rise than another. Philip Williams and Associated used a middle value within the range of the averages, estimating that by 2080, sea level would be approximately 0.98 feet higher than today, resulting in inundation of an additional 9.8 feet of beach. The applicant has chosen to analyze inundation, based on the lowest part of the range of possible changes in sea level. The most likely range of inundation is from 6.5 feet to 11.8 feet and the probable range is from 2.4 feet to 20.5 feet⁶⁰; the possible range is even larger and is not considered by the IPCC in its analysis.

The beach will become narrower over time. Waves will inundate the dry beach and interact with the shoreline protective device more regularly, thus the beach will be available to the public for progressively smaller periods of time until at some point the beach becomes so narrow and so regularly inundated that no dry sandy beach is available to the public. Thus, the policies that allow the reconstruction of the revetment

⁵⁹ IPCC 2001, Figure 11.12 and Letter Report by Dr. Jenkins, 19 December 2003. These changes in sea level is based on the range from all the models and scenarios, including uncertainties in land-ice changes, permafrost changes and sediment deposition, but does not allow for uncertainty relating to ice-dynamical changes in the West Antarctic ice sheet.

⁶⁰ This estimate is based only on the change in water elevation relative to the existing beach, and does not account for possible shifts in sediment on the shoreface to otherwise modify the location of the shoreline.

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will allow development that progressively destroys a lower cost visitor and recreational facility, the sandy beach, which is inconsistent with Section 30213 of the Coastal Act, thus the proposed LUP, as submitted, must be denied.

Since submittal of the LCP amendment, the landowner has undertaken studies to investigate the feasibility of repairing and maintaining the revetment in a more landward alignment than the existing revetment. In one of their analytical iterations (see landowner studies circa November 2002), the landowner investigated the feasibility of setting the development back an adequate distance to avoid need for a shoreline protective device to protect the development. These studies determined that it would be technically feasible to establish an alignment that, in the post-construction condition, would result in a bluff/slope toe from 80 to 160 feet landward than the existing toe. Thus, an additional 80 to 160 feet of beach width would be available to the public. However, those same studies concluded that construction-phase stability issues would make this alternative infeasible.

In their most recent analysis (see landowner studies circa December 2003), the landowner has indicated that the revetment could be placed up to 10 feet landward of the present alignment as part of a repair and maintenance effort. Due to tapering of the structure to provide connections to the adjacent revetment, their latest design would result in an average gain of 5 feet of beach width, rather than the full 10 feet achieved at the apex of the setback. It has been demonstrated that this landward alignment provides an adequate factor of safety for the development and provides additional sandy beach area that would be available for use by the public.

Extending the life of the existing revetment through repair and maintenance would result in many of the same impacts that would come from the construction of a new revetment that are noted above. Nevertheless, pursuant to Section 30610(d) of the Coastal Act, such work is normally exempt from coastal development permit requirements, and under section 13252(a) of the Commission's regulations only the methods by which the work is performed remain subject to review to ensure consistency with Coastal Act policies or applicable LCP policies designed to protect coastal resources. The Commission's suggested removal of the proposed blanket authority to reconstruct the protective device and insertion of Suggested Modifications 63 and 64 would ensure that all aspects of the contemplated revetment work that are not legitimately exempt would be subject to review to ensure consistency with the Coastal Act. Thus, with these suggested modifications, this aspect of the LUP would be approvable as consistent with the Coastal Act.

Furthermore, due to the relatively narrow area of dry sandy beach that will be available to beach users at the Strand (present and future), it is important to strictly control the types of structures that may be placed there which occupy sandy beach. Thus, the Commission requires Suggested Modifications 21, 39, 62, 63, and 90, among others. Therefore, the Commission has made suggested modifications to address the issues identified above, which allows the Commission to find the LUP, with the modifications, consistent with the public access policies of the Coastal Act.

2. GATING OF THE RESIDENTIAL DEVELOPMENT

The residential area contemplated by the proposed LUP in the Strand would be located between Selva Road (a public road) and the sea⁶¹. The proposed LUP does not contain any explicit policy that prohibits public vehicular access through the proposed residential area. This prohibition is more directly carried out in the IP (i.e. the Headlands PDD), however, the issue is discussed here in detail.

Presently, there is no public vehicular access near the sandy beach in the Headlands area, nor in nearby surrounding areas. Rather, beach access is limited to pedestrian access. Under the proposed LUP, similar types of pedestrian beach access would be provided from the County parking lot above Strand beach. The lack of vehicular access near to the beach limits the use of those beach areas to individuals capable of long, steep descents and ascents to and from the beach. Where feasible and opportunities arise to remedy a limitation on public access, such limitations should be addressed. The proposed LUP contemplates the construction of a residential neighborhood, including a road network, that could provide, at minimum, a drop-off area for the public near the sandy beach that would be accessible by vehicle. Upon completion of drop-off, the driver could return to the existing County parking lot.

The City and landowner have expressed concerns regarding public vehicular access to a drop off in this area. First, the City and landowner have indicated that the roads contemplated in the Strand residential area are narrow and are not designed to accommodate traffic beyond that anticipated for the residents and guests of the neighborhood. Also, the City and landowner have suggested that opening the road network to public vehicles will suggest that there is public parking available along those streets. Once drivers realize they cannot park, they will need to turn around, leading to traffic congestion in the neighborhood and possible safety concerns for the pedestrians traveling along the public pedestrian pathway that is proposed through the Strand.

The Commission generally does not sanction exclusivity in the coastal zone by allowing gated development between public roads and the beach. Gated neighborhoods adjacent to the beach give an impression that the beach is also private. However, the circumstances at this site suggest that gating the residential area to public vehicles would not result in an adverse impact upon the public's ability to access the beach. For instance, the presence of the large County parking lot that accommodates public parking makes it clear there are public access opportunities present. Appropriate signage and visual cues to pedestrians would further minimize adverse impacts. Specific LUP policies to implement these mitigation measures are necessary. Nevertheless, the absence of, at minimum, a drop off near beach level within a new street network that could feasibly provide such access is an adverse impact, a clear failure to maximize access (30210), and a failure to provide access in new development (30212). Thus, the LUP, as submitted, must be denied.

⁶¹ Note that Selva Road is not identified on the Commission's post-certification map as the 'first public road', presumably because the road is not continuous. Rather, the more landward Pacific Coast Highway is identified as the first public road.

The City and landowner have identified alternative types of access that will allow individuals of all physical abilities to access the beach. Under the City and Landowner's informal submittal, City staff added language to the Urban Design Element of the LUP that would explicitly allow gating of the Strand residential community to vehicles provided that mechanized access from the existing County parking lot to Strand Beach, in the form of an inclined elevator/funicular, is included as part of the plan. Given the circumstances unique to this site, the Commission finds this alternative acceptable, provided that additional policies are included in the LUP to assure adequate public access. For instance, the LUP must provide clear mechanisms triggering the requirement to construct the mechanized access and the period by which it must be available to the public, as well as an appropriate management entity, operation and maintenance plan, and cost controls to assure the system is available to the public during reasonable time periods for a reasonable cost, and contingency measures if the mechanized access is unavailable to the public. Furthermore, LUP policies that mandate appropriate signage and visual cues to clearly demarcate the public pedestrian path through the neighborhood to the beach, as well as strict controls limiting changes to the management of the County parking lot that would discourage the public from using that public parking lot must be incorporated. Therefore, the Commission requires Suggested Modifications 12, 19, 22, 23, 24 and 27.

3. TRAFFIC/EFFECTS OF GRADING EXPORT ON PUBLIC ACCESS

Stabilization of the Strand area in preparation for development will necessitate the export of at least one million cubic yards of soil. Realignment of the shoreline protective device to provide additional beach width will generate additional soil that needs to be exported from the site. Some of this soil could be deposited in the bowl area, and contoured for development, without impacting ESHA. However, unless some ESHA impact is allowed, the remainder of the soil must be exported from the site via public roads that provide public access to the coast. The landowner anticipates that this export would necessitate approximately 44,000 truck trips one-way (88,000 round-trip) over a 10-month period. The landowner has indicated these truck trips will have a significant adverse impact upon public access in the form of traffic upon public roads that provide public access to the coast during the construction phase of the project. However, as proposed, the project would avoid this potential adverse impact upon public access.

The City and landowner have considered a variety of ways to deposit the soil in the bowl area while minimizing encroachment into ESHA. However, according to the City and landowner, the minimal encroachment possible, without resorting to off-site export, is 6.5 acres of ESHA impact. Ultimately, the Commission finds that 6.5 acres of ESHA impact are acceptable in the context of this overall project (see Balancing/Estoppel discussion elsewhere in these findings (Section VII)).

4. SCHEDULE FOR PROVISION OF PUBLIC ACCESS COMPONENTS

The proposed LUP purports to provide extensive public access amenities such as the dedication of Strand Beach, a public trail network and accessways to the beach, as well as various public open space areas. However, the LUP only contains relatively unspecific narrative in the Conservation Open Space Element regarding the need to prepare an open space program for the creation and management of the public access program. The fact the Headlands area is presently owned by a single landowner currently simplifies the implementation of an open space plan. However, the existing subdivision makes it possible for individual or groups of parcels to be transferred to another landowner. If such a transfer were to occur, the procedures and timing necessary to implement the public access components would become more complex. In addition, the LUP lacks a certain amount of specificity in the policies relative to the location of public access amenities. In these cases, the Commission finds that the proposed LUP lacks sufficient detail regarding the location, timing and mechanisms for implementing the open space program and its public access amenities. The LUP must contain policies that identify a trigger for dedication of public access and open space areas and the phasing by which the various public access and open space amenities must be open to the public. Some of these measures are contained in the proposed PDD, but without corresponding provisions in the LUP, it is not possible to assess whether those provisions conform with the LUP. These and other policies must be incorporated into the LUP to assure that the public access and open space amenities are transferred into the public domain and made available for public use in a timely way. Therefore, the Commission requires Suggested Modifications 11, 12, 25, 26, 27, 30, 34 and 35.

5. PARKING

Applicable Coastal Act policies include Sections 30212.5 and 30252. Section 30212.5 requires that visitor serving public facilities, such as parking be distributed to prevent any one area from becoming overcrowded. Section 30252 requires that the location and amount of new development should maintain and enhance public access to the coast by providing adequate parking or other substitute means of serving the development with public transportation.

The proposed LUP contains policies that address parking in a very general way, but fails to focus on specific issues, such as a requirement that new development provide adequate parking on-site. In order to address the lack of specificity, the Commission requires Suggested Modification 15. In addition, the LUP doesn't contain adequate policies to protect public parking and control rates and periods of use such that the public is encouraged to utilize the public parking. Therefore, the Commission requires Suggested Modifications 15, 19 and 22.

6. OTHER ACCESS ISSUES

The LUP policies, as submitted, do not contain adequate specificity relative to the required alignment of public trails. In order to address this issue, the Commission requires Suggested Modifications 11 and 12.

The proposed LUP policies don't address temporary events and how they must be controlled. If not properly controlled in terms of quantity, duration, location, among other issues, temporary events can have adverse public access impacts, as well as adverse visual and biological resource impacts. Therefore, the LUP must contain provisions that require controls on temporary events. Thus, the Commission requires Suggested Modification 20.

The proposed LUP identifies a variety of public access facilities distributed throughout the development, such as trails, parking and restrooms. However, certain areas are lacking adequate public access support facilities. For instance, there are no restrooms located at the southerly area of Strand Beach. The City and landowner have agreed to address these issues in the manner described in Suggested Modifications 39 and 90.

D. RECREATIONAL AND VISITOR SERVING FACILITIES

Coastal Act Sections 30212.5, 30213, 30221, 30222, and 30223 address the provision of recreation and visitor serving facilities in the coastal zone. Section 30212.5 requires that visitor serving public facilities, such as parking be distributed to prevent any one area from becoming overcrowded. Section 30213 requires that lower cost visitor serving facilities will be protected, encouraged, and where feasible provided. Section 30221 states that oceanfront land suitable for recreational use will be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided in the area. Section 30222 requires that private lands suitable for visitor-serving commercial recreational uses designed to enhance public opportunities for coastal recreation will have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. Section 30223 requires that upland areas necessary to support coastal recreational uses shall be preserved for such uses, where feasible.

The proposed LUP raises several concerns with the Coastal Act. The first is reserving appropriate land in the Headlands area to provide visitor overnight accommodations and appurtenant visitor serving uses consistent with Section 30223 of the Coastal Act. Another issue is the provision of lower cost visitor recreation facilities, in particular, the provision of lower cost overnight accommodations.

The findings herein discuss the presence of ESHA in the Headlands area and the proposal to designate 2.8 acres of land that contains ESHA for visitor/recreation

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commercial land use near the intersection of Green Lantern and Cove Road. The LUP targets this area for a 65-90 room inn and associated visitor serving commercial amenities. Construction of the hotel would result in the destruction of ESHA, which would be inconsistent with Section 30240 of the Coastal Act. Thus, the location contemplated in the LUP for a hotel and the policies enabling construction of the hotel in that location are inconsistent with the Chapter 3 policy protection of ESHA (30240).

However, notwithstanding the ESHA impact, the provision of a visitor serving use such as a 65-90 room inn would be consistent with Coastal Act policies encouraging such uses in the coastal zone. The Headlands area is the last large, mostly vacant, privately owned area of land in the coastal zone in the City of Dana Point, and among the largest vacant privately owned lands in coastal Orange County⁶². The Headlands is also one of the few significant areas of land that has ocean frontage. The physical setting, including proximity to the ocean and impressive coastal views make the site well suited as a visitor-serving destination. The 65-90 room inn with restaurant(s) will be a local and regional visitor destination. It will be an amenity that opens the site to visitors that may not otherwise be drawn to the site by its other amenities, such as the trails, open spaces and beach.

The City and landowner contemplate this 65-90 room inn as a luxury accommodation. Accordingly, while the facility will be visitor serving, it will not be lower cost. The Coastal Act also encourages the provision of lower-cost uses, including lower-cost overnight accommodations. In recognition of this, the landowner has agreed to construct lower-cost overnight accommodations within the proposed visitor serving commercial site located at the corner of Street of the Green Lantern and Pacific Coast Highway. This lower-cost accommodation would include a minimum of 40 beds and is contemplated to be operated as a hostel. The landowner has committed to provide this lower cost development as a 'turn-key' facility (i.e. constructed, fully furnished, and open for business) that will be open for use prior to or concurrent with the opening of the 65-90 room luxury inn. This lower cost facility is one component of the package of public amenities (i.e. the HDCE Elements) the landowner is required to provide to offset the allowance for impacts to ESHA. In order to assure that the lower-cost facility is implemented as proposed by the landowner, the Commission requires Suggested Modifications 4, 30, and 32.

The City's submittal contains provisions to allow 'fractional ownership' of the 65-90 room inn. Fractional ownership is similar to a time share in that it allows individual entities to occupy rooms in the inn on a permanent, intermittent basis. If allowed to consume a substantial portion or all of the accommodations, the facility would cease to be primarily visitor serving, and more of a lower priority residential use. Similarly, the facility could be turned into a club that is exclusive to the general public. In order to prevent conversion of the facility to substantial privatization and a lower priority use, the Commission requires Suggested Modification 33.

⁶² Bolsa Chica in Huntington Beach and Banning Ranch in the Newport Beach area are larger at approximately 308 and 412 acres, respectively.

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Also, under Goal 2 of the LUE, Policy 2.11⁶³ is written in a manner which suggests that the only areas of the Headlands suitable for visitor-serving commercial recreational (VRC) development would be those areas along Pacific Coast Highway and Street of the Green Lantern. As discussed above, there are other areas of the Headlands that would be suitable for such uses, such as within the bowl/Upper Headlands and in the Strand. In this case, the City and landowner have chosen the areas identified. Thus, the Commission requires Suggested Modification 2.

E. VISUAL RESOURCES

Section 30251 of Coastal Act provides the principal policy for evaluating the visual aspects of the proposed LUP for conformance with the Coastal Act. Section 30251 states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Development should be sited and designed to protect public views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and to restore and enhance visual quality in visually degraded areas, where feasible.

As noted elsewhere, the proposed LUP contemplates construction of a new shoreline protection device along Strand Beach to protect new residential development. The new shoreline protective device contemplated would be visible above the sand line in varying degrees during different periods of the year. During summer, when there tends to be more sand on the beach, more of the revetment would be covered, than during winter when less sand is available to cover the revetment. In either case, the revetment would be visible by the public visiting the beach, as well as from more distant view points. Rather than visually upgrading the views that are presently degraded by the existing revetment, the proposed LUP would perpetuate the presence of the revetment. Thus, views would not be upgraded, but would continue to be degraded in a manner inconsistent with Section 30251 of the Coastal Act.

The Commission's Suggested Modifications 63 and 64 would allow approval of a more limited amount of development that would upgrade the existing revetment. Although this work would extend the life of the existing revetment and thereby result in many of the same impacts that would come from the construction of a new revetment, the Commission has concluded that this limited form of work would constitute repair and maintenance. As such, pursuant to section 30610(d) of the Coastal Act, the perpetuation of the object of the repair and maintenance work does not need a coastal development permit, and under section 13252(a) of the Commission's regulations, only the methods by which the work is performed must remain reviewable to ensure consistency with Coastal Act policies or applicable LCP policies designed to protect coastal resources. The Commission's suggested removal of the proposed blanket authority to reconstruct the protective device and insertion of Suggested Modifications

⁶³ Policy 2.11 appears to be incorrectly numbered in the LCP amendment, and should be Policy 2.10 unless the suggested modifications necessitate a different numerical identifier.

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63 and 64, would ensure that all aspects of the contemplated revetment work that are not legitimately exempt would be subject to review to ensure consistency with the Coastal Act. Thus, with these suggested modifications, this aspect of the LUP would be approvable as consistent with the Coastal Act.

Section 30251 of the Coastal Act requires that landform alteration be minimized in new development. One purpose of minimizing landform alteration is to maintain the aesthetic qualities of the coastal zone. Minimization of landform alteration and grading also addresses other Chapter 3 Coastal Act objectives such as protecting habitat, which is discussed elsewhere in these findings. Techniques to minimize landform alteration include designing new subdivisions to avoid changing significant landforms and avoiding geologically hazardous areas such as landslides and steep slopes where significant grading would be required to develop those areas. The project contemplated in the LCPA would necessitate more than two million (2,000,000) cubic yards of grading (Exhibit 7b). This grading would be necessary to prepare the Strand bluff face for residential development, including geologic remediation. In addition, the material cut from the Strand would be placed into the bowl area of the site, and graded into pads that would provide ocean views from the residential lots to be located in that area. The bluffs and the bowl constitute natural landforms that would be substantially altered by this grading. Thus, by allowing significant landform alteration, the proposed LUP is inconsistent with Section 30251 of the Coastal Act.

However, the Commission has found that, given various factors, the proposal, as modified to eliminate other, more significant Coastal Act inconsistencies, would be, on-balance, the most protective of coastal resources overall, despite some of the visual impacts listed above (see Balancing/Estoppel findings (see Section VII)). Nevertheless, certain policies must be modified to control the circumstances under which the visual resource impacts may occur. Therefore, the Commission requires Suggested Modification 30.

Also, the proposed LUP identifies several important public view points from various proposed public areas including views from the Hilltop Park and the Strand Vista Park. The City and landowner have claimed that the proposed LCP would provide new public viewing opportunities to and along the shoreline. However, the proposed LUP would allow significant grading that would alter the existing topography within the Strand and the bowl areas of the property. The City and landowner have asserted that, even though the land seaward of the proposed viewing areas would be developed, the proposed LCP would maintain public views. The IP contains building height limits (based on finished grade) and a conceptual grading plan that together are intended to implement the proposed view preservation. However, there are no policies in the LUP which mandate a particular grading plan or development configuration. Thus, the grading plan could change in a way that subsequently changes the heights of the structures to be placed on that land, subsequently causing impacts upon views from the proposed public viewing areas. Alternatively, in order to minimize landform alteration, it may be necessary to implement different structural heights rather than changing those heights by changing the landform. In order to avoid adverse impacts on public views,

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the LUP must contain policies which mandate the preservation of public views from the various designated areas and outline with some specificity the kind of view that must be preserved (e.g. white water views of the ocean, views of the sandy beach, distant views of the ocean, etc.). In absence of such specificity, the LUP is inconsistent with Section 30251 of the Coastal Act and must be denied. The following Suggested Modifications address these issues: 6, 7, 8, 10, 28, 29, 30, 38, 40, and 41.

Therefore, for the reasons stated the LUP, as submitted, is not in conformance with, nor does it meet the requirements of the Coastal Act and must be denied. With suggested modifications and the rationale described in the Balancing/Estoppel section of these findings (see Section VII), the Commission finds the LUP in conformance with the Coastal Act.

F. WATER AND MARINE RESOURCES

Marine related policies contained in the Coastal Act are principally found in Sections 30230 through 30236. These policies along with other applicable policies will be used to evaluate the conformance of the LUP with the Coastal Act. In general the marine related policies of the Coastal Act mandate that marine resources shall be maintained, enhanced, and where feasible, restored. Furthermore, they require that the biological productivity and quality of coastal waters be maintained, and, where feasible, restored, for optimum populations of marine organisms and the protection of human health.

These policies also require that the marine environment be protected from hazardous materials, limit the fill of coastal waters to eight enumerated uses, and require that the least environmentally damaging feasible alternative be implemented and that feasible mitigation be provided where such fill is to occur.

New development often results in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. The reduction in permeable surface therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Runoff from impervious surfaces results in increased erosion and sedimentation.

Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use;
- nutrients from wastewater discharge, animal waste and crop residue; and
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts degrade marine resources by reducing the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, and reducing optimum populations of marine organisms and have adverse impacts on human health.

The Commission recognizes that it shares responsibility for protecting coastal water quality from the impacts of development at Dana Point Headlands with the San Diego Regional Water Quality Control Board (Regional Board). The Regional Board regulates the discharge of stormwater and urban runoff from the municipal separate storm sewers operated by the municipalities of southern Orange County through its municipal stormwater permit entitled *Waste Discharge Requirements for discharges of urban runoff from Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region* approved in February 2002. This order provides extensive guidance regarding the types of development that are most likely to cause water quality impacts, selection of appropriate best management practices (BMPs) and requirements for water quality management plans. Suggested Modification 45 (WQ2) would make the requirements of the southern Orange County municipal stormwater permit part of the standard of review for coastal development at Dana Point Headlands

Tentative tract maps and/or master coastal development permits should be developed by a plan to identify an overall program of BMPs to mitigate (infiltrate, filter or treat) polluted runoff generated by the development. Suggested Modification 46 (WQ3) provides specifically for the requirement of Best Management Practices (BMPs) related to siting and design of the project and the post-construction phase BMPs to mitigate the long-term effects of the project. It is based on the Commission's finding that all development has the potential to impact water quality, and that site design and source control measures can often mitigate such impacts, decreasing the need for structural treatment controls.

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When development can be sited and designed with water quality in mind, new impervious surfaces can be minimized. The benefits of reducing impervious surfaces have been documented by studies throughout the country (e.g., *The Practice of Watershed Protection*, Center for Watershed Protection, 2000). Impervious land coverage is becoming an accepted environmental indicator for water pollution. Recent findings show that when paving and other impervious surfaces exceed 10 percent of the watershed, coastal ecosystems begin to deteriorate. Numerous water quality reference documents (e.g., *Start at the Source*, BASMAA 2002) provide sound evidence as to the importance and success of site planning as the first step towards protecting water quality. Additionally, adequate site design and source control measures may eliminate the need for structural treatment controls, decreasing the cost to the applicant, while still protecting water quality.

Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater, is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

Several California Regional Water Quality Control Boards have selected the 85th percentile storm event as a design storm based on a point of diminishing returns, beyond which the marginal benefit of capturing the next incrementally larger volume of stormwater is no longer deemed practicable. The 85th percentile storm generates the same or more precipitation than 85 percent of recorded storms. The actual measurement of the 85th percentile storm event may be the amount of rainfall generated over 24 hours (or less) for structural BMPs that work by capturing a certain volume of water for a certain period of time (volume-based BMPs, e.g. detention basins). Or the measurement may be the rainfall intensity (precipitation per hour) for structural BMPs that treat the runoff as it flows through (flow-based BMPs, e.g., bioswales).

The design standard for sizing structural BMPs in Policy Suggested Modification 47 (WQ4) states that "Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (multiplied by an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs." This standard adheres to the technology-based "Maximum Extent Practicable (MEP)" standard in the Clean Water Act and has shown to be effective in numerous municipalities and coastal development permits. Through adoption of this standard, the Local Coastal Program will ensure that any necessary structural BMPs are designed appropriately to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

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Development that requires a grading/erosion control plan has the potential to generate loose sediment that can move off site due to construction operation or due to runoff. In either case this sediment can eventually be moved into stormdrains or surface waters and have a detrimental effect on water quality. Suggested Modification 48 (WQ5) requires that any project that requires a grading/erosion plan will include a schedule for re-vegetation of the site. If grading occurs during the rainy season the plan will include BMPs to minimize or avoid loss of sediment from the site.

An important strategy to keep nonpoint source pollutants out of coastal waters is to remove the pollutants from roadways before rain or dry weather flow can carry them into the stormdrain system. Pollutants make their way to the streets from automobiles, landscape maintenance, aerial deposition, litter, animal wastes and other sources. It is important to have a frequent cleaning of streets, preferably with a regenerative vacuum sweeper. The sweeping should continue throughout the year on a frequent basis to prevent discharge to the stormdrain both by dry weather flow and by rainfall. Suggested Modification 49 (WQ6) requires the City, property owners or homeowners associations, as applicable, to vacuum sweep streets and parking lots frequently.

The long-term performance of structural BMP devices requires ongoing maintenance. Without proper maintenance, most structural BMPs will lose effectiveness and in some cases will cause additional water quality problems. Many BMPs need to be inspected and repaired on a seasonal or yearly basis. To ensure ongoing maintenance, it is important the owners of the BMPs are informed of their responsibility for following the BMP-specific operation and maintenance plans. Suggested Modification 50 (WQ7) makes it clear that the owners of BMPs are responsible for BMP maintenance.

Commercial development can be a significant source of nonpoint source pollution both due to the generation of pollutants and common designs that connect impervious surfaces directly to stormdrains. For larger developments, the need for parking can generate increases in the volume and velocity of runoff, in addition to the pollutants produced by automobiles. Suggested Modification 51 (WQ8) requires commercial developments to implement BMPs to minimize or avoid the runoff of pollutants from structures, landscaping, parking and loading areas.

Restaurants can be significant sources of nonpoint source pollution, through the generation of large amounts of organics wastes that must be cleaned up and disposed. The wastes include fats, oils, and greases from cooking and leftover food. It is important to educate restaurant workers about the proper way to dispose of these materials and cleanup practices that protect water quality. In addition, fats, oils, and greases are among the most common triggers of sewage spills in California. Suggested Modification 52 (WQ9) requires restaurants to incorporate BMPs to minimize impacts on the stormdrain system.

Waste materials dumped into storm drain inlets can have severe impacts on receiving waters and ground waters. Posting notices regarding discharge prohibitions at storm drain inlets can prevent waste dumping and educate the public about the difference between stormdrains and the sanitary sewer. Storm drain signs and stencils are highly

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visible source controls that are typically placed directly adjacent to storm drain inlets. Suggested Modification 53 (WQ10) requires the provision of stormdrain stenciling and signage.

Irrigation water provided to landscaped areas may result in irrigation water being conveyed into stormwater drainage systems. This source of "dry weather runoff" can carry sediments, fertilizers and pesticides to the stormdrain. And in arid areas such as Dana Point, flow of irrigation water to coastal waters throughout the dry season can be detrimental due to the effects of freshwater on marine organisms, in addition to the effects of pollutants. New development and redevelopment should include efficient irrigation methods that minimize excess runoff into the stormdrains. Suggested Modification 54 (WQ11) requires use of efficient irrigation systems in Dana Point Headland and Suggested Modification 55 (WQ12) ensures that the community will work with the South Coast Water District to divert any remaining dry weather runoff to the sanitary sewer system.

Development often results in additional impervious surfaces leading to increases in the volume and velocity of stormwater runoff. Changes in the stream flow result in detrimental changes to stream morphology. Additionally, the increased runoff carries increased levels of pollutants into waterways. Landscaped areas shed fertilizer and pesticides, motor vehicles deposit trace minerals and petroleum hydrocarbons on roads, which are washed by storm water in receiving waters. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health.

When development can be sited and designed with water quality in mind, new impervious surfaces can be minimized. The benefits of reducing impervious surfaces has been studied and documented. Impervious land coverage is becoming an accepted environmental indicator for water pollution. Recent findings show that when paving and other impervious surfaces exceed 10 percent of the watershed, coastal ecosystems begin to deteriorate. Numerous water quality reference documents (e.g., Start at the Source, BASMAA 2002) provide sound evidence as to the importance and success of site planning as the first step towards protecting water quality. Additionally, adequate site design and source control measures may eliminate the need for structural controls, decreasing the cost to the applicant, while still protecting water quality.

More than any other single element, street design has a powerful impact on stormwater quality. Street and other transportation related structures typically can comprise between 60 and 70% of the total impervious coverage in urban areas and, unlike rooftops, streets are almost always directly connected to an underground stormwater system. Recognizing that street design can be the greatest factor in development's impact on stormwater quality, it is important that designers, municipalities and developers employ street standards that reduce impervious land coverage. Suggested Modification 56 (WQ13) will serve to reduce the impervious surfaces associated with Dana Point Headlands development.

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Nonpoint pollution is generated by many actions of many people. One of the most important steps in any nonpoint source pollution program is to educate the public about how their collective activities can have harmful effects on water quality and how they can help protect water quality with relatively simple actions. Suggested Modification 57 (WQ14) will promote education of Dana Point Headlands residents, property owners and visitors regarding good water quality practices.

Although the requirements for site and source control, and structural BMPs should significantly reduce the concentration of pollutants in stormwater and urban runoff, and thereby reduce the mass loading of such pollutants into receiving waters, it cannot necessarily be assumed that the reduction will be adequate to maintain (much less enhance or restore) marine resources or to maintain and/or restore the biological productivity and quality of coastal waters appropriate to maintain optimum populations of marine organisms and for the protection of human health. Since the Coastal Act requires that this end result be achieved in policies 30320 and 30231, the LCP must similarly ensure that end result in order to meet the requirements of, and conform with, these Chapter 3 policies. Suggested Modification 3 (WQ15) changes the wording of Policy 4.4 from the Preservation of Natural Resources section of the City of Dana Point Land Use Plan to meet these requirements.

The proposed LUP includes treatment of runoff from at least 30 acres of existing developed areas located outside of the 121 acre HDCP area. There are two source areas comprised of an approximately 13 acre area inland of the proposed Strand Vista Park; and a 17 acre area generally bounded by Street of the Green Lantern, Pacific Coast Highway, Street of the Blue Lantern and the harbor/Cove Road. The City and landowner have indicated that the treatment of this combined 30 acres would not be provided if the development in the Strand and the 65-90 room inn were not accommodated in the locations proposed. The Commission considered this treatment of existing developed areas as another critical factor in favor of approving the proposed development. In the absence of the hotel development, there would be no infrastructure proposed in the vicinity that could capture and treat the off-site area. Accordingly, any proposal that benefits from the allowances for ESHA impacts must also include the water quality treatment of at least the 30 additional off-site acres. Accordingly, the Commission imposes Suggested Modifications 4 and 31.

Continuing to allow untreated urban runoff to discharge into coastal water would be inconsistent with Sections 30230 and 30231. As submitted, the LCP fails to fully conform to the requirements of Sections 30230 through 30236 of the Coastal Act regarding the protection of the marine environment. Therefore, for the reasons stated the proposed LUP is not in conformance with nor does it meet the requirements of the Coastal Act policies regarding the protection of marine resource and must be denied. However, the Commission finds that the LUP conforms with Sections 30230 and 30231 with the implementation of the suggested modifications identified above.

VII. Balancing/Estoppel

A. SUMMARY OF HOW THE PROPOSAL CONFLICTS WITH CH. 3 POLICIES

The proposed LUP amendment would allow the City to authorize the construction of single family residences, commercial structures including a hotel, roads, parking areas, and community structures in areas that qualify as ESHA. Furthermore, this development would necessitate some form of fuel modification within ESHA in order to address fire hazards. This development would significantly disrupt the habitat values of the ESHA and would not constitute uses dependent on the resource. Thus, the proposed LUP is inconsistent with Section 30240 of the Coastal Act. Furthermore, the proposed LUP amendment would allow the City to authorize the construction of single family residences in the Strand in an area requiring significant geologic remediation and supported by construction of a new shoreline protective device to protect and maintain the stability of the slope upon which the new residences would be built⁶⁴. The proposed LUP is also inconsistent with several other sections of the Coastal Act identified above. For instance, allowances for the construction of a new shoreline protective device along the Strand and the significant landform alteration associated with the stabilization of the Strand and the filling of the bowl/Upper Headlands with soil would have significant adverse visual impacts and would be inconsistent with Section 30251 of the Coastal Act.⁶⁵

B. COASTAL ACT MANDATES/PLAN CONFORMANCE

The proposed LCP amendment would result in a project that does have certain beneficial elements that are encouraged under the Coastal Act. For instance, the proposal does conserve the Headlands promontory for habitat protection and includes an endowment to cover the cost of perpetual management and maintenance of the property. With modifications, the proposal would protect, and manage with an additional endowment, the Harbor Point promontory and certain land in the Hilltop Park and greenbelt linkage as ESHA. These elements would further the directive in Section 30240 of the Coastal Act. The proposal also transfers Strand beach to the public and creates a variety of public parks and trails providing recreation and public access opportunities, in furtherance of Section 30210 of the Coastal Act. The project would

⁶⁴ If the new development required the construction of a new shoreline protective device, it would be inconsistent with Section 30253 of the Coastal Act as well. However, the applicant has shown that the new development can be supported by upgrading the existing revetment rather than building a new one, thus demonstrating that the residential development does not require "construction of a protective device that would substantially alter natural land forms along bluffs and cliffs" and is not inconsistent with Section 30253 of the Coastal Act. With implementation of suggested modifications, the LUP would limit the work that could be performed on the existing revetment to this sort of "repair and maintenance" upgrading.

⁶⁵ As indicated above, some more limited form of repair and maintenance work may be able to revive the existing revetment without violating any Coastal Act policy, based on the exemption in Coastal Act section 30610(d). The Commission has proposed suggested modifications to reflect that fact. However, other inconsistencies remain, so that even with the suggested modifications listed above, the project as a whole is not approvable without some form of balancing.

also have beneficial water quality elements, such as the treatment of off-site flows that are not presently treated, in furtherance of Section 30231 of the Coastal Act. Finally, the proposal, with the implementation of suggested modifications that the City and landowner have agreed to, would contain a 40-bed lower cost visitor-serving overnight accommodation, in furtherance of Section 30213 of the Coastal Act.

**C. THE IDENTIFICATION OF A TRUE CONFLICT IS NORMALLY A
CONDITION PRECEDENT TO INVOKING A BALANCING APPROACH**

As is indicated above, the standard of review for the Commission's decision whether to certify a land use plan amendment is whether the plan, as amended, continues to meet the requirements of, and be in conformity with, "the policies of Chapter 3" (meaning PRC sections 30,200-265.5). PRC § 30512(c). In general, a proposal must be consistent with all relevant policies in order to be approved. Put differently, consistency with each individual policy is a necessary, but not sufficient, condition for approval of a proposal. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies). However, the Legislature also recognized that conflicts can occur among those policies. PRC § 30007.5. It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved "in a manner which on balance is the most protective of significant coastal resources." PRC §§ 30007.5 and 30200(b). That approach is generally referred to as the "balancing approach to conflict resolution." Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

D. IDENTIFICATION OF A CONFLICT

For the Commission to use the balancing approach to conflict resolution, it must establish that a project presents a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a proposed project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Virtually every project will be consistent with some Chapter 3 policy. This is clear from the fact that many of the Chapter 3 policies prohibit specific types of development. For example, section 30211 states that development "shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization . . .," and subdivision (2) of section 30253 states that new development "shall . . . neither create nor contribute significantly to erosion . . . or in any way require the construction of protective devices" Almost no project would violate every such prohibition. A project does not present a conflict between two statutory directives simply because it violates some prohibitions and not others.

In order to identify a conflict, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on

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that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the status quo. The reason that denial of a project can result in coastal zone effects that are inconsistent with a Chapter 3 policy is that some of the Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources, such as sections 30210 ("maximum access . . . and recreational opportunities shall be provided . . ."), 30220 ("Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses"), and 30230 ("Marine resources shall be maintained, enhanced, and where feasible, restored"). If there is ongoing degradation of one of these resources, and a proposed project would cause the cessation of that degradation, then denial would result in coastal zone effects (in the form of the continuation of the degradation) inconsistent with the applicable policy. Thus, the only way that denial of a project can have impacts inconsistent with a Chapter 3 policy, and therefore the only way that a true conflict can exist, is if: (1) the project will stop some ongoing resource degradation and (2) there is a Chapter 3 policy requiring the Commission to protect and/or enhance the resource being degraded. Only then is the denial option rendered problematic because of its failure to fulfill the Commission's protective mandate.

With respect to the second of those two requirements, though, there are relatively few policies within Chapter 3 that include such an affirmative mandate to enhance a coastal resource. Moreover, because the Commission's role is generally a reactive one, responding to proposed development, rather than affirmatively seeking out ways to protect resources, even policies that are phrased as affirmative mandates to protect resources more often function as prohibitions. For example, section 30240's requirement that environmentally sensitive habitat areas "shall be protected against any significant disruption of habitat values" generally functions as a prohibition against allowing such disruptive development, and its statement that "only uses dependent on those resources shall be allowed within those areas" is a prohibition against allowing non-resource-dependent uses within these areas." Similarly, section 30251's requirement to protect "scenic and visual qualities of coastal areas" generally functions as a prohibition against allowing development that would degrade those qualities. Section 30253 begins by stating that new development shall minimize risks to life and property in certain areas, but that usually requires the Commission to condition projects to ensure that they are not unsafe. Even section 30220, listed above as an affirmative mandate, can be seen more as a prohibition against allowing non-water-oriented recreational uses (or water-oriented recreational uses that could be provided at inland water areas) in coastal areas suited for such activities. Denial of a project cannot result in a coastal zone effect that is inconsistent with a prohibition on a certain type of development. As a result, there are few policies that can serve as a basis for a conflict.

Similarly, denial of a project is not inconsistent with Chapter 3, and thus does not present a conflict, simply because the project would be less inconsistent with a Chapter 3 policy than some alternative project would be, even if approval of the proposed project would be the only way in which the Commission could prevent the more

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inconsistent alternative from occurring. For denial of a project to be inconsistent with a Chapter 3 policy, the project must produce tangible enhancements in resource values over existing conditions, not over the conditions that would be created by a hypothetical alternative. In addition, the project must be fully consistent with the Chapter 3 policy requiring resource enhancement, not simply less inconsistent with that policy than the hypothetical alternative project would be. If the Commission were to interpret the conflict resolution provisions otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered even the smallest, incremental improvement over a hypothetical alternative project would necessarily result in a conflict that would justify a balancing approach. The Commission concludes that the conflict resolution provisions were not intended to apply based on an analysis of different potential levels of compliance with individual policies or to balance a proposed project against a hypothetical alternative.

Also, for a project to provide the sort of benefits that would render denial of the project inconsistent with Chapter 3, those benefits cannot be ones that the project proponent is already being required to provide pursuant to another agency's directive under another body of law. In other words, if the benefits are about to be provided independently of the Commission's action on the proposed project, the project proponent cannot seek approval of an otherwise-unapprovable project on the basis that the project would produce those benefits. In essence, the project proponent does not get credit for resource enhancements that it is already being compelled to provide.

In addition, if a project is inconsistent with at least one Chapter 3 policy, and the essence of that project does not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the project proponent cannot "create a conflict" by adding on an essentially independent component that does remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, project proponents could regularly "create conflicts" and then demand balancing of harms and benefits simply by offering unrelated "carrots" in association with otherwise-unapprovable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulatable process. The balancing provisions were not designed as an invitation to enter into a bartering game in which project proponents offer amenities in exchange for approval of their projects.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the project without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all of the relevant Chapter 3 policies, then the proposed project does not create a true conflict among Chapter 3 policies.

In sum, in order to invoke the balancing approach to conflict resolution, the Commission must conclude all of the following with respect to the proposed project before it: (1)

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approval of the project would be inconsistent with at least one of the policies listed in Chapter 3; (2) denial of the project would result in coastal zone effects that are inconsistent with at least one other policy listed in Chapter 3, by allowing continuing degradation of a resource the Commission is charged with protecting and/or enhancing; (3) the project results in tangible resource enhancement over the current state, rather than an improvement over some hypothetical alternative project; (4) the project is fully consistent with the resource enhancement mandate that requires the sort of benefits that the project provides; (5) the benefits of the project are not independently required by some other body of law; (6) the benefits of the project are a function of the very essence of the project, rather than an ancillary component appended to the project description in order to "create a conflict;" and (7) there are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

An example of a project that presented such a conflict is a project approved by the Commission in 1999 involving the placement of fill in a wetland in order to construct a barn atop the fill, and the installation of water pollution control facilities, on a dairy farm in Humboldt County (CDP #1-98-103, O'Neil). In that case, one of the main objectives of the project was to create a more protective refuge for cows during the rainy season. However, another primary objective was to improve water quality by enabling the better management of cow waste. The existing, ongoing use of the site was degrading water quality, and the barn enabled consolidation and containment of manure, thus providing the first of the four necessary components of an effective waste management system. Although the project was inconsistent with Section 30233, which limits allowable fill of wetlands to eight enumerated purposes, the project also enabled the cessation of ongoing resource degradation. The project was fully consistent with Section 30231's mandate to maintain and restore coastal water quality and offered to tangibly enhance water quality over existing conditions, not just some hypothetical alternative. Thus, denial would have resulted in impacts that would have been inconsistent with Section 30231's mandate for improved water quality. Moreover, it was the very essence of the project, not an ancillary amenity offered as a trade-off, that was both inconsistent with certain Chapter 3 policies and yet also provided benefits. Finally, there were no alternatives identified that were both feasible and less environmentally damaging.

E. THE CURRENT PROPOSAL DOES NOT PRESENT A CONFLICT

As is indicated above (see Section VII.A), the current proposal is inconsistent with several Chapter 3 policies, including those found in Sections 30240, 30251, and 30253. The applicants have suggested that it could be approved through a balancing approach, and the first step in analyzing the feasibility of such an approach is to assess whether the project presents a substantial conflict between two statutory directives of Chapter 3. As the following discussion indicates, the project does not present such a conflict.

**1. DENIAL WOULD NOT CAUSE IMPACTS INCONSISTENT WITH
ANY CHAPTER 3 POLICY**

The proposed LCPA does not present a conflict. It fails the test articulated above because there is no ongoing resource degradation here, and the essence of the project (the development on the Strand and in the Bowl areas) does not involve any resource enhancement. The project proponents argue that the project does involve resource enhancement for several reasons. First, they argue that it involves water quality enhancements, such as the low flow diversion and the improved storm drain lines in the Strand area. Next, they argue that the project improves access by providing a hotel and a youth hostel, creating trails, dedicating the beach to the public, and, in the revised form proposed by the City, by providing a funicular to reach the newly public beach. Finally, they argue that the project protects ESHA by providing an endowment for the management of the ESHA. However, each of these benefits is a function of a component of the project that is conceptually separate from the fundamental elements of the project. These ancillary components cannot, therefore, serve as the basis for identifying a conflict in an otherwise-unapprovable project.

When this project came before the Commission in October of 2003, Staff suggested that the existing certified LCP and the purported property subdivision provided a basis for a potential conflict. The approach was based on the idea that the current legal regime (meaning both the governing LCP and the purported subdivisions) allowed some unspecified degree of development that would be in excess of what would be allowable under – and thus inconsistent with – Sections 30240 and 30250. The theoretical underpinning of this argument was that, if the current regime would enable such development, and the current proposal (or any version thereof) could reduce the degree of inconsistency with Chapter 3 policies below the level to which the developer is currently entitled, then denial of this proposal could cause the project proponent to revert to what it could build under its existing entitlements, thus resulting in coastal zone effects more inconsistent with Chapter 3 policies than that which would result from approval. Thus, denial would result in coastal zone effects inconsistent with a Chapter 3 policy, which is the essence of a conflict. As is indicated above, this approach is not consistent with the Commission's interpretation of the conflict-resolution provisions of the Coastal Act for several reasons.

A primary problem with this reasoning is that it assumes that the developer has a right to develop the area under the current LCP and the purported subdivision. As is explained in the following section, these are unresolved issues. With respect to the LCP, Commission staff interprets it to require a case-by-case assessment of ESHA and to prevent development within any identified ESHA. Regarding the subdivision, the maps were recorded prior to 1929, and the block of land that is alleged to consist of hundreds of individual lots has been held in single ownership ever since. There is an open question regarding whether such a subdivision is of any legal effect.

Another problem with this reasoning is that it identifies a conflict not based on the competing demands of two different policies, but based on the different potential levels

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of compliance with individual policies. For example, it would recognize a conflict because the current regime would allegedly allow development inconsistent with Section 30240, and the proposal would allegedly allow development that is still inconsistent with Section 30240 but less so. The Commission has never endorsed this idea of essentially balancing one provision against itself. As is indicated above, the benefits of the project must be due to the project being fully consistent with some Chapter 3 policy, not being less inconsistent than some possible alternative.

Finally, even if it were true that the landowner had a right to develop this land under the current legal regime, and that denial of this proposal would therefore forfeit an opportunity to avoid a situation even more violative of Chapter 3 policies, this approach also assumes that the appropriate comparison is between entitlements under the current regime, or some hypothetical project that could be undertaken pursuant to those entitlements, on the one hand, and the proposal, on the other. The Commission has never taken the position that that is the appropriate basis for comparison. The baseline for determining whether a denial will result in negative impacts is the current situation on the ground, not what one could legally build based on the current situation "on the books." Thus, if a proposal only protects coastal resources by producing a less severe violation of Chapter 3 policies than would result from a hypothetical alternative to which the project proponent arguably has some entitlement, the Commission does not endorse an approach that treats such a proposal as creating a conflict by requiring approval in order to prevent the project proponent from reverting to the more destructive alternative.

In addition, the project proponents have not demonstrated that there are no alternatives that would retain the fundamental aspects of the project without violating any Chapter 3 policies. The fundamental nature of the project can be described as residential development in the Strand and the Bowl. Based upon that definition, and the belief that the proposed revetment work went beyond mere repair and maintenance, Commission staff asked the project proponents to generate alternative designs for the Strand development that would not necessitate and rely upon upgrading and extending the life of the existing revetment. The project proponents never presented convincing evidence that such a redesign is not possible (see Exhibit 10e). Similarly, the project proponents have not shown why they could not shift all of the Bowl-area development out of the ESHA.

The project proponents claim that these changes would reduce the scale of the development to a level that would render it financially unviable. Thus, they claim, these are not feasible alternatives. However, that claim goes beyond a claim that there are no feasible alternatives. By claiming that the only viable alternatives are those that conflict with Chapter 3, they claim, in essence, that they have an entitlement to a more extensive project than is otherwise allowable, even if it necessarily violates Chapter 3 policies. As is discussed immediately below, no such entitlement has been established.

2. THE DEVELOPER HAS NOT DEMONSTRATED ITS RIGHT TO A PROJECT OF A MINIMUM SIZE DESPITE INCONSISTENCIES WITH CHAPTER 3

All of the inconsistencies with Chapter 3 policies raised by the current proposal could be avoided if the development were restricted to the bowl area and other areas that would not disrupt or displace ESHA, require the construction of a new protective device, or involve massive landform alteration and degradation of scenic and visual qualities. The project proponents claim that the developer has a right to more development (in terms of the market value of the development) than could be accommodated with those constraints. In fact, they claim that the developer has a right to develop each lot shown on the three tract maps dated from the mid-1920's. They also argue that the developer has rights based on the existing subdivision and the LCP. They claim that this gives the developer rights to develop in the ESHA.

However, as is indicated above, there is a dispute over whether the LCP would allow development within the ESHA. In addition, there are questions about the legality of this subdivision. See, e.g., *Gardner v. County of Sonoma* (2003), 29 Cal. 4th 990, 998-999 and 1001, n. 7 (holding that antiquated maps do not constitute certificates of compliance, and so, do not establish legal parcels under the Subdivision Map Act, and withholding judgment on whether pre-1929 maps constitute "antiquated maps"); *Hays v. Vanek* (1989), 217 Cal. App. 3d 271, 289. Finally, even if the subdivision were to be valid, the purported legal lots have been held in common ownership since the original map was recorded. Thus, for purposes of a takings analysis, that entire block of land would likely be treated as a single parcel. See, e.g., *District Intown Properties*, supra.

3. CONCLUSION

In conclusion, despite the positive aspects of this project and the potential benefits over the current regime, the project does not present a conflict in the strict sense in which that term is used in Sections 30200(b) and 30007.5. First, the essence of the project does not involve any resource benefits such that denial would cause effects inconsistent with any Chapter 3 policy. Next, benefits over hypothetical alternative projects that would only be feasible if disputed entitlements were shown to exist do not establish a conflict, especially not where the benefits would take the form of smaller inconsistencies with Chapter 3 policies than would result from the alternative project, and the proposal would nonetheless still be inconsistent with those policies. Finally, there has been no showing that alternative designs, consistent with Chapter 3 policies, could not be implemented.

**F. THE APPLICANT FORMED REASONABLE EXPECTATIONS,
PARTIALLY IN RESPONSE TO COMMISSION ACTIONS**

Despite the conclusion, above, that the developer has not demonstrated that it is entitled to some minimum level of development, the current situation does present certain unique difficulties resulting, in part, from the long history of planning efforts at this site, including the pre-1929 recordation of subdivision maps and the controversy over the meaning of the existing LCP. It would not be unreasonable for an investor to have placed some degree of reliance on these elements, and their legal import is not entirely clear. As a result, although there are clearly limits on what the landowner could do at this site and legal questions that have not been resolved, the landowner does have an argument that it has a right to some substantial development at this site, and possibly even something that is more acutely in conflict with Chapter 3 than the current proposal. Thus, Commission staff was correct in its conclusion that, were the Commission to approve something less acutely in conflict with Chapter 3 policies, that approval would, in a sense, advance some resource protection policies. For example, approval of a project that protects most of the ESHA on site, and that simultaneously improves water quality, provides public access amenities, and concentrates development, could advance resource protection over what may be buildable under the current legal regime. Although these facts do not, strictly speaking, create a conflict, they are of concern to the Commission.

Moreover, there are additional unique factors present in this situation. First, as indicated above, an NCCP has been developed for this region. Although the designation of geographic areas for various uses within the NCCP process uses different standards and is designed to address different issues than the Commission's ESHA delineation, the Commission must consider the result of the NCCP as part of any comprehensive analysis of the site. Moreover, senior Commission staff actually commented on the NCCP, and although those comments were ambiguous and could not, in any event, bind the Commission, they, too, could have induced a level of reasonable reliance on the part of an investor that the Commission must take into account. The Commission is not estopped from taking action inconsistent with its staff's comment letters. Nevertheless, the Commission concludes that, given the confluence of the host of unique factors present in this situation, the combination of all of the aforementioned factors, including those that bring the project close to the point of presenting a conflict, does allow the Commission to analyze the proposal in a manner that incorporates elements of the balancing approach.

1. **WHAT DEVELOPMENT CONFIGURATION IS MOST PROTECTIVE OF SIGNIFICANT COASTAL RESOURCES AT THIS SITE, WHILE SIMULTANEOUSLY REMAINING EQUITABLE, GIVEN THE HISTORY OF PLANNING EFFORTS AT THE SITE?**

First, given the above analysis, the Commission concludes that the developer has a right to develop the site in manner that involves some encroachment into the ESHA. However, because of the importance of the resource, such encroachment should be limited.

Second, the Commission notes that by shifting much of the potential development from the ESHA to the Strand, thereby minimizing encroachment into the bulk of the ESHA and concentrating development near existing developed areas, the project would preserve much of the threatened ESHA and include additional benefits consistent with Section 30250. The first clause of the first sentence of Section 30250(a) requires that most types of new development be located near "existing developed areas able to accommodate it." The Commission has consistently interpreted that language to promote a general concentration of development, but only as long as the new, concentrated development meets both of the following requirements: (1) it is located as close as possible to existing developed areas that have sufficient infrastructure to support it, and (2) it is otherwise consistent with the requirements of Chapter 3, either because it is consistent with all other Chapter 3 policies, or because it is, on balance, most protective of significant coastal resources. A version of the current proposal that shifts development away from the promontory, which is both the farthest removed from developed areas and the largest concentration of ESHA would satisfy this requirement.

On the other hand, such a shift necessitates massive landform alteration to create a stable environment to serve the new residential development, as well as impacts to an additional small (less than one acre) patch of ESHA. It is difficult to balance these competing interests. However, there are several factors that the Commission is taking into consideration that the Commission finds are substantial benefits to balance against what is otherwise inconsistent with the biological and visual resources protection provisions of Chapter 3 of the Coastal Act. For example, there are significant water quality benefits made possible by the landform alteration at the Strands and a 65-90 room inn along Street of the Green Lantern. Similarly, there are access benefits that flow from the dedication of the Strand beach to the public (which, although it is not a directly related benefit, is a substantial access benefit).

Additional access benefits are generated with the landform alteration at the Strand, which is accompanied by repair and maintenance, including re-alignment, of the existing revetment. The repaired and re-aligned revetment will make more sandy beach area available to the public. Setting that alignment to improve beach access compared with existing conditions is critical to achieving an acceptable overall balance. However, if rocks and other debris from the existing revetment are left in place, these materials could become exposed over time and become an impediment or hazard to

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public access. As part of the repair and maintenance activity, the beach area would be made more usable by the public through the removal of all retrievable components that are part of or were dislodged from the existing revetment that are located seaward of the re-aligned revetment toe to the intertidal zone, and maintenance and monitoring provisions to ensure that any rock that wasn't retrieved during the construction phase or that becomes dislodged from the repaired/re-aligned revetment is retrieved and properly re-used or disposed.

Another access benefit made possible by the proposal is the provision of lateral pedestrian access along the beach, in a location protected from tidal action, such as immediately on top of or landward of the shoreline protective device and seaward of the Strand residential use. This lateral access would allow the public to enjoy the shoreline at times that tidal action prevents or severely limits public access to and along the sandy beach. Loss of access to sandy beach areas during such tidal action can be provided with appropriately sited gathering areas, such as picnic tables, along or the pathway.

Finally, the proposal involves the restoration and long-term preservation of the vast majority of the ESHA area. As a result, the Commission concludes that the combined effect of these factors favors a trade-off. Suggested Modifications 4, 30, 31, 32, 37, 39, 41, 62, 63, 66, 67, 68, 74, 77, 78, 81, 83, 85, 86, 87, 88, 90, 91, 92, 118, 128, 130, 139, 164-169, 174 and 175 among others, formalize the accepted trade-off.

2. CONCLUSION

In conclusion, the Commission finds that, given the multiple unique factors present in this situation, including the existing LCP, which is open to multiple reasonable interpretations, the pre-1929 subdivision, the legality of which is an open legal question, the development of a NCCP, and the Commission's statements about that NCCP, which did engender some reasonable reliance on the part of the developer, it is necessary and appropriate to balance these factors, along with the various benefits associated with the proposal, against the impacts that result from the violation of other Chapter 3 policies. In sum, the Commission finds that it is, on balance, most equitable and most protective of coastal resources to allow a degree of encroachment into the ESHA in this case, as well as the landform alteration in the Strand, in the context of the numerous water quality and public access benefits associated with the project and the protections offered for the remaining ESHA, and in light of the reasonable expectations that had developed in this case.

VIII. Findings for Denial of the City's Implementation Program Amendment and Approval if Modified per the Suggested Modifications

The Commission hereby finds and declares as follows. Below are the specific findings for denial of the City of Dana Point Implementation Program Amendment, as submitted, and approval if modified per the suggested modifications.

The proposed Implementation Program consists of the City's zoning code as was previously certified for the Monarch and Capistrano Beach portions of the City; a newly added section to the Zoning Code (Section 9.35) to allow the creation of planned development districts (PDDs), and the proposed PDD for the Headlands (Section 3.0 and 4.0 of the Headlands Development and Conservation Plan). The PDD is the IP and not the LUP. Thus, the standard of review for the IP including the PDD is the LUP. As noted above, the LUP is being denied, as submitted, due to inconsistencies with Sections 30240, 30253, 30230, 30231, 30213, among others. However, with the suggested modifications, the Commission has found the Land Use Plan consistent with the Coastal Act. The IP, as submitted, would be inconsistent with the LUP as modified by the suggested modifications, thus, it is not adequate to carry out the LUP. However, as described below, with suggested modifications the Commission can find the IP adequate to carry out the LUP.

A. BIOLOGY/ESHA

The LUP findings describe in detail the deficiencies of the LCP amendment with respect to Section 30240 of the Coastal Act. The Commission has modified the LUP such that, on balance, it can find the LUP most protective of Coastal Resources. In order to implement the LUP, as modified, the Commission requires modifications to the IP. The IP would allow development within and adjacent to ESHA that is incompatible with the continuance of the ESHA including but not limited to commercial structures including a hotel, visitor serving structures including a lighthouse, and fuel modification. The IP contains requirements for re-vegetation of certain areas of land within the Headlands, however, it does not contain any explicit requirement to treat these areas as mitigation. The IP also does not contain standards relative to the quantity, or form, of mitigation necessary to offset impacts. Thus, in order to assure the IP adequately carries out the LUP, as modified, the Commission has suggested modifications to the IP to implement these requirements. These modifications are Suggested Modifications 93, 97, 98, 101, 103, 104, 105, 106, 107, 118, 119, 121, 124, 125, 126, 127, 128, 136, 137, 138, 139, 140, 142, 144, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 168, 171, 172, 173, 176, 177, 178, 183, 184, 185, 186, 187, 188, 189, 190, 191, and 192.

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The landowner requested clarification regarding the type and extent of fencing along trails. Suggested Modification 127 provides clarification on this issue. Fencing along trails may consist of post and cap, split rail or similar type, provided that such fencing is used in conjunction with a mesh that is impervious to dogs. This fencing should be 3 ½ to 4 feet tall. Where necessary, a small gap should be placed between ground level and the bottom of the mesh/fence to allow free circulation of small, native animals (e.g. the Pacific pocket mouse). Chain link fencing should not be used.

The LCPA contains trail alignment that in some cases are entirely new (e.g. the bluff top trail around the Headlands promontory) and in other cases formalize or slightly relocate existing trails (e.g. those in the Hilltop/Greenbelt area). New trails causing vegetation impacts should be mitigated at the 3:1 ratio. However, the re-alignment of existing alignments should only be required to re-vegetate the retired trail alignment in exchange for the new alignment. This clarification is made in Suggested Modification 128.

B. HAZARDS

The LUP, as modified by the suggested modifications, requires development at the Headlands to address geologic and shoreline hazards in the Strand in order to accommodate development there. In addition, the LUP requires applications for development to include analyses of hazards and compliance with certain procedures and setbacks. In order to assure implementation of the LUP as modified, the Commission requires Suggested Modifications 101, 118, 120, 129, 130, 141, 164, 165, 166, 185, 186, 190, 191, and 192.

As submitted, Section 4.0 of the HDCP contains a definition of a bluff that is inconsistent with both the definition of coastal bluff contained within Section 9.75 of the Zoning Code. In order to rectify this inconsistency, the Commission requires Suggested Modification 141.

C. SHORELINE AND COASTAL RESOURCE ACCESS

The Commission has implemented changes to the coastal land use plan to assure consistency with Chapter 3 policies relative to coastal access. These changes include, but are not limited to requiring landward placement of the shoreline protective device in the Strand in order to maximize beach use area in the Strand, incorporation of a public access along the top or landward of the shoreline protective device, measures to mitigate gating of the residential community in the Strand to vehicles, provision of additional public access support facilities such as restrooms and picnic tables in the Strand, requirements to assure the provision of the public access components of the HDCP, and provisions to address parking issues. The IP, as submitted, does not adequately carry out the modified LUP. Thus, the Commission requires Suggested Modifications 97, 98, 101, 102, 103, 104, 106, 108, 109, 111, 113, 117, 118, 119, 122,

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123, 131, 138, 139, 144, 145, 146, 147, 148, 149, 152, 153, 157, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 172, 174, 175, 177 and 178.

D. VISITOR RECREATIONAL DEVELOPMENT

The proposed IP would allow fractional ownership within the visitor recreation commercial uses areas at the Headlands, including fractional ownership of any lodging facilities.

Fractional ownership would be similar to timeshares. The landowner supplied the following description of the differences between fractional ownership and timeshares⁶⁶:

As opposed to a timeshare, where an owner buys the right to a specific room/suite for the same weekly or biweekly interval every year, with a fractional, an owner has a preferential interest for an interval of use (typically 1-2 weeks) that floats, i.e., no specific week.

Access to any given week is granted via a reservation system on a first come basis. In addition, with a fractional, the assigned room/suite will typically vary as well, depending on availability.

In addition, fractionals are usually associated with a full service hotel in order for the fractional owners to avail themselves of the concierge service, on-site spas, restaurants, and room service. Another distinction is that as opposed to a timeshare where each room/suite is divided into approximately 50-52 one week intervals, with a fractional, typically no more than 30 weekly intervals are sold. This leaves the remainder of the year for the room/suite to serve overnight guests or to serve as left over float time.

Though fractional ownership/time-shares are similar to hotels in many ways there are significant differences that favor interpreting fractional ownership/time-shares as a form of residential development. Fractional ownership/time-shares cannot be considered to be a true visitor serving development, like a hotel, since it is membership based and it would be possible for members to stay for significant periods of time. Furthermore, the Commission recognizes that fractional ownership/time-share membership, though it is available to general public, once purchased by the member would not promote maximum public access opportunities on a first come first serve basis such as hotels provide.

Fractional ownership/timeshares typically involve the "selling" of units to more affluent vacationers who typically stay in the units for longer periods of time than overnight use. Because they are occupied for longer periods of time by those who buy interests in them, they are almost considered to be a residential use rather than a transient visitor

⁶⁶ Headlands Reserve LLC 2003. E-mail titled Grading in the Strand; the term "Dana Point", "Headlands Promontory", etc.; and description of fractional use for the Seaside Inn, dated December 15, 2003 with attachment titled 'timeshare' dated December 14, 2003.

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serving use. Under Land Use Element Policy 2.10, residential development is a low priority use in the Coastal Zone. In order to address this issue, the Commission requires Suggested Modifications.

In order to address the issue, the landowner has agreed to restrict any potential fractional ownership during the peak season (Memorial Day weekend to Labor Day weekend) such that the reservation of rooms/suites by fractional owners shall be limited to no more than 50 percent of the total rooms/suites approved in any overnight accommodations. The remaining 50 percent of the rooms/suites shall be reserved for overnight guest use. In order to implement this agreement, the Commission requires Suggested Modification 111.

The IP, as submitted, leaves out or contains restrictions upon uses within visitor/recreation commercial districts that are inconsistent with coastal land use plan policies encouraging the provision of visitor serving and lower cost visitor recreational facilities in the coastal zone. Thus, the IP, as submitted must be denied. In order to rectify the problem, the Commission requires Suggested Modification 114.

E. VISUAL RESOURCES

The Commission has modified the coastal land use plan to address the circumstances upon which landform alteration in the Strand and bowl may be undertaken, and the provision and protection of public view points throughout the Headlands. The IP, as submitted, does not adequately carry out the LUP as modified. In order to address this issue, the Commission requires Suggested Modifications 97, 99, 100, 110, 115, 137, 138, 141 and 185.

F. WATER QUALITY

In the IP, the value indicated for first flush differs from the estimate of the 24-hour 85th percentile storm event that is found in the California Regional Water Quality Control Board San Diego Region's *Waste Discharge Requirements for discharges of urban runoff from Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region* (Municipal Permit). The Municipal Permit also provides for a site-specific estimation of the 85th percentile storm based on local historical rainfall data. The closest location to Dana Point for which the Commission has historical rainfall data is Laguna Beach, located approximately seven miles northwest of Dana Point. These data indicate that the volume of runoff produced from a 24-hour 85th percentile storm event is 0.69 inch. Therefore, Suggested Modification 181 (WQ1) is that the numeric sizing criteria for structural treatment BMPs at the Dana Point Headlands should be at least 0.69 inch unless site-specific data provided by the applicant indicates otherwise.

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Furthermore, the Commission finds the IP would be inconsistent with coastal land use plan policies pertaining to water quality, unless Suggested Modifications 179, 180, 181, 182, 190, 191, and 192.

G. CULTURAL RESOURCES

The LUP contains policies requiring the protection of cultural resources. The subject site is known to contain cultural resources. However, the IP does not contain adequate provisions to address the protection of cultural resources. To assure that archeological resources are appropriately identified, new provisions have been added to specify the process to be followed if cultural resources are encountered or Native American remains are uncovered. The provisions require that archeological research be conducted to evaluate potential significance of any archeological resources that may be discovered. The provisions also require monitoring of grading operations as a final measure to assure that archeological resources are not inadvertently destroyed. In order to assure the IP adequately carries out the LUP provisions relative to cultural resources, the Commission requires Suggested Modification 101.

H. COASTAL DEVELOPMENT PERMIT PROCEDURES

Sections 3.0 and 4.0 of the HDCP, as submitted, contain a variety of exceptions to the procedures for processing a coastal development permit identified in the Zoning Code. In other instances, the procedures are inconsistent with those identified in the Zoning Code. These exceptions and inconsistencies could potentially allow development that results in adverse impacts upon coastal resources that are inconsistent with the coastal land use plan. Furthermore, new Section 9.34 of the Zoning Code fails to contain provisions to assure that any planned development district approved in the coastal zone is consistent with and adequate to carry out the provisions of the certified coastal land use plan. In order to rectify these issues, the Commission requires Suggested Modifications 94, 134, 135, 136, 143, 193, 194, 195, 196, 197, 198, and 199.

Also, throughout Section 3.0 and 4.0 of the HDCP, there is some indication that if there is a conflict between the HDCP and any other provision of the Local Coastal Program, the HDCP takes precedence. This could lead to situations where the HDCP would be inconsistent and would not carry out policy in the Local Coastal Program Land Use Plan. Thus, these provisions of the HDCP are not adequate to assure the requirements of the Land Use Plan are carried out, thus, these provisions in the HDCP must be denied. In order to rectify this issue, the Commission requires Suggested Modification 96.

IX. Consistency with the California Environmental Quality Act

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, the Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA.

The proposed LCP amendment has been found not to be in conformance with several Coastal Act Policies regarding public access, protection of the marine habitat, protecting environmentally sensitive habitat areas, promoting visitor serving uses, protecting visual resources, and minimizing the impact of development in hazardous locations. Thus, the LCP amendment is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. Furthermore, the proposed LCP amendment would result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act. To resolve the concerns identified suggested modifications have been made to the City's Land Use Plan. Without the incorporation of these suggested modification; the LCPA, as submitted, is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the Land Use Plan Amendment. As modified, the Commission finds that approval of the Land Use Plan amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

Relative to the Implementation Program, the Commission finds that approval of the Implementation Program, as submitted, will result in significant adverse environmental impacts under the meaning of CEQA. To resolve the concerns identified suggested modifications have been made to the City's Implementation Plan. Without the incorporation of these suggested modification; the Implementation Plan amendment, as submitted, is not adequate to carry out and is not in conformity with the policies of Land Use Plan, as modified by the suggested modifications. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the Implementation Plan Amendment. As modified, the Commission finds that approval of the Implementation Plan amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

Dana Point LCP Amendment 1-03
CEQA: Revised Findings

Given the proposed suggested modifications, the Commission finds that the City of Dana Point Local Coastal Program Amendment 1-03, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of the CEQA. Further, future individual projects will require coastal development permits issued by the City of Dana Point. Throughout the coastal zone, specific impacts associated with individual development projects are assessed through the coastal development permit review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant adverse environmental impacts.

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

X. List of Exhibits/Substantive File Documents

The following table lists exhibits which are also substantive file documents. All documents cited throughout the report and in Commission staff memorandum should be considered substantive file documents as well.

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
1		Project Location	#
2a	Existing Conditions	Major Land Features/Areas	#
2b		Existing Structures	#
2c		Existing Revetment	#
2d		Existing Tract Maps	#
3a	Existing LCP	LCP Areas	#
3b		Dana Point Specific Plan LCP ("1986 LCP"): Excerpts Relative to the Headlands	%
3c		CCC Findings Adopting 1986 LCP: Excerpts Relative to the Headlands	%
4a	Proposed LCP Amendment	Resolution of Adoption and Submittal of LUP Amendment	%
4b		Resolution of Adoption of General Plan Amendment	%
4c		Resolution of Adoption of Zone Text Amendment	%
4d		Resolution of Adoption and Submittal of IP Amendment	%
4e		Resolution of Adoption and Submittal of PDD Guidelines	%
4f		Map of City Upon Certification of LCP Amendment	%
5a	Proposed LCP Amendment	Land Use Plan Map	#
5b		PDD – Planning Areas	#
5c		Comparison of 1986 LCP with Proposed Amended LCP	#

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
6a	Informal City Modifications to LCP Amendment	Letter from City	%
6b		Existing Vegetation and Proposed Modified Land Use Plan	%
7a	Development Contemplated Under Proposed LCP Amendment	Proposed Revetment (October 2003)	%
7b		Proposed Grading	%
7c		Revised (December 2003) Revetment Alignment (TKC 2003. Revised Strand Revetment Alignment. Two page drawing dated December 10, 2003., plus 1 page dated 12/17)	%
7d		Revised Grading Concept (December 2003)	#
7e		Existing Revetment Alignment Toe, prepared by The Keith Companies dated January 8, 2004	#
8a	Technical Analyses/Evaluations of Shoreline Protective Device/Revetment in the Strand	Seymour, Richard J., Ph.D., P.E. 2003. Assessment of Improvements to the Existing Headlands Development & Conservation Plan (HDCP) Shoreline Protection. Dated August 2003	%
8b		Jenkins, Scott. A., Ph.D., and Wasyl, Joseph. 2003. Comparative Analysis of Beach Change Effects Due to a Seawall Alternative for the Headlands Development & Conservation Plan, Dana Point, California. Dated September 10, 2003	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
8c		Wiegel, Robert L. Undated. Peer Review of Reports on Coastal Engineering Aspects of the Headlands Development and Conservation Plan, Dana Point, Orange County, California.	%
8d		Jenkins, Scott. A. Ph.D., and Wasyl, Joseph. 2002. Constraints and Unique Characteristics Effecting Non-Structural Shore Protection Alternatives for the Dana Point Headlands Development and Conservation Plan. Dated November 17, 2002.	%
8e		Noble Consultants. 2002. No Revetment, Shorefront Slope Setback Alternative. Dated November 20, 2002.	%
8f		Carey, Paul. S., P.E. 2002. Headlands Development and Conservation Plan Shorefront Slope Setback Alternative. Dated November 20, 2002.	%
8g		Jenkins, Scott A. 2003. Headlands Development and Conservation Plan (response to Surfrider Letters dated March 19, 2003 and March 14, 2003). September 19, 2003	%
8h		AMEC 2003. Configuration and estimated volume, existing rock revetment, Dana Strand Area, Headlands Development and Conservation Plan (HDCP), Dana Point, California. Dated December 23, 2003	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
8i		AMEC 2003. Addendum stability evaluations, 10-foot revetment setback alternative, Headlands Development and Conservation Plan (HDCP), Dana Point, California. Dated December 19, 2003	%
8j		AMEC 2003. Response to Surfrider Foundation letter (10/22/03), Local Coastal Program Amendment DPT LCPA 2-02, Headlands Development and Conservation Plan (HDCP), Dana Point, California. Dated December 11, 2003	%
8k		Jenkins, Dr. Scott A. 2003. Headlands Development and Conservation Plan. Letter dated December 19, 2003.	%
8L		Jenkins, Dr. Scott A. 2003. Dana Point Local Coastal Program Amendment 2-02 [sic]; Headlands. Letter dated December 3, 2003	%
8m		Noble Consultants, Inc. Rock quantities of existing and to-be-reconstructed revetment structure at Strand Beach. Dated December 19, 2003	%
8n		MBC 2003. Shorefront protection for the Strand Area, Dana Point Headlands. Dated December 11, 2003.	%
8o		Noble Consultants, Inc. Comments...dated December 3, 2003	%
9a	Surfrider Foundation Comments	Letter dated August 14, 2003 regarding Petition Transmittal	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
9b		Marra, John J. 2003. Review of Report Pertaining to Headlands Development and Conservation Plan by S.A. Jenkins and J. Wasyl	%
9c		Maddux, Timothy B. Undated. Review of "Evaluation of Coastal Processes Effects Associated with Removal of the Revetment from the Headlands Development and Conservation Plan"	%
9d		Letter dated March 17, 2003 from Chad Nelson, Surfrider Foundation to Karl Schwing, California Coastal Commission regarding shoreline protection and the offshore kelp beds	%
9e		Letter dated December 26, 2002 from Michael Lewis, Surfrider Foundation to Ralph Faust, California Coastal Commission regarding Response to letter from Joseph Petrillo with Sheppard Mullin Richter & Hampton LLC dated November 11, 2002	%
9f		Surfrider Foundation 2003. Letter regarding Request for Meeting: LCP Amendment, Dana Point Headlands. Dated December 9, 2003.	%
10a	Coastal Commission Technical Staff Comments Relative to Coastal Processes and Geologic Hazards	Memo dated September 19, 2003 by Lesley Ewing, Senior Coastal Engineer	%
10b		Memo dated July 21, 2003 by Lesley Ewing, Senior Coastal Engineer	%
10c		Memo dated July 8, 2003 by Mark Johnsson, Staff Geologist	%
10d		Memo dated September 16, 2002 by Mark Johnsson, Staff Geologist	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
10e		Memo dated December 24, 2003 by Mark Johnsson, Staff Geologist	%
11a	NCCP/HCP Central and Coastal Subregion	Findings of Facts in Support of Findings Regarding the Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan Joint Programmatic Environmental Impact Report No. 553 (SCH No. 93071061) and Draft Environmental Impact Statement 95-59 dated April 9, 1996: Selected Excerpts	%
11b		NCCP/HCP dated April 14, 1997 and April 11, 2000: Selected Excerpts	%
11c		Map depicting the NCCP/HCP Reserve System and the Coastal Zone Boundary	%
12a	Pacific Pocket Mouse	URS. 2002. Dana Point Headlands Pacific Pocket Mouse Survey, August 18-September 1, 2002, dated September 19, 2002	%
12b		URS. 2002. Update on the Current Status and Viability Assessment of Pacific Pocket Mouse Population on Dana Point Headlands, dated September 18, 2002	%
13a	Native Vegetation	Letter from Pat Mock, URS, with attachment to John Dixon, CCC dated August 8, 2003	%
13b		Letter from W. Kevin Darnall, Headlands Reserve LLC to Caitlin Bean CCC dated June 12, 2003	%
13c		Letter from Fred Roberts, CNPS, to Karl Schwing, CCC dated June 9, 2003	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
13d		Letter from Tony Bomkamp, GLA to Mike Reilly, CCC dated April 15, 2003, re: response to Fred Roberts Letter dated January 28, 2003	%
13e		Letter from Fred Roberts, CNPS to Mike Reilly, CCC dated March 3, 2003 re: status of Blochman's dudleya	%
13f		Letter from Tony Bomkamp, GLA to Meredith Osborne, CDFG dated February 10, 2003, re: relocation of Blochman's dudleya and response to Fred Roberts letter dated June 27, 2002	%
13g		Letter from Fred Roberts, CNPS to Mike Reilly, CCC dated January 28, 2003	%
13h		Letter from Fred Roberts, CNPS to Meredith Osborne, CDFG dated June 27, 2002	%
13i		Letter from CNPS to City of Dana Point dated February 9, 2002 with letter attached dated November 16, 2001	%
14a	Comments from CDFG and USFWS	Memo from Eric Larsen, CDFG to Karl Schwing, CCC dated August 7, 2003	%
14b		Letter from William E Tippetts, CDFG and Karen A. Goebel, USFWS to Mike Reilly, CCC dated March 28, 2003	%
14c		Letter from William E. Tippetts, CDFG to John Dixon and John Allen, CCC dated February 15, 2002	%
15a	Coastal Commission Technical Staff Comments Relative to Upland Biological Resources	Memo by John Dixon dated September 18, 2003	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
15b		Memo by Caitlin Bean dated June 26, 2003	%
15c		Map depicting location of ESHA (as updated by Exhibit 15a) and Land Use Areas (as submitted by City Council May 2002)	%
15d		Map depicting biological resources(as shown on City's original submittal) and location of ESHA	%
15e		Map depicting biological resources (as updated by new Landowner surveys) and location of ESHA	%
15f		Memorandum from Dr. John Dixon dated January 13, 2004 regarding Dana Headlands Fuel Modification	%
16	Headlands Promontory Park Endowment	Letter from Center for Natural Lands Management dated August 26, 2003	%
17a	Coastal Commission Staff Comments Relative to Planning Efforts Involving the Headlands	Chronology	%
17b		Draft EIR (Current Plan) Comments dated November 21, 2001	%
17c		Draft LCP Comments (Current Plan) dated November 21, 2001	%
17d		Draft EIR Comments (1998 Plan) dated September 5, 1998	%
17e		NOP for Draft EIR Comments (1998 Plan) dated June 12, 1998	%
17f		EIR/EIS Comments on NCCP/HCP dated January 29, 1996	%
17g		Draft EIR Comments (early 1990 plan) dated July 29, 1993	%
18a	Legal Analyses	Letter from City Attorney (Rutan & Tucker LLP) dated August 19, 2003	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
18b		Letter from Sheppard Mullin Richter & Hampton LLP dated August 11, 2003	%
18c		Letter from Sheppard Mullin Richter & Hampton LLP dated January 13, 2003	%
18d		Letter from Sheppard Mullin Richer & Hampton LLP dated November 11, 2002	%
18e		Sheppard Mullin 2003. Letter from Joseph E. Petrillo to California Coastal Commission regarding Headlands Project/Dana Point LCP Amendment. 10 December 2003.	%
18f		Sheppard Mullin 2003. Letter from Joseph E. Petrillo to California Coastal Commission regarding Dana Point Headlands LCP Amendment No. 2-02 [sic], Headlands Development and Conservation Plan, Strand Revetment Coastal Act Consistency. 10 December 2003.	%
19	Letters in Support of City-Proposed Plan (October 2003 Hearing)		%
19b	Letter in Support Rec'd Since October 2003 Hearing		%
20	Letters of Critique of City-Proposed Plan		%
20b	Letter of Critique Rec'd Since October 2003 Hearing		%
21	Letters in Opposition to City-Proposed Plan		%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
21b	Letters in Opposition Rec'd Since October 2003 Hearing		%
22	Proposed 1996 Land Use Plan to be newly applied to Headlands	Land Use Element	%
		Urban Design Element	%
		Conservation Open Space Element	%
23	Proposed 1996 IP to be newly applied to Headlands	Zoning Code	%
24	Headlands Development & Conservation Plan including changes and additions to 1996 LUP and IP (Adopted and Submitted by Resolution of the City Council)	Chapter 1.0 - Changes to the 1996 Land Use Element, Urban Design Element, and Conservation Open Space Element to allow Headlands Plan to proceed	%
		Chapter 2.0 - Adds Chapter 9.34 to the City Zoning Code which allows City to Create PDDs	%
		Chapter 3.0 - The Headlands PDD	%
		Chapter 4.0 - Development Guidelines for Headlands PDD	%
		Chapter 5.0 - Coastal Act Consistency Analysis	%
25	Headlands Development & Conservation Plan (Modifications Suggested by City Staff and Landowner) Not Submitted Via Resolution of the City Council	Chapter 1.0	%

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
		Chapter 2.0	%
		Chapter 3.0	%
26a		Landowner's January 2004 Proposal with Depicting of Anticipated ESHA Impacts	%
26b		Staff Recommendation: Project As Modified Per Suggested Modifications	%
26c		Dana Point Headlands LCP Amendment 1-03; Coastal Commission-Approved ESHA Impact Areas and Trail Alignments (January 15, 2004)	#, *
27a	Landowners Analysis of Reconstruction of Revetment as 'Repair and Maintenance'	AMEC 2003. Summary of observations and associated photographs, 1983-84 Repair and Reconstruction, rock revetment and shorefront slope, Dana Strand Club Mobile Home Park, Dana Point, California. Dated December 2, 2003.	%
27b		Headlands Reserve LLC 2003. Strand Revetment – Section 13252(b) Analysis. Dated December 22, 2003	%
27c		Headlands Reserve LLC 2003. Headlands Development and Conservation Plan ("HDCP")- September 19, 2003 Memorandum from Lesley Ewing to Karl Schwing, Subject: City of Dana Point LCP and Dana Strand Beach. Dated December 11, 2003	%
28	Fuel Management Plan	Headlands Reserve LLC 2003. The Headlands Fire Management Program and Landscape Plan. Undated 3 page drawing submitted December 12, 2003	%
28b		Location of ESHA and Fuel Modification at the Headlands	#

Dana Point LCP Amendment 1-03
Exhibits/Substantive File Documents: Revised Findings

Exhibit #	Category	Description	Manner Supplied * = Web Site # = Printed Edition % = Available Upon Request (previously supplied in either the October 2003 Staff Recommendation or January 2004 Staff Recommendation and Incorporated by Reference)
28c		Fuel Modification Program at Marblehead	%
29		Partial Transcript of January 2004 Hearing – Commissioner Deliberation Only	#

Substantive File Documents Not Listed as Exhibits:

AMEC 2004. Response to Public Inquiries, Coastal Erosion Technical Report (7/11/90), Extent of Previous Subsurface Exploration, Headlands Development and Conservation Plan (HDCP), Dana Point, California. Memorandum from Scott T. Kerwin to Headlands Reserve LLC dated January 9, 2004.

GeoSyntec Consultants 2004. Dana Point Harbor TMDL, Headlands Best Management Practices. Memorandum from Carol L. Forrest, P.E. to Kevin Darnall dated January 12, 2004.

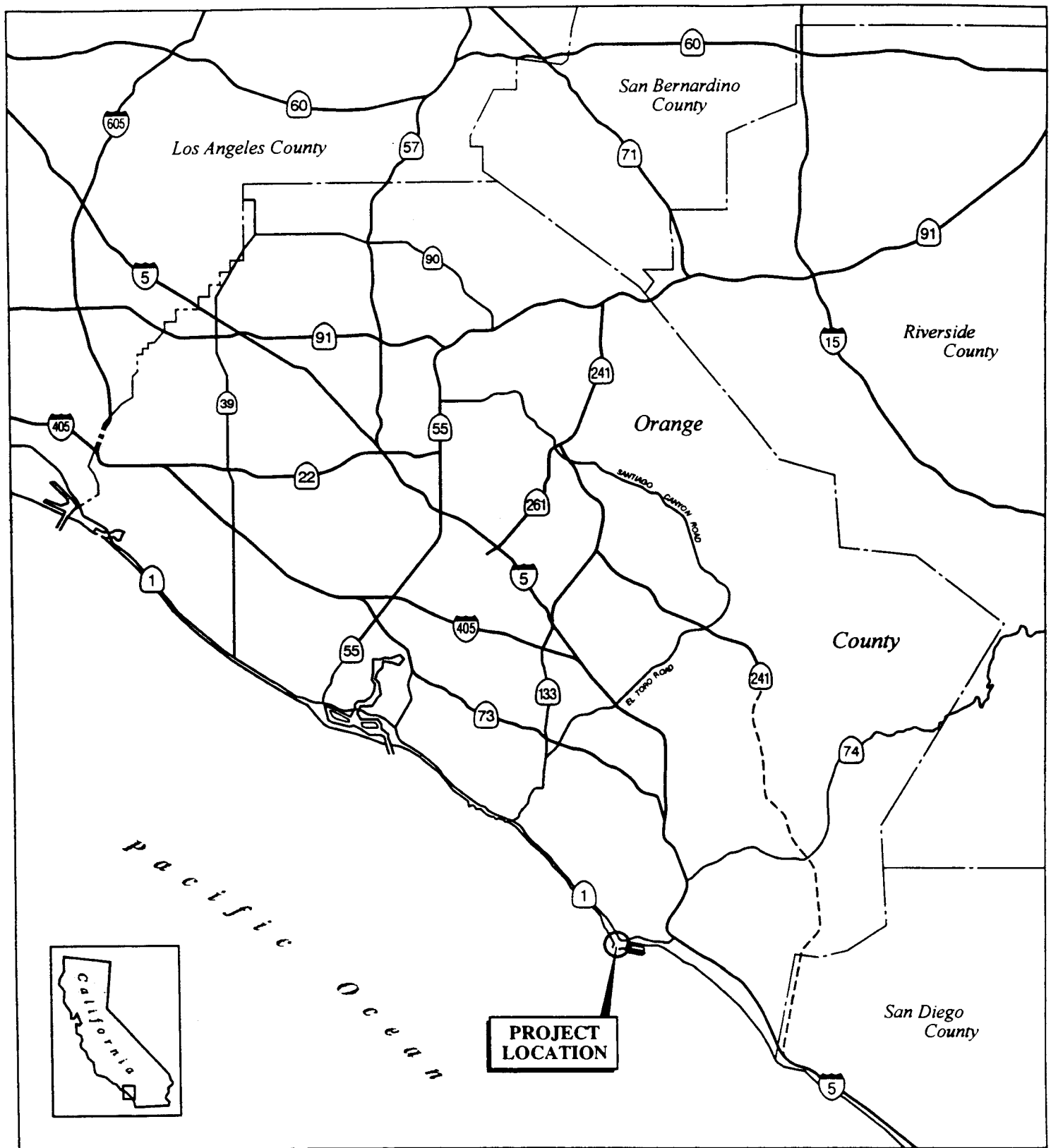
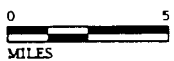


FIGURE 3.1

LSA



COASTAL COMMISSION

DPT LCPA 1-03
EXHIBIT 1

HDCP EIR
Regional Location

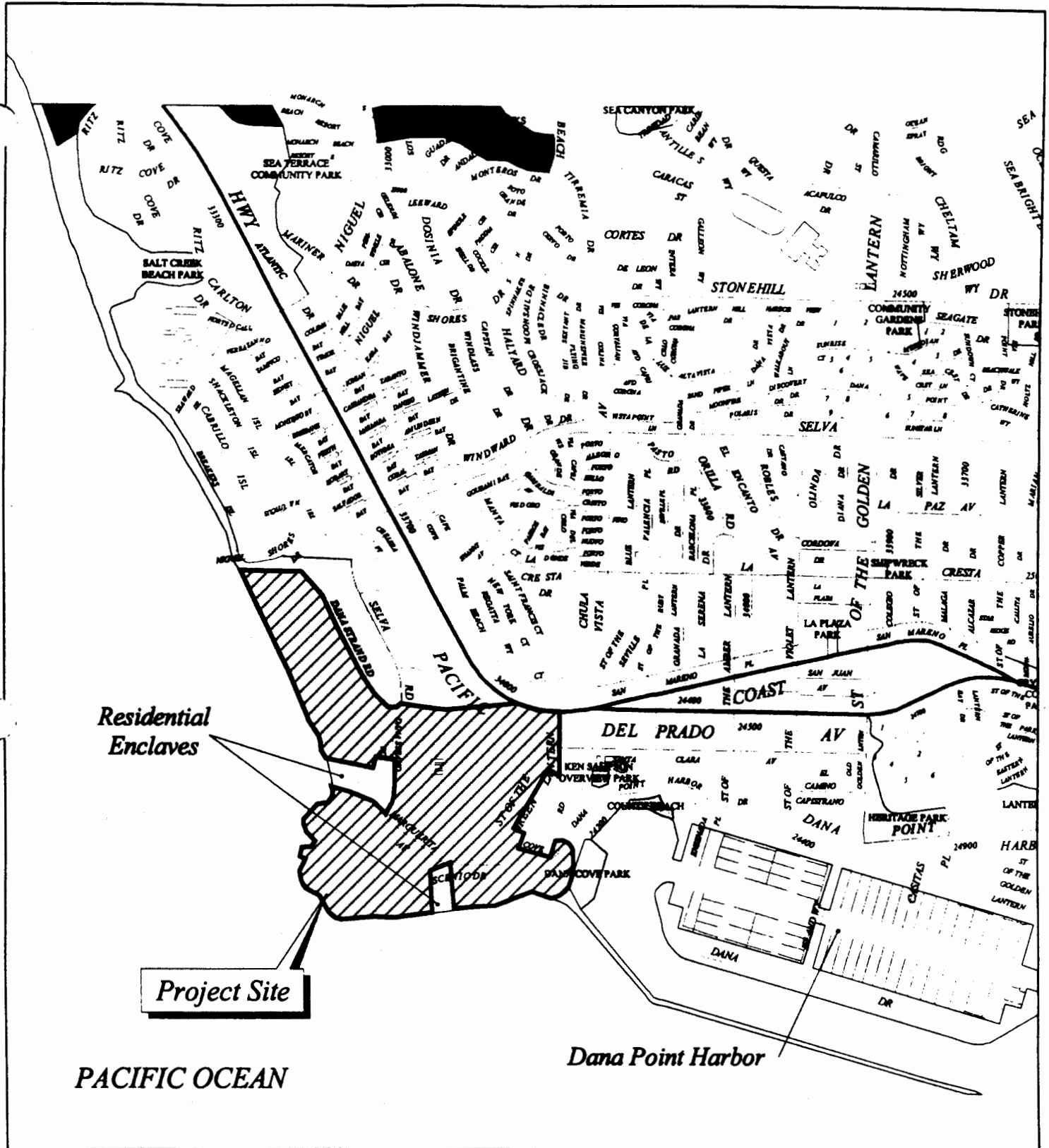


FIGURE 3.2

LSA



0.5 MILES
0.8 KILOMETERS

COASTAL COMMISSION

EXHIBIT # 1

PAGE 2 OF 2

HDCP EIR
Local Vicinity

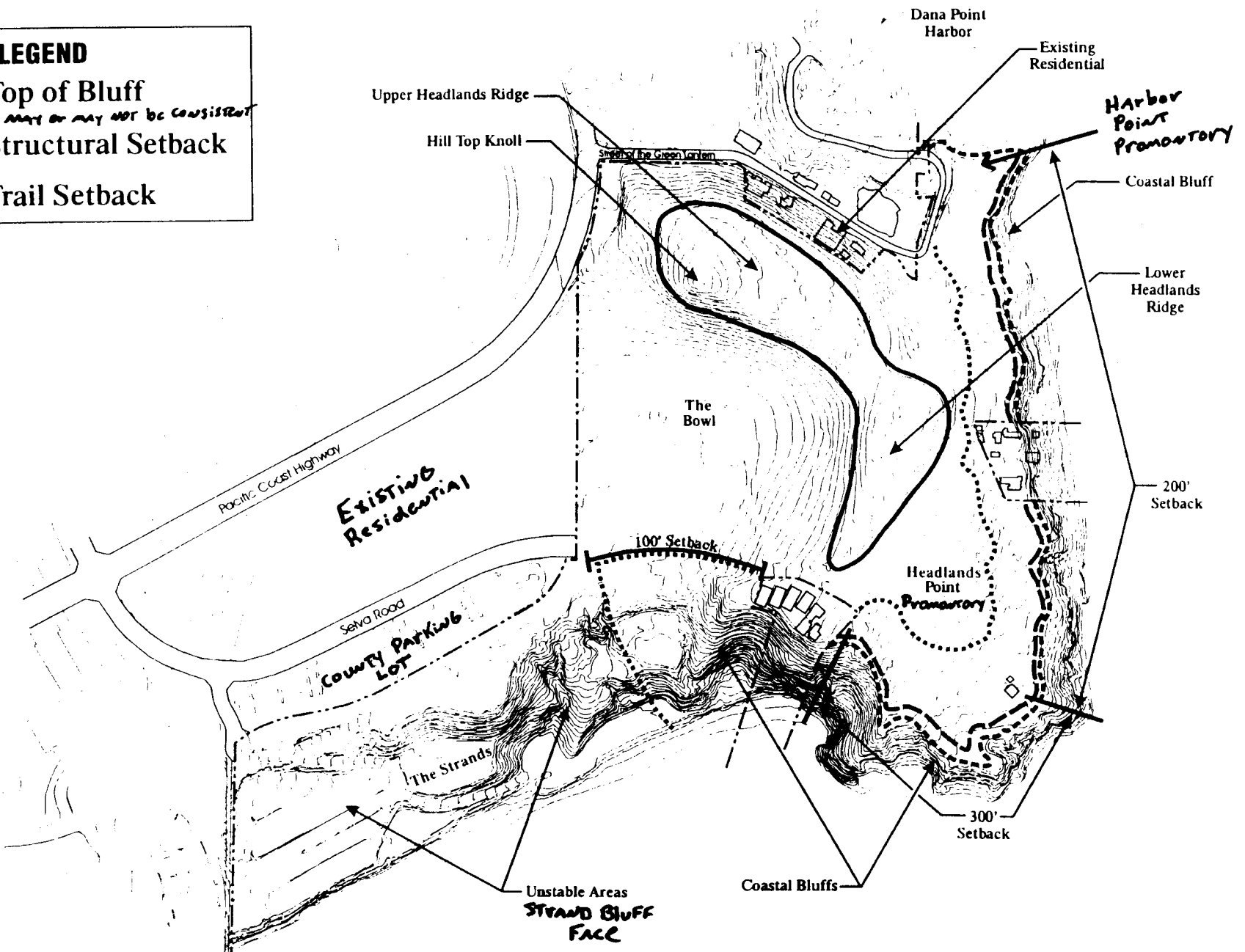
LEGEND

- Top of Bluff
- Structural Setback
- Trail Setback

NOTE: This line may or may not be consistent w/ CCA

COASTAL COMMISSION

EXHIBIT # **2A**
PAGE **1** OF **1**



Not to Scale



EIP

FIGURE 3-4
Land Form Features and Structural Setbacks

City of Dana Point

SOURCE: The Planning Center

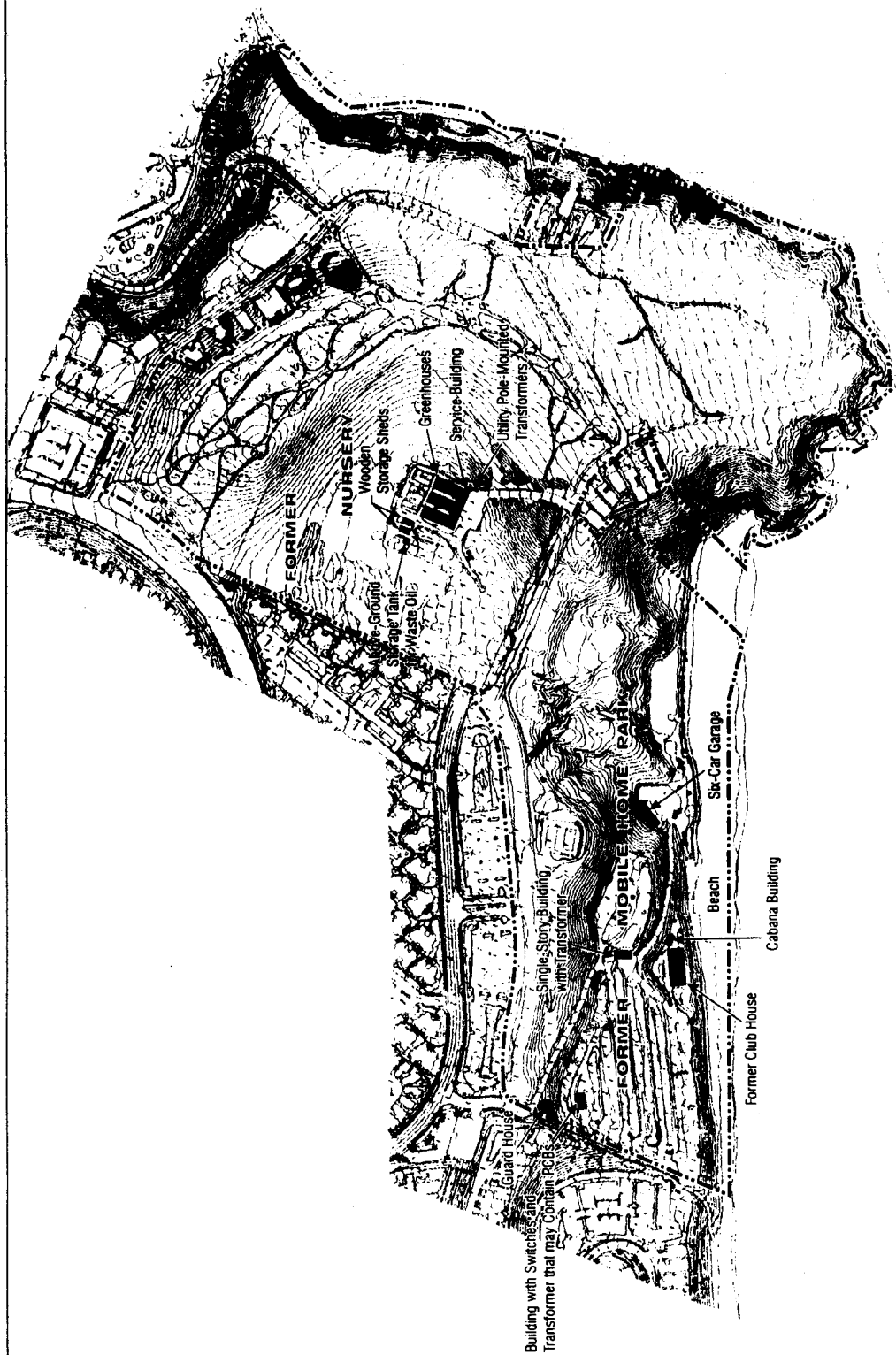


FIGURE 4.6.

HDCP E.
Locations of Existing Su
Conditions and Us

COASTAL COMMISSION

EXHIBIT # 2b

PAGE 1 OF 1



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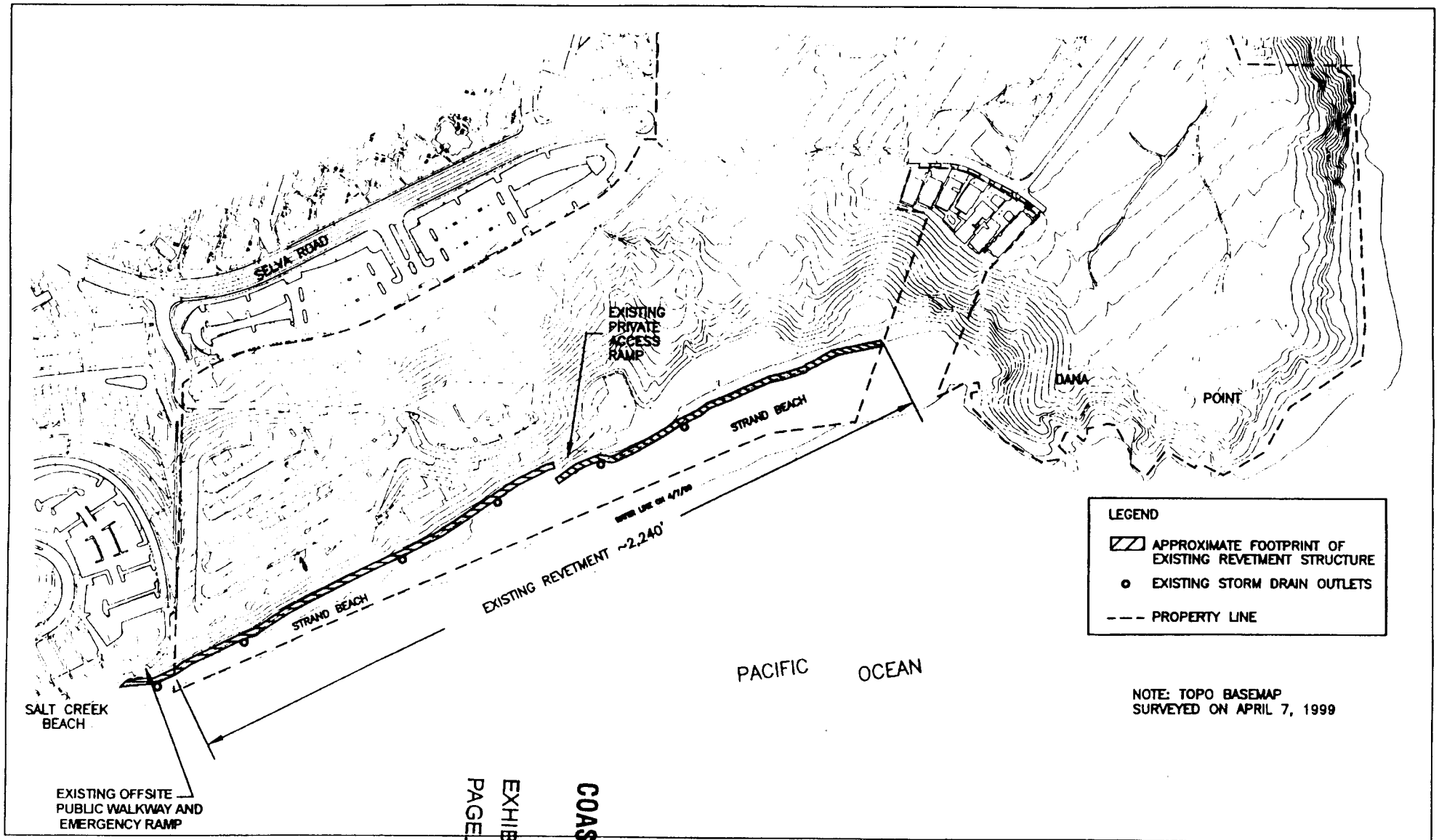
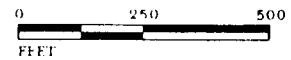


FIGURE 4.16.1

LSA



SOURCE: NOBLE CONSULTANTS, INC.

FILE: R130:G4-16/Existing Structures.cdr (9/18/01)

EXHIBIT # **2c**
PAGE **1** OF **1**

COASTAL COMMISSION

HDCPEIR
Existing Coastal Structures

BEING A RESUBDIVISION OF BLOCKS A,B,D & E OF TRACT N° 573 AS SHOWN ON A MAP THERE-OF RECORDED IN MISC. MAP BOOK 20 PAGE 29 RECORDS OF ORANGE COUNTY, CALIFORNIA. ALSO A PORTION OF LOT X OF SAID TRACT N° 573.

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BEING A SUBDIVISION OF LOT 3 AND A PORTION
OF LOT 2 OF FRACT SEC 21 T.8 S. R.6 W. S.B.B&M
ORANGE COUNTY CALIFORNIA.

FILED



EXHIBIT # 20
PAGE 1 OF 1

FINAL MAPS NO. 697 & 771

**RECORDED JULY 1924
& AUGUST 1925**

Note that it is impossible to make an attempt
 to show general claims subject to change even
 in the empirical sciences, let alone

THE HEADLANDS

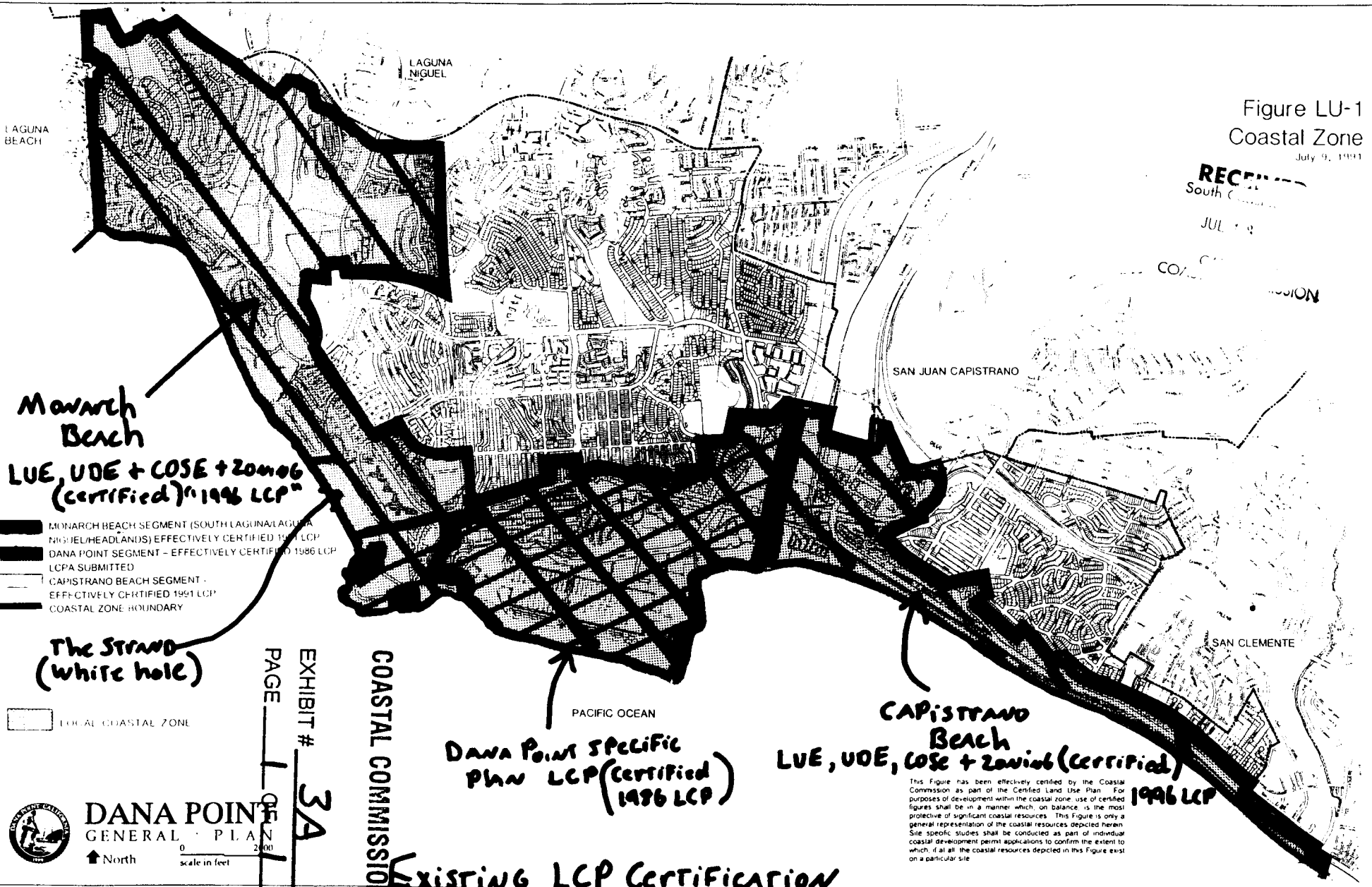
DEVELOPMENT AND CONSERVATION PLAN

The Keith Companies **TKC**



Figure LU-1
Coastal Zone
July 9, 1991

RECEIVED
South Coast
JUL 18
COASTAL COMMISSION



This Figure has been effectively certified by the Coastal Commission as part of the Certified Land Use Plan. For purposes of development within the coastal zone, use of certified figures shall be in a manner which, on balance, is the most protective of significant coastal resources. This Figure is only a general representation of the coastal resources depicted herein. Site specific studies shall be conducted as part of individual coastal development permit applications to confirm the extent to which, if at all, the coastal resources depicted in this Figure exist on a particular site.

COASTAL COMMISSION

EXHIBIT # 3A
PAGE 1 OF 1

DANA POINT
GENERAL PLAN



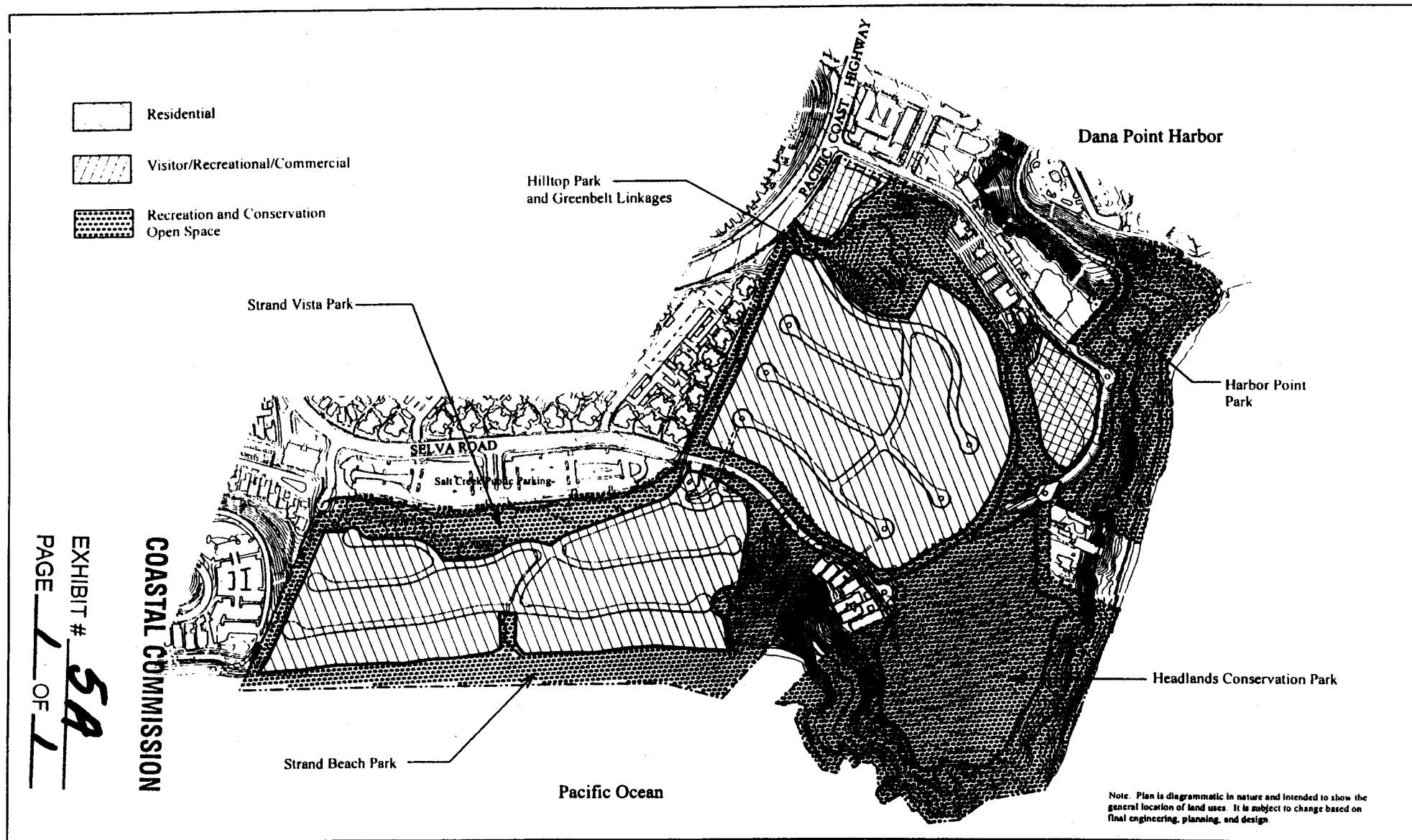


FIGURE 3.3

LSA



0 300 600
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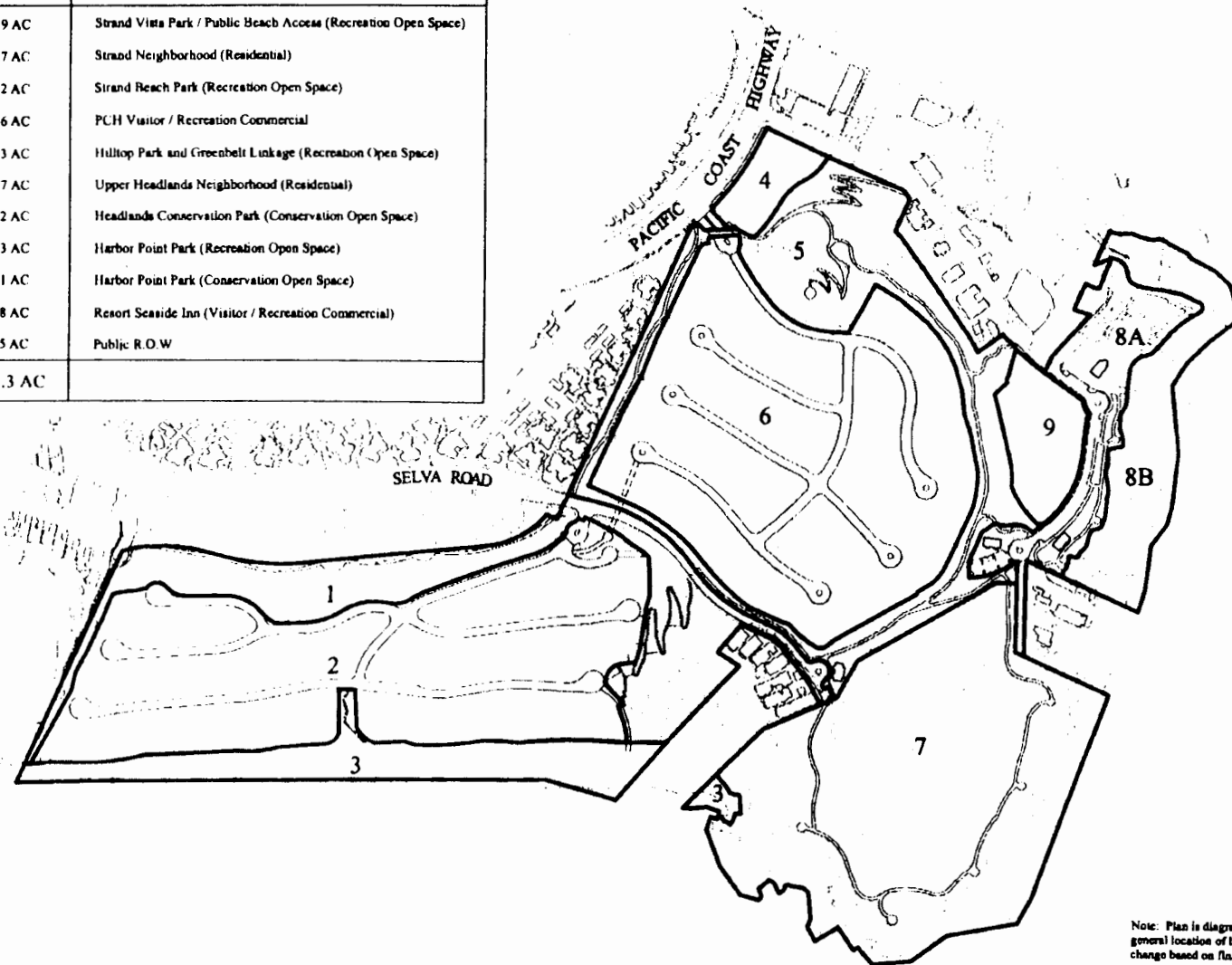
SOURCE: SWA

\\HLR130\G\Land Use Plan.cdr (10/1/01)

HDCP EIR
Land Use Plan

EXHIBIT # **5A**
PAGE **1** OF **1**

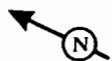
PLANNING AREA	ACREAGE	DESCRIPTION
PA 1	9.9 AC	Strand Vista Park / Public Beach Access (Recreation Open Space)
PA 2	25.7 AC	Strand Neighborhood (Residential)
PA 3	5.2 AC	Strand Beach Park (Recreation Open Space)
PA 4	1.6 AC	PCH Visitor / Recreation Commercial
PA 5	12.3 AC	Hilltop Park and Greenbelt Linkage (Recreation Open Space)
PA 6	26.7 AC	Upper Headlands Neighborhood (Residential)
PA 7	24.2 AC	Headlands Conservation Park (Conservation Open Space)
PA 8A	4.3 AC	Harbor Point Park (Recreation Open Space)
PA 8B	6.1 AC	Harbor Point Park (Conservation Open Space)
PA 9	2.8 AC	Resort Seaside Inn (Visitor / Recreation Commercial)
	2.5 AC	Public R.O.W
TOTAL	121.3 AC	



Note: Plan is diagrammatic in nature and intended to show the general location of land use planning areas. It is subject to change based on final engineering, planning, and design.

FIGURE 3.4

LSA



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SOURCE: SWA

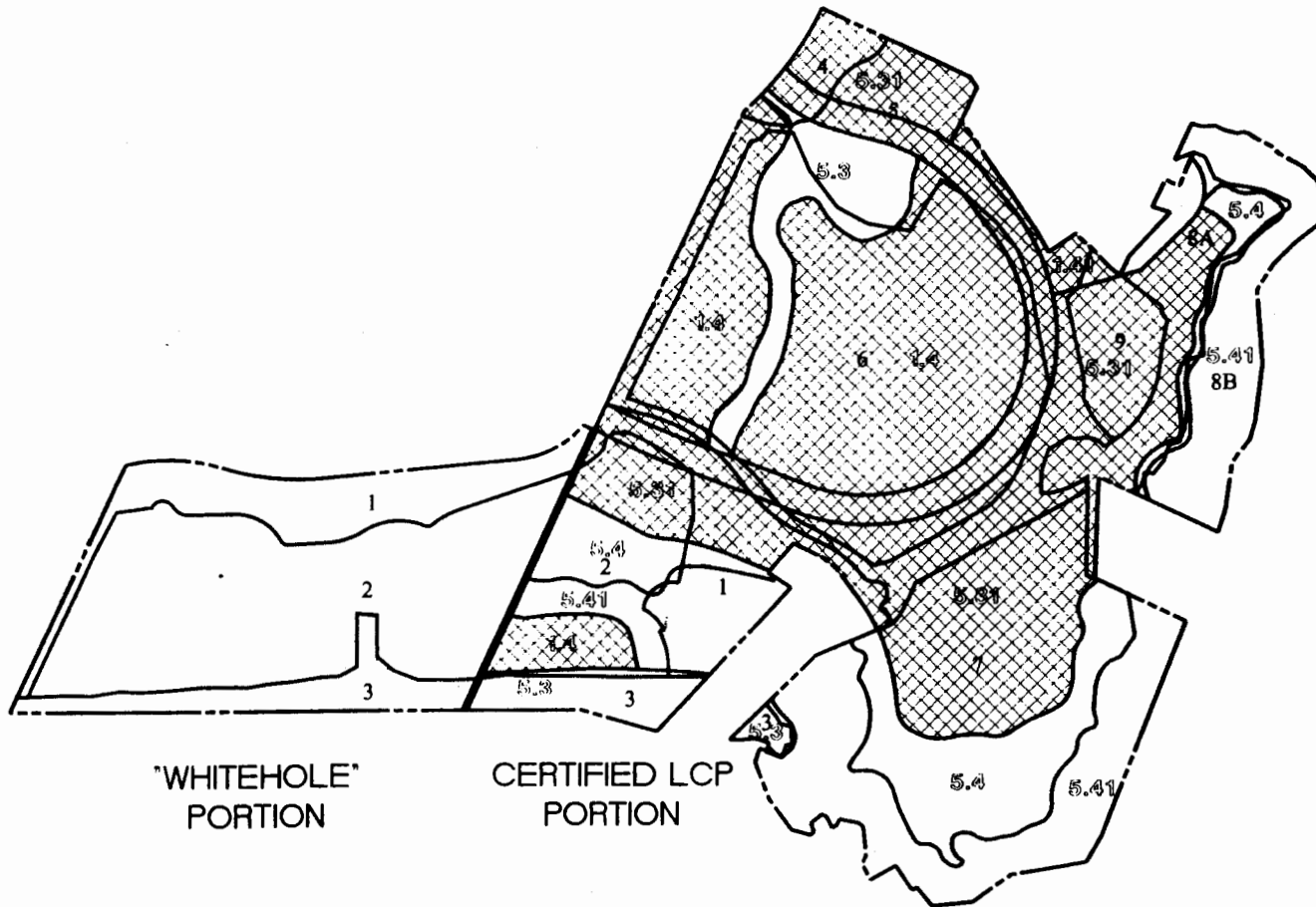
F:\HLR130\GN\Land Use Planning Areas.cdr (10/1/01)

HDCP EIR

Land Use Planning Areas

COASTAL COMMISSION
EXHIBIT # **5B**
PAGE **1** OF **1**

LAND USE COMPARISON



HDCP LAND USE DESIGNATIONS			
PA	WHITEHOLE ACREAGE	CERTIFIED ACREAGE	PLANNING AREA DESCRIPTION
1	49 AC	50 AC	Strand Vista Park / Public Beach Access (Recreation Open Space)
2	18.2 AC	7.5 AC	Strand Neighborhood (Residential)
3	31 AC	21 AC	Strand Beach Park (Recreation Open Space)
4	-	16 AC	PCH Visitor / Recreation Commercial
5	-	123 AC	Hilltop Park and Greenbelt Linkage (Recreation Open Space)
6	-	26.7 AC	Upper Headlands Neighborhood (Residential)
7	-	242 AC	Headlands Conservation Park (Conservation Open Space)
8A	-	43 AC	Harbor Point Park (Recreation Open Space)
8B	-	61 AC	Harbor Point Park (Conservation Open Space)
9	-	28 AC	Resort Seaside Inn (Visitor / Recreation Commercial)
	-	2.5 AC	Public R.O.W
T:	26.2 AC	951 AC	1213 AC

CERTIFIED LCP LAND USE DESIGNATIONS

1.4 HIGH DENSITY RESIDENTIAL

1.41 HIGH DENSITY RESIDENTIAL

5.3 RECREATIONAL

5.31 TOURIST/RECREATIONAL/COMMERCIAL

5.4 OTHER OPEN SPACE

5.41 CONSERVATION

 DEVELOPED LAND

COASTAL COMMISSION

EXHIBIT # **5c**

PAGE **1** OF **1**

THE HEADLANDS

DEVELOPMENT AND CONSERVATION PLAN

The Keith Companies **TKC**



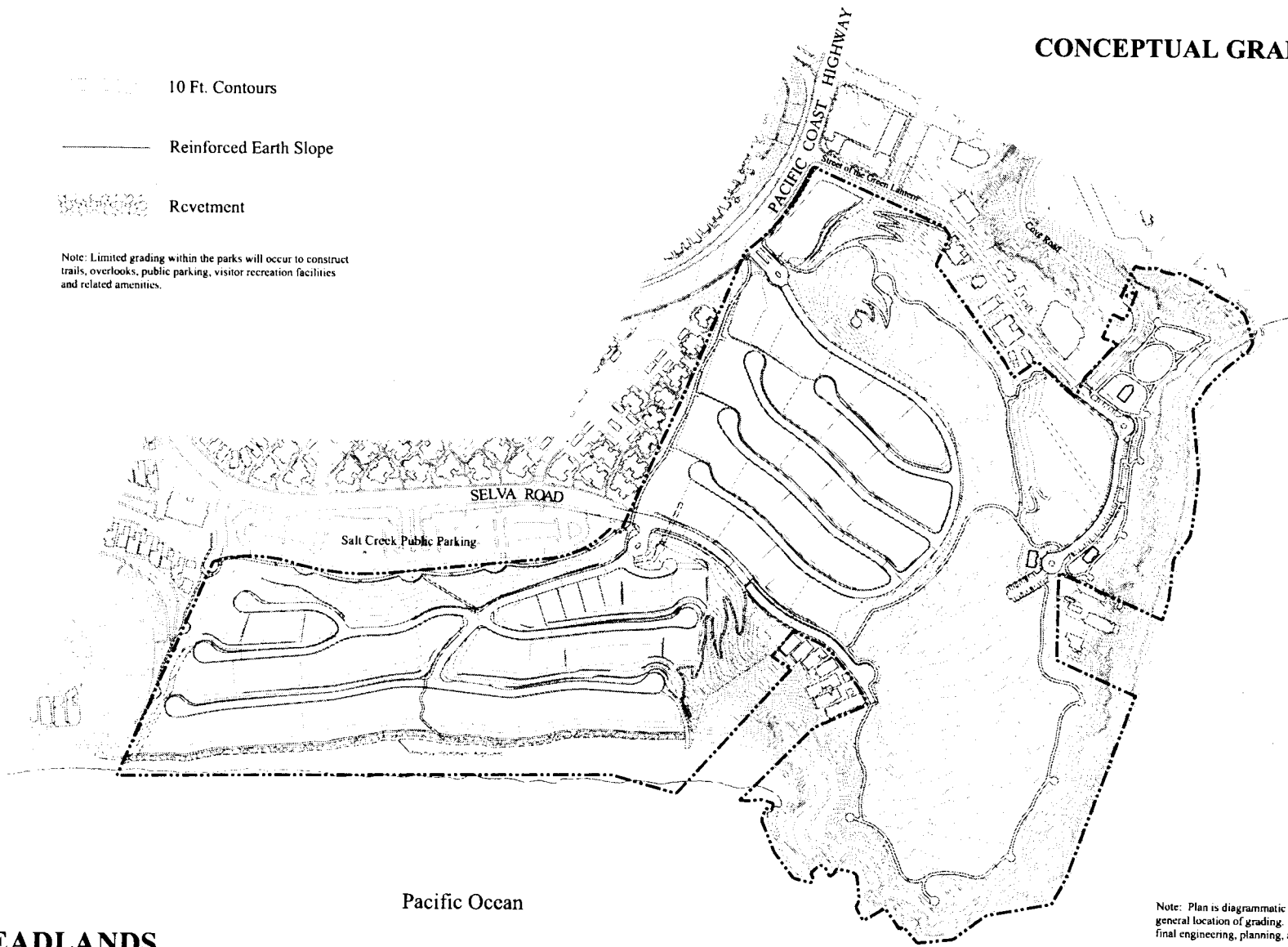
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Scale in Feet

Map is for informational purposes only and should not be used for engineering, planning, and design.

CONCEPTUAL GRADING PLAN
FIGURE 4.11.1

- 10 Ft. Contours
- Reinforced Earth Slope
- Revetment

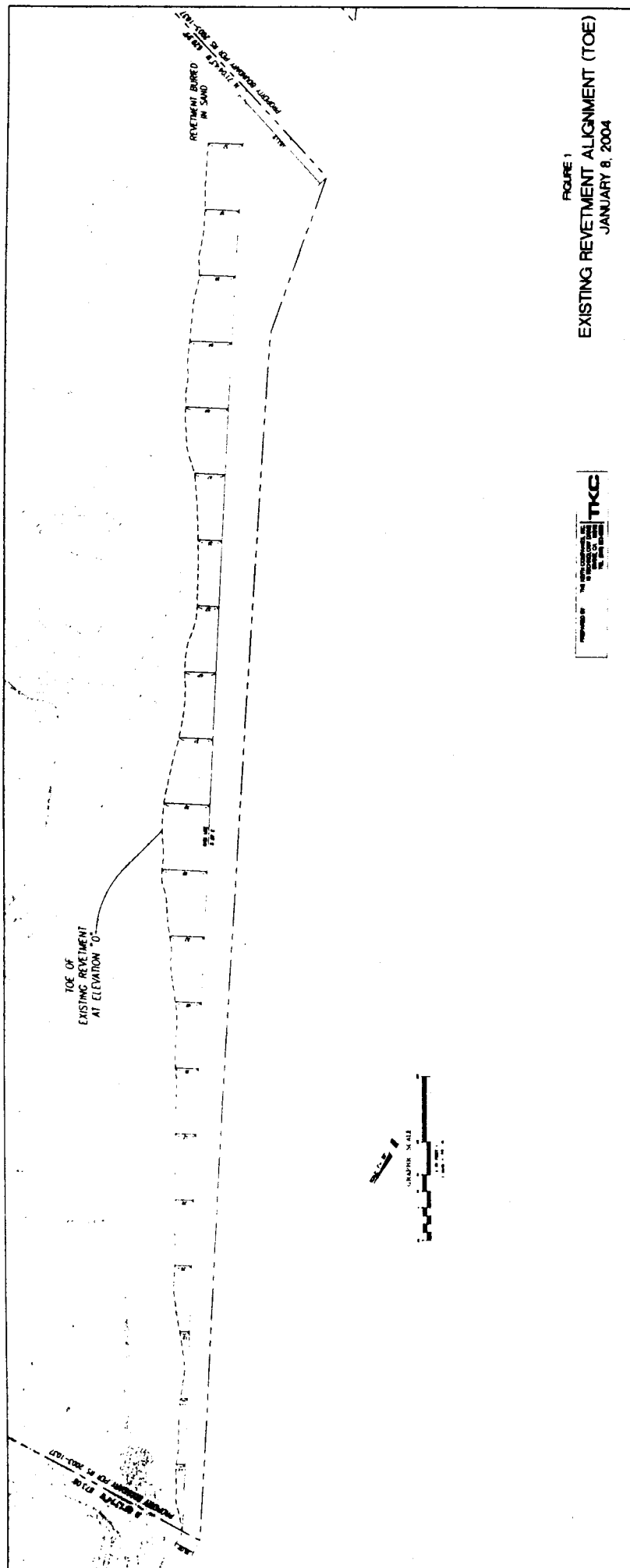
Note: Limited grading within the parks will occur to construct trails, overlooks, public parking, visitor recreation facilities and related amenities.



Note: Plan is diagrammatic in nature and intended to show the general location of grading. It is subject to change based on final engineering, planning, and design.

Ex 7d

THE HEADLANDS
DEVELOPMENT AND CONSERVATION PLAN



Ex 7e

Dana Point Headlands LCP Amendment 1-03

Coastal Commission-approved ESHA Impact Areas
and Trail Alignments (January 15, 2004)

Exhibit 26-C

- Commission Approved Buffer Wall
- Commission Approved Trail Alignment
- Landowner Proposed Streets and Parking
Street and Parking Alignments Depicted Are
For General Reference Purposes Only.
- ☒ Commission Approved ESHA Impact Area
(Includes Allowed Fuel Modification Impacts)
- ESHA Boundaries
- Project Boundary

200 0 200
Feet

Note: Locations are approximate. For illustrative
Purposes Only. Image Base Source: AirPhoto USA,
6/2000. Data Source: Commission site visit: May 2003,
The Keith Companies and URS Corporation:
September, 2003.



ESHA
APPROXIMATE
Boundary

Fuel Mod Outside
ESHA = O.K.

- AREA 3 (WITH ESHA)
- Deadwood Removal
 - REVEGETATION Limited
 - FIRE SAFE PLANT PALETTE
 - HABITAT ISLANDS with Irrigation

- AREA 1 - Fuel Mod For INW
- Irrigated
 - Controlled, FIRE SAFE PLANT PALETTE
 - Deadwood Removal

- AREA 2 within ESH
- Irrigated
 - Plant PALETTE Controls
 - HABITAT ISLANDS

Upper Headlands
Residential

No Fuel Mod

No Fuel Mod

ESHA

- Area 1 Fuel Mod
- Irrigated
 - FIRE SAFE PLANT PALETTE
 - HABITAT ISLANDS with Irrigation

Fuel Mod/Fire MANAGEMENT
w/ ESHA Overlay
Ex 28b

Existing
Residential

ESHA

Existing
Residential

Existing
Residential

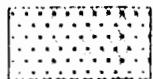
PACIFIC COAST HIGHWAY

Street of the Green Lantern

Existing Residential

Seaside Inn

LEGEND



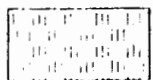
Area 1

Irrigated slope as per OCFA standards; planted as per the Revegetation Plant Palette. Not a part of OCFA fuel modification requirements. (See Sheet 3, Notes 5, 6, 7)



Area 2

Low growing grass mix/native shrubs as per the Revegetation Plant Palette, irrigated as necessary for plant establishment and healthy growth. Not a part of OCFA fuel modification requirements. (See Sheet 3, Notes 6, 7)



Area 3

Revegetation as necessary if disturbed utilizing the Revegetation Plant Palette. For the east facing slopes of the Hilltop Park, existing chaparral and non-native trees are to be thinned/removed and replaced by species from the Revegetation Plant Palette. Not a part of OCFA fuel modification requirements. (See Sheet 3, Notes 4, 5, 6, 7)



Area 4

Irrigated landscaped areas. Not a part of OCFA fuel modification requirements. (See Sheet 3, Note 7)



Lots requiring special architectural treatment.



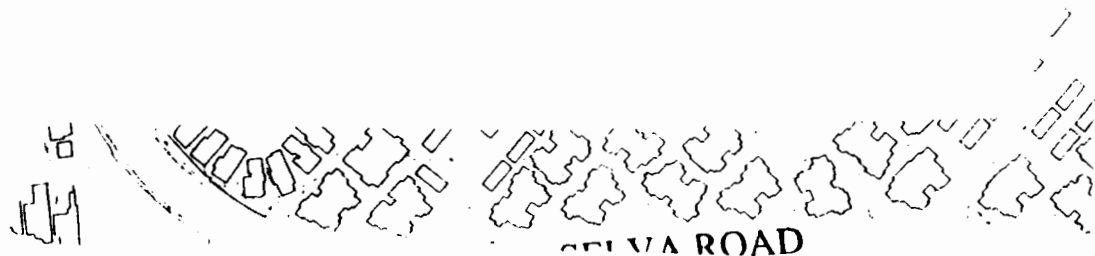
6' high masonry wall along the perimeter road and along the side yards of the affected lots as shown.



Cross-section

See Ex 28

10' Building Setback



1 California Coastal Commission --- January 15, 2004

2 Dana Point LCP Amendment No. DPT-MAJ-~~2-02~~

COASTAL COMMISSION

3 Dana Point Headlands

1-03

4 Fragmented portion -- following close of the public hearing

5 * * * * *

6 6:15 p.m.

7 CHAIR REILLY: All right, with that we will
8 conclude the public testimony, and return to staff.

9 DEPUTY DIRECTOR LEE: Thank you, Chairman Reilly,
10 just a few comments.

11 To remind the Commission -- and I think you
12 actually heard it from the representative from the Department
13 of Fish and Game -- the Department of Fish and Game, and the
14 Fish and Wildlife Service agencies were not making an ESHA
15 delineation under the Coastal Act. That is our job, and that
16 is the Commission's charge, and that is something has been
17 completed by Dr. Dixon, and if you have any questions about
18 that he can certainly respond to them.

19 Similarly, as it was before, the single citation
20 that was repeated, and quoted today by the city's represent-
21 ative is from a narrative section of the existing plan. It
22 is not a finding, and most importantly, it is not a proposed
23 policy.

24 With regards to Mr. Damm's letter, it also further
25 indicated that the plan would still need to be evaluated, and

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Ex 29

DPT-MAJ-1-03

1 I must remind the Commission that the cited letter was
2 drafted before we had the services and expertise of either
3 Dr. Allen or Dr. Dixon on staff.

4 The characterization of what could be done, even
5 in areas designated for development in the existing plan,
6 again, we strongly disagree with the city's representation of
7 that. We went through that in more detail at the last
8 hearing, but I feel compelled to, again, point out Policy 18
9 of the certified Land Use Plan, which specifically requires
10 that prior to any CDP application -- and I am quoting:

11 "Any rare, endangered, threatened or especially
12 valuable species, and their habitats shall be
13 identified and a mitigation and management
14 program shall be prepared and implemented to
15 protect against any significant disruption of
16 these habitat values."

17 In addition, there is a companion policy, Policy L
18 for site development permits in the certified Implementation
19 Plan, that requires that concurrent with any CDP application,
20 a botanical survey and management and mitigation program by a
21 qualified biologist, approved by both the local government
22 and the Executive Director will be completed.

23 The policy specifically states the survey shall
24 include all portions of the headlands' area, and shall
25 precisely delineate the location of any rare, endangered, or

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1 especially valuable species. And, again, in consultation
2 with the Department of Fish and Game, and the Executive
3 Director, the applicant shall prepare a mitigation program.

4 And, the city had to make a finding that that
5 mitigation program was carried out in conjunction and
6 consistent with Section 30240. Those were adopted certified
7 policies that would have brought that decision of what was
8 ESHA on this site, back to current standards with any CDP
9 application.

10 While we appreciate that much of this plan will be
11 open space, it will be managed acreage, and I would ask you
12 to look at Exhibit 28-B that was provided to you in your
13 addendum, and that covers the fuel modification that would be
14 performed on this site.

15 This exhibit is from what the landowner gave to us
16 as recently as just the last couple of weeks, and as far as I
17 know, there is no changes to it. If you look at the exhibit,
18 it shows very clearly that there is a limited revegetation
19 plant palate, some of which the materials in that are not
20 consistent with coastal sage scrub restoration efforts --
21 that is identified in the memorandum given to you by Dr.
22 Dixon.

23 And, contrary to the statements today, it clearly
24 shows that there will be irrigated areas, both in areas 1 and
25 2 of the proposal. It also shows that their habitat islands

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1 will be necessary in those areas where if there are plants
2 that colonize and begin to develop, they have to be pruned
3 and kept at a certain density and plant coverage.

4 None of the fuel modification that was approved by
5 this Commission on the Marblehead site occurred in ESHA. It
6 was all outside of the ESHA boundaries. This work is
7 occurring in areas that your staff, and Dr. Dixon, are
8 clearly defining as ESHA on the Headlands site.

9 I also want to just clarify that the revetment
10 realignment was pursued by the landowner, independently, and
11 we do compliment him for that. That was based on the
12 Commission's comments at the last hearing. Given the
13 Commission's comments and direction to staff at the last
14 hearing, we were also directed to go back and reassess
15 whether or not the work proposed could be viewed as bonafide
16 repair and maintenance activity.

17 We have done that, and as you have heard today, we
18 don't believe that the reconstruction of the revetment from
19 the bottom up, constitutes legitimate repair and maintenance,
20 and that the work that they are seeking to do here is
21 comparable with the Encinitas or Las Olas projects.

22 We have no problem with any of the desired
23 community facilities. It is just, unfortunately, their
24 location within the defined ESHA that could be accepted and
25 supported in other areas of the recommended development

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1 footprint.

2 And, I must note that the lighthouses that were
3 cited, I believe were all existing facilities, rather than a
4 new one that is being sought within an undeveloped area, as
5 is asked for today.

6 With regards to public access opportunities, they
7 will not be as extensive in length as proposed by the city,
8 but they will represent a formalized trail system that will
9 provide the public with the ability to enjoy the scenic
10 vistas, shoreline views, and natural habitats in a meaningful
11 way. The fencing will be in character, and is needed to
12 deter domestic animals and random access across the site.

13 Finally, I just want to clarify my remarks on
14 assessing the economic considerations. We don't evaluate,
15 and can't really legitimately judge the economic viability of
16 a project, but we certainly did consider economics, and that
17 is why staff was prepared to support a major concession of
18 allowing the revetment at this site, given the significant
19 constraints that we felt the ESHA delineation did pose on the
20 project.

21 Again, that concludes my comments. The technical
22 staff is prepared to answer any questions, as well.

23 EXECUTIVE DIRECTOR DOUGLAS: Just one small
24 addition, relative to the repair and maintenance
25 consideration.

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1 That issue came up several times, and of course in
2 the discussion today, and I know Commissioners have raised
3 it, too, and it is important to recognize that whether it is
4 repair and maintenance -- I mean from our perspective it is a
5 new seawall -- but, even if it were repair and maintenance,
6 that is not a standard of review. That just goes to the
7 question of whether or not it is exempt from coastal
8 permitting requirements.

9 This clearly requires a permit, so even if it is
10 determined to be repair and maintenance, that doesn't mean
11 that is the standard for approving the work that is required
12 here. So, it is important that you understand, it is still
13 Chapter 3 policies that have to be applied.

14 I think John has a couple of comments to make,
15 too.

16 ENVIRONMENTAL PROGRAM MANAGER DIXON: Commission-
17 ers, first I would like to comment, briefly, on two matters
18 of fact.

19 It has been asserted today that the gnatcatcher
20 and the pocket mouse at the headlands are in decline and that
21 all that remains of the mouse population is a single conjugal
22 couple. In fact, the pocket mouse populations fluctuate by
23 orders of magnitude from year to year, and survey level
24 trapping results must be interpreted very, very cautiously.

25 At the headlands, the trapping effort and protocol

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1 varied so much from year to year that temporal inferences are
2 not possible. For other rodent species, it has been observed
3 that repeated failures at trapping may be followed by high
4 trap success. Such phenomena probably reflect both rainfall
5 related changes in density, and also changes in behavior.

6 As for the gnatcatchers, no evidence of decline
7 has ever been presented.

8 Second, I would like to say a few words about long
9 term viability of habitat. It is not that such viability is
10 unimportant. It is, rather, that estimating long term
11 viability in ESHA analysis is extremely problematic.

12 For example, for the gnatcatcher, the empirical
13 evidence is that 7 or 8 pairs -- not individuals -- nested in
14 coastal sage scrub at the headlands in 1993 and 2000, and
15 that individuals are still present. This indicates that the
16 headlands have provided viable gnatcatcher habitat for at
17 least 10 years. This is certainly no guarantee that gnat-
18 catchers will continue to nest at this site, but empirical
19 evidence of past use is still the best predictor of future
20 use.

21 On the other hand, statements about long term
22 viability, based on general ecological principles, such as
23 the affects of relative isolation, are necessarily more
24 speculative. If an ESHA analysis is based on prognost-
25 ications of long term viability, that are based on general

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1 ecological concepts, then the door is open wide to
2 theoretical arguments which can be constructed to call into
3 question most any ESHA designation.

4 Thank you.

5 CHAIR REILLY: All right, does that conclude
6 staff's comments?

7 DEPUTY DIRECTOR LEE: Yes.

8 CHAIR REILLY: All right, with that, we will bring
9 it back to the Commission.

10 There are certainly a broad range of issues before
11 us. As a method for proceeding, let me make a suggestion.
12 There are actually four motions associated with the staff
13 recommendation on this, beginning on page 10 of the staff
14 review. Motions 1 and 3, basically, reject the Land Use
15 Plan, and the Implementation Plan as submitted by the city.
16 Motions 2 and 4, then, would certify first the Land Use Plan,
17 and then the Implementation Plan.

18 It is my sense that the Commission may want to
19 entertain some possible amendments to the staff recommend-
20 ations, and my suggestion for doing that would be that we go
21 ahead and offer and pass both Motions 1 and 3, initially, and
22 then open both the other motions on the Land Use Plan, and
23 the Implementation Plan, so as amendments are put forward,
24 staff can figure out which one of those two they apply to.

25 No, I think we can have two motion open here, on

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1 this? why not? Are you going to figure out on any amendment
2 which one is LUP and which one is IP, counsel?

3 CHIEF COUNSEL FAUST: No, I am not, nonetheless,
4 both under your regulations --

5 CHAIR REILLY: Well, that is my problem.

6 CHIEF COUNSEL FAUST: -- and under Roberts Rules
7 of Order, there is only one main motion on the floor at a
8 time. I can't help you in terms of which motion goes to
9 what, but you can try it, but I am telling you what your
10 regulations provide.

11 CHAIR REILLY: All right.

12 COMMISSIONER ORR: Mr. Chair.

13 EXECUTIVE DIRECTOR DOUGLAS: We'll help you when
14 you get to that point.

15 CHAIR REILLY: All right.

16 COMMISSIONER ORR: Well, I was just going to
17 suggest that I am willing to make the motions that you think
18 we can get out of the way, so that we can at least dispense
19 with those.

20 CHAIR REILLY: Why don't we try Motions 1 and 3,
21 then, Commissioner Orr.

22 [MOTION]

23 COMMISSIONER ORR: Okay, I move that the
24 Commission certify the City of Dana Point Land Use Plan
25 Amendment 1-03 as submitted, and recommend a "No" vote.

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1 CHAIR REILLY: Is there any discussion?

2 COMMISSIONER MC CLAIN-HILL: Second.

3 COMMISSIONER ORR: We need a "second", first.

4 COMMISSIONER MC CLAIN-HILL: Second.

5 CHAIR REILLY: Motion by Commissioner Orr,
6 seconded by Commissioner McClain-Hill.

7 Is there any objection to a unanimous roll call?

8 [No Response]

9 Seeing none, the motion carries.

10 COMMISSIONER ORR: Then, should I proceed to 3 at
11 this point.

12 CHAIR REILLY: Please.

13 [MOTION]

14 COMMISSIONER ORR: I move the Commission reject
15 the City of Dana Point Implementation Plan Amendment 1-03 as
16 submitted, and recommend a "Yes" vote.

17 Do I have a "second"?

18 COMMISSIONER PETERS: Second.

19 CHAIR REILLY: Is there a "second" to the motion?

20 COMMISSIONER ORR: Oh, wait a minute, wait a
21 minute, wait, wait --

22 COMMISSIONER MC CLAIN-HILL: It is the third, No.
23 3.

24 COMMISSIONER ORR: Yeah, it is the third one.

25 CHAIR REILLY: It is to reject the City of Dana

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1 Point --

2 COMMISSIONER ORR: Yeah, we want to reject it and
3 then --

4 CHAIR REILLY: -- Implementation, and then have a
5 "Yes" vote.

6 COMMISSIONER ORR: Those are the two that are
7 housekeeping motions, so yes.

8 Moved and seconded.

9 CHAIR REILLY: Moved by Commissioner Orr, and
10 seconded by Commissioner McClain-Hill.

11 Is there any discussion?

12 [No Response]

13 Is there objection to unanimous roll call?

14 [No Response]

15 Okay, we passed those two motions.

16 Do you want to go ahead and make motion 3, and get
17 it on the -- Motion No. 2, I am sorry, and get it on table,
18 Commissioner.

19 COMMISSIONER ORR: I'll let someone else do that.

20 CHAIR REILLY: All right.

21 Commissioner McClain-Hill.

22 [Pause in proceedings.]

23 CHAIR REILLY: Pardon me?

24 [MOTION]

25 COMMISSIONER MC CLAIN-HILL: I move that the

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1 Commissioner certify the Land Use Plan Amendment 1-03 for the
2 City of Dana Point, if modified as suggested in the staff
3 report.

4 And, for the purposes of -- well, staff recommends
5 a "Yes" vote.

6 CHAIR REILLY: All right, is there a "second"?

7 COMMISSIONER HART: Second.

8 CHAIR REILLY: Moved by Commissioner McClain-
9 Hill, seconded by Commissioner Hart.

10 So, there is a motion on the table. Do you want
11 to start discussions, Commissioner?

12 COMMISSIONER MC CLAIN-HILL: Yeah, first I want
13 to, again, commend the staff, the applicant, and the members
14 of the audience, and interested parties who have all worked
15 so very hard to get us where we are today.

16 And, while I appreciate that both our staff and
17 the applicant are feeling a little frustrated, by their not
18 having gotten to a place of consensus, I am, actually,
19 appreciative of how far they did get, and how much they did
20 get done.

21 I continue to be, with respect to the two
22 principle issues that are before us, and frankly, I think
23 there are some more, in addition to issues regarding the
24 ESHA, and issues regarding the revetment, I am interested in
25 some staff modifications that seem to affect the coastal

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1 jurisdiction, with respect to permits to be issued, once the
2 LCP is adopted, and I will want to address that down the
3 line, but we've got to start somewhere. So, I guess I will
4 start with the revetment.

5 I understand and have read thoroughly staff's
6 analysis of the revetment, and I am not persuaded by that
7 analysis that it is consistent with similar analysis of
8 revetment repair and maintenance, and so I would like to hear
9 some additional Commission discussion on that point.

10 As I look at what staff has written, and listened
11 to the staff presentation today, along with materials
12 submitted by the developer -- or by the city, and by the
13 potential developer, it seems to me that we are now making a
14 distinction that goes to how much of -- no, the manner in
15 which the wall is in disrepair, so that a wall that is in
16 disrepair to the point that the revetment rocks have moved,
17 and then need to be restacked, that constitutes, or appears
18 to constitute, based on previous decisions repair and
19 maintenance.

20 And, what I heard today -- as opposed to bringing
21 new materials on site -- and what I thought I heard today
22 was, well, in this case, while they will be using existing
23 materials, since the nature of the disrepair hasn't resulted
24 in the rocks actually moving, the fact that they will
25 participate in moving them, and then move the wall, or the

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1 rocks back into place, makes it a new structure, and I am
2 just not really sure that that is a distinction that I buy.

3 I don't know that that is consistent, since it
4 seems to me to be -- in the past, we've looked at materials,
5 new versus old, and I am concerned about the moving of the
6 wall because it seems now we are into maintenance, repair and
7 realignment, which I am, you know, I am interested in whether
8 or not the other project -- I think they said Encinitas --
9 that the Encinitas wall was also put in a different -- was,
10 quote, realigned, so I would be interested in staff's
11 feedback on that.

12 And, with that I would gladly yield the mike to
13 others.

14 CHAIR REILLY: Thank you, Commissioner.

15 Commissioner Hart, did you have any comments?

16 COMMISSIONER HART: Well, to follow up on
17 Commissioner McClain-Hill's approach, maybe a document that
18 we have from the City of Dana Point, that suggests
19 modifications organized by category, and I would propose to
20 follow up Ms. McClain's comments with the City of Dana
21 Point's changes to our staff report for the strand area.

22 And, I think that if everybody has that in front
23 of them, this might be clearer, and maybe we can all speak to
24 that and then have a vote step-by-step through these kinds of
25 issues.

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1 It looks to be as though what the city is
2 proposing --

3 CHAIR REILLY: It is on page 11 of that document.

4 COMMISSIONER HART: Right.

5 They would propose only deleting, I believe, Nos.
6 61, 62, 63. It looks as though all of the rest of those that
7 relate to this area are acceptable to both parties, as
8 edited.

9 So, I have kind of prefaced my motion, but if the
10 Chair would indulge me, I would move that we delete those
11 items.

12 CHAIR REILLY: You want to amend the motion, the
13 main motion, to incorporate those modifications outlined by
14 the city, for the strand area, both in terms of the edits and
15 the deletions, is that your intent?

16 COMMISSIONER HART: Yes, that is my intent. I am
17 assuming that the edits and deletions are something staff has
18 already seen and agreed to.

19 CHAIR REILLY: I am not assuming staff is in
20 accord with any of these edits.

21 COMMISSIONER HART: All right, well, I think your
22 way is much cleaner, then, yes, just basically the motion
23 would be pages 11 and 12, 13 and 14 of this document, from
24 Items No. 7 through 156.

25 CHAIR REILLY: The whole area --

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1 COMMISSIONER HART: The whole thing, yes.

2 CHAIR REILLY: -- that relates to the strand area.
3 Is there a "second" to that motion?

4 COMMISSIONER ISEMAN: Second.

5 CHAIR REILLY: Seconded by Commissioner Iseman,
6 amending motion by Commissioner Hart.

7 Do you want to discuss that amending motion?

8 COMMISSIONER HART: Well, again, I just think that
9 Commissioner McClain-Hill raised the issue that I share. I
10 just don't see how we can't remain consistent with the
11 approach that we've used in other seawalls, where they exist,
12 and are in need of repair. And, I just see this as being in
13 that category.

14 I certainly understand and share the concern of
15 Surfrider, and other folks, who are speaking to the idea that
16 we are going to allow new seawall construction for new
17 development, and I couldn't agree more that that is not what
18 we want to be doing.

19 But, I do think what we have, really, here is a
20 third category, which is an existing seawall that was
21 protecting development that exists there that is going to be
22 repaired, and that is a different category than what we have
23 been talking about in the past. So, I think that this is,
24 probably, an extraordinarily small category of facts in a
25 world where you had existing development with a seawall that

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1 fell into disrepair, and is being repaired in this instance.

2 So, I think that is a comfortable place for me,
3 anyway, on this issue.

4 CHAIR REILLY: All right, as we go through here, I
5 would like to try to at least focus our comments on the
6 amending motion, and if we get through that, then we will
7 open it back up to other issues.

8 Commissioner Krueer.

9 COMMISSIONER KRUEER: Yes, on the amending motion,
10 I spent a lot of time and thinking about this, especially in
11 the last couple of days, in regard to the issue that
12 Commissioner McClain-Hill has raised on the revetment, and
13 also on the issue of the grading.

14 In San Diego, in October, I was trying to persuade
15 and push the developer, like staff, to move back, and move
16 the revetment back so, in fact, that could alleviate some of
17 the grading in the strand area. Problem is, now, from all of
18 the evidence, from the speakers, and from the analysis that I
19 have looked at, and from Dr. Johnsson's comments, too, I
20 guess what I am concerned about, because of the revetment
21 issue, is that to me, by merely we ask them to move the
22 revetment back, it still is in the existing footprint. It is
23 the same size and height. And, it is the same material.

24 And, what I understand, by looking at this, and
25 the representations I've gotten from different people, merely

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1 the fact of picking up a rock and repositioning it, and
2 moving it into a structural position to protect the slope, I
3 have some concern, because I do believe in Encinitas, back in
4 September, we made a decision with a revetment that was
5 almost 2500-feet long, and we did a very similar thing.

6 I believe we have to be very careful here, if not,
7 the developer could do not what I was suggesting by moving
8 the revetment back, picking up more beach, and helping --
9 doing what the Surfriders and other people wanted to do, they
10 could just keep it in its place, move the rocks around, and
11 have the same thing.

12 I don't want to punish somebody, and to me to call
13 this new construction now, I do not believe we can leap to
14 that from the mere fact of picking up rocks, salvaging those
15 rocks, and putting them back in the same place, in an area,
16 because I've asked them to move it back.

17 And, the issue of the grading, which affects the
18 revetment, is a concern that I've always wanted to get it
19 back as far as possible, but now that I study this, the
20 problem is, as you take out all of the million cubic yards of
21 this landslide area, and you unload the thing, the further
22 you push it back, the lighter you get the anchor, the weight
23 of holding back the rest of the slope. I wanted to see some
24 lots removed off of that strand area.

25 The problem I see now is a construction constraint

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1 problem, and a safety issue, too, because when you do that,
2 you destabilize the slope, because you have less weight,
3 simply said, to anchor the upper slope, plus, as we push it
4 back, and push it higher, we create a bigger slope from the
5 revetment, and what it does is it creates a bigger -- it
6 makes the road make the angle and the road descention may be
7 over 15 percent. It creates a lot of problems.

8 And, the biggest problem is, even moving this back
9 5 or 10 feet, it is going to, probably, take another 50,000
10 yards to move up into the bowl area. The problem we've got
11 here is that with this site, to keep all of this balance,
12 what you don't want to do is have to export a half a million
13 yards, or 3,000 truck loads -- talk about an EIR problem, or
14 environmental problem, you've got to keep it on the site.

15 So, common sense tells me I would love to have it
16 more than 10 feet, but I don't know anything that has been
17 shown to me yet that it can go greater than 10 feet. So, I
18 think that my original idea was a good one, but unfortunately
19 it creates a lot of other problems, and I think we've got to
20 be very careful with this, calling this new development. I
21 really don't want to do that, because then it is just going
22 to create other problems, and I think we have used -- it is
23 not more than 50 percent more new material.

24 And, Section 13252(b) dictates that the
25 replacement of more than 50 percent of existing materials

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1 constitutes new construction. Let's not try to create new
2 construction here, when I begged them to move the revetment
3 back -- and they are using most of all of the same material,
4 maybe only 20 percent the same material -- I think we create
5 a problem.

6 So, I lean with what Commissioner McClain-Hill
7 said, and I think we have got to be very, very careful, you
8 know, we are really creating an imbalance here that is really
9 going to create a lot more problems.

10 CHAIR REILLY: Commissioner Iseman.

11 COMMISSIONER ISEMAN: I think one of the speakers,
12 Don Low, was the one who said no good deed goes unpunished,
13 and when you create an additional .2 of an acre of beach,
14 with an existing revetment, it seems that the developer was
15 moving forward with a solution.

16 The initial discussion we had in October, the
17 Coastal Commission staff was recommending a new seawall, and
18 now we are having a problem with an old revetment. So, I
19 would just go along with the previous statements, and support
20 of the revised old revetment.

21 CHAIR REILLY: Commissioner Orr.

22 COMMISSIONER ORR: Thank you.

23 I am afraid that I am going to have to not quite
24 follow your instructions, because I think I need to go back a
25 couple of steps, because I think all of these things are sort

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1 of interlocked.

2 I will say a couple of things about the revetment.
3 I mean, one is, I guess I am persuaded that it is a new
4 development, but I think, as also was said by staff at some
5 point, there is also -- the question for me is why is it
6 being done? And, it is being done, it seems to me,
7 specifically to support new development. There is not a
8 proposal -- no one would be before us suggesting the
9 rebuilding, repair, reconstruction, whatever you want to call
10 it of this, but for the fact that a bunch of new housing is
11 to go there, and in the staff report it is pointed out that
12 there are certain elements that are purportedly protected by
13 this, but they are the very elements that are going to be
14 torn down in order to make way for the new housing.

15 But, to me the bigger point here, and I think
16 staff has done an excellent job, but my own view is that they
17 have compromised too much. I find us being told that we
18 should put 3.75 acres of non-ESHA development --

19 UNIDENTIFIED SPEAKER: [Comment not on microphone]

20 COMMISSIONER ORR: Yes, I know I am, thank you,
21 but in order to explain -- because I think the strand drives
22 the amount of grading, which then says we've got to put so
23 many million cubic -- or a million cubic yards of stuff
24 somewhere, and therefore where are we going to put it in
25 ESHA?

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1 And, then, I get kind of a balancing thing that I
2 don't think is any way I've ever seen the Commission called
3 on to balance before, where we are not balancing among
4 Chapter 3 policies. We are being asked to balance against
5 reasonable investment expectations.

6 I think Commissioner Wan will probably say, "Where
7 do we have any information about that, from a financial
8 standpoint?"

9 But, I agree with every speaker who said that
10 there are ways to put a perfectly profitable project on this
11 site without going into a single square foot of ESHA, and
12 that being the case, I can't find myself voting -- so, I
13 guess I am going off of the point a bit to say that I see
14 these things as all kind of interrelated, and if somebody is
15 telling me that I need to vote "Yes" on the revetment, as
16 revised by the city, I've got a problem with that whole
17 premise that you start with, we need to move the stuff
18 around, and we need to some how invade ESHA in order to give
19 value to this project. I just don't believe that is true.

20 CHAIR REILLY: Commissioner Wan.

21 COMMISSIONER WAN: I think Commissioner Orr has
22 said it quite well. This is one of the things that is
23 driving this project, and this project -- and I do have to
24 talk about this in the overall sense, and then I also want to
25 talk about some of the specifics in these three pages that we

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1 are talking about.

2 Staff, in an attempt, I think, to try to
3 compromise has put us in this position where we are making
4 compromises to try to somehow find a way to approve a project
5 that has so many inconsistencies with the Coastal Act that
6 you can't do it, except to go to what Commissioner Orr was
7 talking about.

8 And, there is just a totally untenable balancing,
9 balancing based on a staff letter that supposedly binds this
10 Commission? I would like to hear from any city or county
11 that would say that they think that they ought to be bound by
12 what a letter from one of their staff says, or that prior
13 planning, somehow, is an entitlement. The prior planning
14 didn't give them any entitlements. Your standard of review
15 today is the Coastal Act. And, frankly, even the staff
16 report has allowed inconsistencies with the Coastal Act.

17 And, when we get to the ESHA I'll go into those
18 details with the ESHA, but I don't buy the city's theory
19 about the seawall, not at all. I think staff is absolutely
20 correct, in their analysis, and the only reason they have to
21 allow it is because they want to go down this balancing path
22 where they have decided to give too much.

23 But, I should point out, relative to the specific
24 amendment in front of us, that these pages contain -- pages
25 11, 12, and 13, contain changes that are very complex. It is

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1 not simply saying that this seawall is repair and main-
2 tenance.

3 And, I'll go to, for example, on page 13, 63, they
4 delete the policy, you know, of siting and design of new
5 shoreline development, and they say:

6 "The reference studies and analysis have
7 been completed in the certified project
8 EIR, and in additional technical reports
9 provided to coastal staff as part of the
10 LCP Amendment approval. Further studies
11 subject to staff analysis usurp local agency
12 control and are not required pursuant to
13 the Coastal Act. Proposed studies are
14 redundant and are merely a means to restrict
15 or prevent implementation of the Land Use Plan."

16 By agreeing to this, we are basically saying that
17 when a city does an EIR, our staff is not entitled to do its
18 own investigation, and analysis, and report to this
19 Commission. That goes beyond even this project. That is a
20 totally untenable statement, and this Commission is wholesale
21 accepting this kind of analysis. It is just plain wrong, and
22 these three pages are loaded with that kind of deletions and
23 analysis.

24 And, don't make any mistake, Commissioner Orr is
25 correct. The purpose of this seawall is not to protect the

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1 beach, it is to provide the ability to put in new houses and
2 that is fundamentally inconsistent with the Coastal Act.

3 CHAIR REILLY: Commissioner Woolley, then
4 Commissioner Peters.

5 COMMISSIONER WOOLLEY: Thank you, Mr. Chairman.

6 Since I have been able to spend some time in
7 reading the particular sections dealing with the revetment,
8 and also having spoken to the applicant, and seeing the
9 photograph, the computer simulation of where the revetment
10 would be moved to, and then reading the regulation one more
11 time, and particularly in the staff report under land use
12 findings, pages 123 through 124, I think the principle of the
13 issue, for me, is still difficult to get to. That is, I
14 can't really define this is repair and maintenance, at this
15 point. That is the problem I'm having.

16 By the new design, and by the way the language
17 reads, we are, essentially constructing a new revetment, and
18 it is done for the purposes of some of the geological
19 findings that were noted by staff, but also for the ultimate
20 new development up on the slope.

21 So, that, to me -- unfortunately, though, I know
22 the applicant would like us to think in the terms of making
23 it better, it still is not repair and maintenance. It is
24 construction of a new revetment. And, I don't know how we
25 can call it anything but that, at this point.

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1 Listening to all of the testimony, trying to get
2 to the point of repair and maintenance, that is why I can't
3 accept the amendment, and it also may start to unravel some
4 of the other things that we have in front of us.

5 Thank you, Mr. Chairman.

6 CHAIR REILLY: Commissioner Peters.

7 COMMISSIONER PETERS: The problem I have with this
8 project is the revetment, but I am not sure that this motion
9 is what I am concerned about. It does look like using old
10 materials to make a new seawall. It looks like to me that is
11 what we are doing.

12 But, I think I also thought, you know,
13 Commissioner Kruer's comment was correct, too. In a way you
14 don't want sort of a perverse result that if you leave it
15 here, it is existing, but if you move it inland it is not.

16 So, I guess my concern, mostly, on the revetment
17 is the evidentiary one raised by Dr. Johnsson, which is that
18 on a project of this magnitude, where the revetment could
19 have so much affect on the beach, the character of the beach,
20 talk about the setbacks, all of those questions haven't been
21 answered for me. I am not sure that this motion is relevant
22 to that.

23 I have a problem with the revetment, because in a
24 project of this magnitude, with all of the money that is
25 being spent, and the significance of it, I don't think it is

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1 at all unreasonable to get that intermediate grading plan
2 that Dr. Johnsson talked about, and that is my concern about
3 the revetment.

4 I am a little less concerned about this motion,
5 as really being fundamental to my opposition to the
6 revetment.

7 CHAIR REILLY: Let me ask staff.

8 Peter, you said something earlier, that even if
9 the Commission found that the proposed work on the revetment
10 did meet the criteria of repair and maintenance, it was of a
11 level of significance where it would require a CDP, so it
12 didn't make any difference. So, could you explain what you
13 meant by that, because I didn't fully understand that.

14 EXECUTIVE DIRECTOR DOUGLAS: First of all, I want
15 to clarify that by virtue of moving the wall back the number
16 of feet that the applicant did, which was in response to
17 Commissioner comments, and we applaud them for doing that,
18 from our perspective that doesn't make any difference, in
19 terms of whether it is a new seawall, or not.

20 We said that, even in the previous alignment, we
21 considered it a new seawall because of the manner of the
22 construction, and the way that they are going to go about
23 putting it in to engineer it to support new development.

24 But, the point that I was making -- and you might
25 want to ask legal counsel to explain further -- is the

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1 question of whether or not it is repair of maintenance really
2 goes to the question of whether or not it is exempt from
3 permit requirements. This clearly is subject to permit
4 requirements, so it still has to be found to be consistent
5 with Chapter 3 policies, and that is a finding you would have
6 to make, irrespective of whether it is --

7 CHAIR REILLY: Well, I guess --

8 EXECUTIVE DIRECTOR DOUGLAS: -- new or repair and
9 maintenance.

10 CHAIR REILLY: -- my question is, do Chapter 3
11 policies deal with the repair and maintenance of an existing
12 seawall in a manner different than you would deal with a new
13 seawall that was built for new development?

14 EXECUTIVE DIRECTOR DOUGLAS: Well, Ralph may want
15 to jump into this, but the whole purpose of repairing, if it
16 is repair, is to permit new development -- or to protect new
17 development, so you would still have to see -- and I would
18 ask Ralph to help on this -- whether or not, if you call it
19 repair and maintenance, given the amount of work that is
20 going to be done here, and what it is for, whether that is
21 consistent with the Coastal Act?

22 COMMISSIONER ORR: Mr. Chair, I just wanted to --

23 CHAIR REILLY: Commissioner Orr, let's go to
24 counsel here, for a moment.

25 COMMISSIONER ORR: Yeah, I wanted to try to frame

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1 the question, as I think what we are trying to ask -- and
2 someone else correct me if I am wrong -- is given that this
3 is an activity that needs a permit, in one way or another --
4 well, that is what I thought -- at in any rate, in deciding
5 whether to approve either as a reconstructed -- whatever you
6 call it -- seawall, and in measuring that decision against
7 Chapter 3 policies, do we look, in making that decision, do
8 we properly look first at what the purpose of the either new
9 structure, or the repaired structure, is?

10 [Pause in proceedings.]

11 In other words, does the question of purpose
12 precede, if we decide that the purpose of this is for new
13 development, seawalls are not to protect new development,
14 does that, then, lead to the conclusion that it is a
15 violation of Chapter 3 policies to approve it either as new
16 construction, or as a repair?

17 CHAIR REILLY: Counsel.

18 CHIEF COUNSEL FAUST: Yes, thank you, Mr.
19 Chairman. Let me step back a second, and I hope that I can
20 -- well, I will try to clarify what I think is before you.

21 I think that part of the difficulty here is that
22 repair and maintenance is being used in several different
23 ways -- the words, themselves. On the one hand, there is an
24 old revetment on this beach, and when someone is doing work
25 upon it, and starts out with an old revetment, and is going

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1 to end up with a new revetment, it seems fair, I think, at
2 least to the proponents, to call that activity repair and
3 maintenance of an existing seawall.

4 That is to be distinguished, however, in the
5 ordinary human terms, or in equitable terms, from the words
6 repair and maintenance as a term of art used in Section 30610
7 of the Coastal Act. The repair and maintenance concept that
8 is contained in 30610 of the Coastal Act is an exemption from
9 the permit requirements, coastal development permit require-
10 ments that are contained in the Coastal Act.

11 And, the statute in Section 30610 provides that
12 repair and maintenance activities, under certain
13 circumstances are exempt from coastal development permitting
14 requirements. It also provides that in certain circumstances
15 where the Commission identifies by regulation circumstances
16 where there is a significant environmental impact that the
17 Commission shall provide, or may provide, that a coastal
18 development permit is required. That was in the original
19 legislation.

20 This Commission responded to that legislation by
21 adopting regulations, the repair and maintenance regulations
22 are contained in Section 13252 of your regulations, and those
23 regulations lay out the exceptions to that exemption require-
24 ment. One of those was cited a moment ago by one of the
25 Commissioners, and that is Section 13252(b) that talks about

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1 the replacement of 50 percent, or more, of -- among other
2 things -- a revetment, and that anything that constitutes
3 replacement of 50 percent, or more, is not repair and
4 maintenance, but instead constitutes new development.

5 However, Section 13252(a) also creates certain
6 exceptions to the exemption, and those exceptions include
7 where the project is identifies and involves a risk of
8 substantial adverse environmental impact. In (a)(1) it talks
9 about any method of repair and maintenance of a revetment
10 that involves substantial alteration of a foundation,
11 protective work, or placement of riprap, artificial berms of
12 sand, et cetera, et cetera, or among other things presence,
13 whether temporary or permanent, of mechanized construction
14 equipment or construction materials on any sand area.

15 In Subsection (a)(2) it involves -- I'll stop
16 there, excuse me.

17 So, there are other -- so, what I want to say is
18 there are other examples of things that it could be argued
19 take it out of the exemption. So, one thing here is whether,
20 as a term of art, this is exempt from permit requirements.
21 And, what Mr. Douglas is saying, and what your staff report
22 says, is that even though they may be, in their minds -- the
23 applicants' -- repairing and maintaining an existing seawall,
24 that seawall is not exempt from coastal development permit
25 requirements under the Coastal Act.

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1 The second thing that I think is important to
2 discuss here is the differences between what is before you
3 today, which is an LCP amendment, and a coastal development
4 permit.

5 The Section 30610, and the various arguments about
6 whether subject to a permit or not, involve, of course,
7 permit requirements. What the suggested modifications that
8 the present motion on the floor deals with have to do with
9 information requirements for all applications for new
10 development on a beach, beach front, bluff or bluff top
11 property in the headlands area.

12 It may well be that there is no other possibility,
13 ever, under any conceivable circumstance, of any new develop-
14 ment in those areas, other than this existing revetment being
15 reconstructed.

16 But, I think it is fair to point out that those
17 policies are, on their face, intended to cover more ground
18 than simply the reconstruction of this existing revetment.

19 So, I would say, subsequently, that even if you
20 disagree with staff's interpretation of the repair and
21 maintenance provisions of the statutes, if what you are
22 objective is, is to exempt this particular seawall from
23 future permitting requirements, because you believe it is
24 exempt, I would suggest that you not do so in such a broad
25 based manner, but rather provide a specific exemption for

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1 this seawall, and continue to maintain the more general
2 requirements that would then apply to any other development
3 that may be proposed at any future time under the certified
4 LCP.

5 So, I hope that is helpful, Mr. Chairman. Those
6 would be the two comments that I would have at this time.

7 CHAIR REILLY: I think it is helpful, and I think
8 that citing the other areas of exclusion from exemption is
9 also helpful.

10 If the determination were to be that this is a
11 repair and maintenance, but it still triggers those
12 provisions that would make it subject to coastal development
13 permit, under the category of repair and maintenance, how do
14 we view that differently than we would view a proposal under
15 a CDP for a new seawall?

16 CHIEF COUNSEL FAUST: If you were dealing with --
17 and it is easy to talk about this in terms of if you were
18 dealing with a permit that was before you-- and then we can
19 back track and talk about the applicability of the LCP -- but
20 if you were dealing with a permit that is before you, once
21 it was subject to the permit requirements, you would then
22 apply whatever the applicable policies are for approval of
23 the permit. There may be a certified LCP. In some
24 instances, it may be your Chapter 3 policies, where there
25 either is no certified jurisdiction, or where it is in the

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1 area of your original jurisdiction.

2 Once it is subject to permit requirements, there
3 is nothing about it being repair and maintenance activity,
4 takes it out of the applicability of whatever the appropriate
5 standard you usually use.

6 I am not sure I answered your full question, Mr.
7 Chair.

8 CHAIR REILLY: Well, I am not, either.

9 EXECUTIVE DIRECTOR DOUGLAS: Let me try this.

10 If I could supplement that, one of the other
11 realities is that if it is a permit, even if it is repair and
12 maintenance, but it is determined to require a permit, then
13 you do have to use Chapter 3 policies and you have to look at
14 the purpose for it. I don't think you can avoid that. I
15 think, at that point, you look at the question of why is this
16 development, that is repair and maintenance, in a general
17 sense, but still requires a coastal permit, how is it
18 consistent with the Coastal Act?

19 And, if it were just to bring back the rocks that
20 had migrated on the beach, that is one thing. If it is
21 intended to provide stability to allow new development, I
22 think that is a factor that has to be taken into account.

23 CHAIR REILLY: Commissioner Burke.

24 COMMISSIONER BURKE: I understand everything you
25 have said, and it really makes me think I need a therapy

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1 session.

2 But, here is -- you see, I have got to have Trent,
3 and Woolley, and Sara explain to me later why, you know, they
4 see this as new construction.

5 Say, we didn't require them to move it 5 feet, and
6 they just brought in the rocks, then that is repair and
7 maintenance, right? no, that is new construction.

8 EXECUTIVE DIRECTOR DOUGLAS: That's right, from
9 our perspective, it would still be new construction, because
10 they are actually going down to the foundation, and redoing
11 the whole thing.

12 COMMISSIONER BURKE: Okay, I don't agree with
13 that, but let me go a step further.

14 Then if -- who made the motion?

15 COMMISSIONER HART: I did.

16 COMMISSIONER BURKE: Okay, if Gregg made the
17 motion on Tuesday, if Gregg made the motion, and he made it
18 more specific, as Ralph indicated, that it was only repair
19 and maintenance on this revetment for what is currently being
20 considered, then they would be exempt from getting another
21 permit, right?

22 EXECUTIVE DIRECTOR DOUGLAS: Counsel may want to
23 respond to that, but certainly in terms of making it more
24 specific, I think that is a good idea, but whether or not it
25 exempts it from a permit requirement --

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1 COMMISSIONER BURKE: Well, what exempts it?

2 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

3 COMMISSIONER BURKE: What exempts it?

4 EXECUTIVE DIRECTOR DOUGLAS: Well, you have
5 regulations --

6 COMMISSIONER BURKE: Because, you see, what I am
7 trying to figure out is, if I am voting on this revetment
8 now, you know, I am going to make half of the people mad, and
9 half of the people happy, and I don't want to make half of
10 the people mad, and half of the people happy, and then have
11 to come back and vote on it in three months, and make the
12 other half mad, and the other half happy, you know, if
13 somebody is going to be angry with me tonight, I want to get
14 it over with, so, I mean, you know.

15 COMMISSIONER HART: This sounds a lot like
16 yesterday.

17 COMMISSIONER BURKE: Right, and so, you know, I
18 need some, you know, some intellectual --

19 Ralph, help me out here. Go down, go in your bag
20 there, and say, you know, if you say this, now, you know,
21 they may not want to do this. I am just, you know, I am
22 talking about -- I don't even know if this thing is going to
23 pass, but if it did pass, there obviously is some method by
24 which you can exempt this revetment. I am just asking how
25 you do that?

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1 CHIEF COUNSEL FAUST: Through the Chair,
2 Commissioner Burke, the issue, I think, is what the method or
3 standard of approvability would be if you were going to allow
4 the reconstruction of this revetment.

5 The staff report that was presented to you offers
6 what I guess I would say is a comprehensive theory that, in
7 its entirety, includes the approval of a shoreline protective
8 device in this area. It does not embrace the repair and
9 maintenance theory that was offered up by the city, and I
10 believe the applicants, and without going into detail on
11 that, and I think if we were going to go into detail, it
12 would probably be more appropriate to go into closed session
13 to discuss this --

14 COMMISSIONER MC CLAIN-HILL: Is it possible to do
15 that?

16 CHAIR REILLY: Pardon me?

17 COMMISSIONER MC CLAIN-HILL: Is it possible to go
18 into closed session to have some part of this discussion?

19 CHAIR REILLY: It is possible, but let's have
20 counsel complete his response.

21 COMMISSIONER MC CLAIN-HILL: Okay.

22 CHIEF COUNSEL FAUST: Just to finish the thought,
23 Mr. Chairman, I would just state the conclusion, and the
24 conclusion was that it was your staff's conclusion, and that
25 included your legal staff, that the theory that is offered in

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1 the staff report is a more defensible theory for the
2 Commission's conclusion than one that rests the approval of
3 the reconstruction of the revetment upon a repair and
4 maintenance theory. And, that is why it was presented in the
5 way that it is.

6 EXECUTIVE DIRECTOR DOUGLAS: Well, if I may,
7 Commissioner Burke asked a question -- this is the chief
8 counsel -- and the question, as I understood it, was if you
9 determine that it is repair and maintenance, in the context
10 --

11 COMMISSIONER BURKE: Is there a way --

12 EXECUTIVE DIRECTOR DOUGLAS: -- of the LCP, does
13 that --

14 COMMISSIONER BURKE: No, not does that. Is there
15 a way --

16 EXECUTIVE DIRECTOR DOUGLAS: Right.

17 COMMISSIONER BURKE: -- that the motion can be
18 framed that negates the possibility of them having to get a
19 permit?

20 EXECUTIVE DIRECTOR DOUGLAS: When it comes in for
21 a CDP at the local level, under the LCP, and that is a
22 question that I have, too, because we haven't analyzed that.

23 COMMISSIONER BURKE: That is obviously the
24 question.

25 EXECUTIVE DIRECTOR DOUGLAS: Right.

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1 COMMISSIONER BURKE: Because I never want to see
2 this again, in life.

3 CHIEF COUNSEL FAUST: Well, technically, to
4 achieve what I think that Commissioner Hart wanted to achieve
5 -- or I thought Commissioner Hart wanted to achieve in his
6 motion, to exempt the reconstruction of this revetment from
7 the permit requirements, coastal development permit require-
8 ments, yes, it can be technically achieved.

9 And, the way to do that would be to simply
10 provide, probably in a new suggested modification, that any
11 reconstruction of this particular revetment would be exempt
12 from coastal development permit requirements. So,
13 technically, the answer to your question is, "Yes."

14 The reason that I said something else in addition
15 to that is that -- and this may be the time, if the
16 Commission chooses, to go into closed session -- that there
17 are questions about the sustainability of that action in
18 future litigation, if future litigation were to occur.

19 But, technically, yes, it can be done. We can
20 write a motion that would exempt that from coastal develop-
21 ment permit requirements.

22 CHAIR REILLY: So, if I hear counsel correctly,
23 the response is that the net sum of the staff recommendation
24 is to allow the modifications to that revetment, and it is
25 done in a manner that staff and legal counsel feels puts the

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1 Commission on the strongest possible grounds, is that
2 correct?

3 CHIEF COUNSEL FAUST: Mr. Chairman, I think it is
4 probably best if we go into closed session.

5 CHAIR REILLY: All right.

6 We will need to go into closed session with our
7 counsel. The time is 7:00 o'clock. I am going to have us
8 take a five minute break, and then we will come back in and
9 the Commission will be in closed session with their counsel.

10 And, we are going to have to ask people to go
11 outside during that time period.

12 [Closed Session Held]

13 CHAIR REILLY: All right, we will reconvene, and
14 go to counsel for a report on closed session.

15 CHIEF COUNSEL FAUST: Yes, thank you, Mr.
16 Chairman.

17 In closed session, the Commission discussed and
18 received advice from its counsel with respect to the legal
19 issues and the potential litigation involved in the Dana
20 Point Headlands matter. And, after conferring and receiving
21 advice from its counsel, took no further action.

22 That concludes my report on closed session.

23 CHAIR REILLY: Thank you, so we will bring it back
24 to the Commission for discussion.

25 Commissioner Hart.

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1 [MOTION]

2 COMMISSIONER HART: Yes, Mr. Chair, I would like
3 to withdraw the previous motion, and instead add a suggested
4 modification that would define this revetment, the proposal
5 by the applicant for the revetment, to be a repair and
6 maintenance project, and then I would ask staff to spend some
7 time drafting language that would reflect the right words to
8 make that happen.

9 COMMISSIONER ISEMAN: Second.

10 CHAIR REILLY: Moved by Commissioner Hart,
11 seconded by Commissioner Iseman, to direct staff to develop
12 the required policy language to characterize the changes to
13 the revetment proposed by the city as qualifying under the
14 repair and maintenance category.

15 Is that correct?

16 COMMISSIONER HART: Yes, sir, thank you.

17 CHAIR REILLY: Okay, is there discussion.

18 Commissioner Wan.

19 COMMISSIONER WAN: The only discussion is that I
20 am certainly not going to agree that this is, in any way,
21 that. You go to any definition that we have ever used, in
22 any other examples, this is not repair and maintenance. This
23 is an attempt to legalize something that shouldn't be
24 approved.

25 [Audience Reaction]

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1 CHAIR REILLY: I am going to ask you not to do
2 that, please.

3 If there is no further discussion, the maker of
4 the motion is asking for a "Yes" vote.

5 Will the secretary please call the roll.

6 SECRETARY GOEHLER: Commissioner Hart?

7 COMMISSIONER HART: Yes.

8 SECRETARY GOEHLER: Commissioner Iseman?

9 COMMISSIONER ISEMAN: Yes.

10 SECRETARY GOEHLER: Commissioner Kruer?

11 COMMISSIONER KRUER: Yes.

12 SECRETARY GOEHLER: Commissioner McClain-Hill?

13 COMMISSIONER MC CLAIN-HILL: Yes.

14 SECRETARY GOEHLER: Commissioner Orr?

15 COMMISSIONER ORR: No.

16 SECRETARY GOEHLER: Commissioner Nichols?

17 COMMISSIONER NICHOLS: Yes, based on the previous
18 earlier discussions.

19 SECRETARY GOEHLER: Commissioner Peters?

20 COMMISSIONER POTTER: Yes.

21 SECRETARY GOEHLER: Commissioner Potter?

22 COMMISSIONER POTTER: Aye.

23 SECRETARY GOEHLER: Commissioner Wan?

24 COMMISSIONER WAN: No.

25 SECRETARY GOEHLER: Commissioner Woolley?

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1 COMMISSIONER WOOLLEY: No.

2 SECRETARY GOEHLER: Commissioner Burke?

3 COMMISSIONER BURKE: Yes.

4 SECRETARY GOEHLER: Chairman Reilly?

5 CHAIR REILLY: Yes.

6 SECRETARY GOEHLER: Nine, three.

7 CHAIR REILLY: All right.

8 Commissioner Nichols, did you have a matter you
9 wanted to raise?

10 COMMISSIONER NICHOLS: No, I am sorry. I was
11 going to speak on the earlier motion.

12 [Pause in proceedings.]

13 Oh, I am sorry, if we are moving forward to other
14 topics here?

15 CHAIR REILLY: Yes.

16 COMMISSIONER NICHOLS: I apologize, my second
17 meeting of the Commission, so I am still learning the ropes
18 here.

19 I wanted to raise the issue of the balancing that
20 was proposed for dealing with the ESHA matter, and the
21 ongoing dispute with the City of Dana Point, and their
22 biologist, and the applicant's biologist, over the issue of
23 where the ESHA is located on the Dana Point Headlands, and I
24 wanted to make the point that I am, clearly, not in sympathy
25 with the view that simply because the NCCP didn't include

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1 land that that mean that it doesn't contain ESHA. That
2 cannot be correct.

3 And, I was pleased to hear the Department of Fish
4 and Game representative agree that the NCCP simply didn't
5 deal with the question of ESHA.

6 However, I am troubled by the definition of the
7 ESHA, and the balancing that is proposed as the method for
8 the staff recommending the construction of the hotel on the
9 site that is proposed for it, because I just don't think that
10 if something is really ESHA, that it is really okay to
11 destroy it.

12 And, my concern is that having, you know, done an
13 extremely cursory overview of having seen the area, it seemed
14 to me that there were, clearly, some portions of this site
15 that were, while still coastal sage scrub, not ESHA, and at
16 the same time, the developer is, as part of the overall
17 development here, proposing a very considerable increase in
18 the amount of protection that is being offered in the
19 conservation reserve, with the long term maintenance that is
20 provided for that, that goes not only beyond anything that
21 could have happened with the NCCP, but really represents
22 something beyond what the state is doing in many instances,
23 with land that we own, and are trying to preserve.

24 And, so my question really is how we can maintain
25 and designate the most important areas without having to

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1 simply find that everywhere there is coastal sage scrub that
2 that constitutes ESHA because as I felt at the time that I
3 was looking at this stuff from the position of the Resources
4 Agency, it is pretty clear that every section of the coast of
5 California, that isn't paved, could be defined as ESHA, under
6 a very reasonable definition of ESHA, because every single
7 bit of it is environmentally sensitive, and every single bit
8 of it is habitat for something.

9 There is nothing wrong with that fact. It is a
10 true and important fact, but it isn't helpful when you are
11 trying to deal with specific projects, which in some cases
12 may even enhance the value of habitat area.

13 So, I am really turning to the staff to ask them
14 whether there is an alternative way to deal with this issue
15 that would draw the line around the areas that are
16 contiguous, that are going to be capable of being maintained
17 and preserved without having to go through this process that
18 is proposed here?

19 EXECUTIVE DIRECTOR DOUGLAS: If I may try to
20 respond to that, in terms of how the Commission designates
21 ESHA, we have a long history, and a rather disciplined, I
22 think, approach to it that Dr. Dixon has presented in work-
23 shops before the Commission, and in presentations and
24 analysis on how you determine what is ESHA, and I beg to
25 differ on the question that you can call everything ESHA that

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1 has habitat value. You can't, not the way that we apply the
2 ESHA determinations. So, that is one thing.

3 You can, looking at the evidence before you, you
4 could determine that portions of this are not ESHA, that John
5 has identified, and has mapped as ESHA area. Our approach,
6 and the recommendation for the 3.-some acres of incursion,
7 was to use the balancing provision, the hybrid balancing
8 approach, to allow that.

9 If you take that approach, you could decide under
10 that approach, that the additional area where the hotel is
11 being proposed -- which we are not recommending -- but, if
12 you chose to do that you could do that. There is nothing
13 that limits you from saying that only 3.-some acres of ESHA
14 can be permitted for development using the balancing clause.

15 So, that is one other way that you could approach
16 it.

17 COMMISSIONER NICHOLS: Well, I think, Mr. Douglas,
18 I didn't mean to get into an argument with you about the
19 extremes of the definition of ESHA, and I agree that the
20 Commission has developed a record, over time, of what they
21 have designated, and they certainly haven't designated every
22 piece of the coast as ESHA, so I wasn't trying to suggest
23 that that is what had happened.

24 I was making sort of a grandiose comment there,
25 because I do think that, as we did last month, in the case of

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1 the Monterey Community Hospital, the Commission has looked at
2 biological evidence and made decisions that some things that
3 could have been defined as ESHA, you know, with all due
4 respect to our staff, we just weren't going to go as far as
5 the staff had wanted to take us in defining ESHA.

6 With the permission of the Chair, I would like to
7 ask the biologist for the applicant, if they would care to
8 comment on where the areas of disagreement are, if we still
9 have a biologist present who can comment on this? We do.

10 CHAIR REILLY: Well, and just while he is coming
11 up here, Commissioner, we've had, I think, substantial
12 testimony and evidence submitted by the city and the
13 developer in this case, you know, in contention with staff's
14 definition, and stuff, so that is also part of the record.

15 But, go ahead, sir.

16 MR. MOCK: Dr. Patrick Mock, I think the main
17 focus of this site is the pocket mouse area. I think that is
18 undisputed, and that is the area that is part of the con-
19 servation park.

20 The viability of the remainder of the site is
21 going to be totally dependent on the level of effort for
22 habitat management, and it is the slivering off of 3 or 6
23 acres here or there is not going to change the outcome of
24 that, without that management plan.

25 So, the main thing is whatever habitat is

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1 ultimately conserved, needs to be managed very intensively
2 because of the edge effects.

3 The main concern about designating ESHA in areas
4 that are marginal, and just barely make the threshold for
5 defining even sage scrub -- typically, we define sage scrub
6 on the order of 15 to 30 percent cover of sage scrub species.
7 The harbor park area, where the lighthouse is barely makes
8 that in certain parts. There is a lot of it that is bare
9 ground, or dominated by non-native vegetation, with minimal
10 sage scrub species on it.

11 The same with the ESHA associated with the strand.
12 The majority of that area is dominated by ice plant, and then
13 there are these little tiny patches here and there --

14 COMMISSIONER NICHOLS: That is what I saw that
15 caused me to --

16 MR. MOCK: -- and there just happens to be a gnat-
17 catcher siting there through the years, but it is not
18 sufficient to rise it to the level of ESHA.

19 COMMISSIONER NICHOLS: So, your contention is that
20 none of the site, other than the area that is being
21 protected, is ESHA?

22 MR. MOCK: Well, I think it is reasonable, because
23 that is where the key resource, regional resource, of where
24 the pocket mouse is, is reasonable.

25 All of the other sensitive species out there are

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1 one or two individuals, with the exception of the gnat-
2 catcher, and the dudleya. The dudleya, under the current
3 proposal, is completely conserved, with maybe one or two
4 individuals being allowed to be translocated to get out of an
5 easement, or a fuel modification zone.

6 But, by far, the most sensitive areas, the most
7 heavily occupied areas with sensitive species are in open
8 space in the current proposal.

9 COMMISSIONER NICHOLS: And, specifically, with
10 respect to the proposed hotel site, then, your contention is
11 that that is not ESHA?

12 MR. MOCK: Well, it has sage scrub on it. It is
13 used by gnatcatchers, but with the restoration program that
14 is being proposed, that will mitigate that loss of that
15 habitat, so that the net result is the carrying capacity of
16 the site is going to be, essentially, the same because of the
17 restoration program and the habitat management program that
18 is being proposed.

19 COMMISSIONER NICHOLS: Well, I think we don't
20 want, essentially, the same. I think we want the same, or
21 better, and the status quo is not good enough.

22 One of the things I wanted to ask you about, if
23 you are familiar with the recommendations of the Endangered
24 Habitat League, they have called for three additional
25 protections to be included in the plan, which would be

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1 implementing the conservation plan, prior to construction
2 beginning, moving the road to protect the dudleya area
3 further, and there was one other with relationship to
4 implementing the plan -- I don't have that in front of me, at
5 the moment.

6 MR. MOCK: All of those are minor adjustments
7 that, from an engineering point of view, I have to defer to
8 the planners, in that regard, but we are talking about very,
9 very small areas of contention here that don't rise to the
10 level of concern that should make or break this decision.

11 COMMISSIONER NICHOLS: But, I mean, I think that
12 this is really, to me, the key as to whether we are
13 implementing the Coastal Act, or not, is whether we are
14 following the law, with respect to how we deal with ESHA, and
15 there is an issue about that, whether you just say, "Yeah,
16 everything is ESHA," or does this have a definition of things
17 that include areas that are not viable, or whether you go for
18 a program that actually maintains and improves viability?

19 MR. MOCK: Well, that is where the habitat
20 management program is critical, because if you don't have
21 that, the viability isn't going to happen.

22 COMMISSIONER NICHOLS: All right, okay.

23 CHAIR REILLY: All right --

24 COMMISSIONER NICHOLS: That answers my question,
25 thank you.

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1 CHAIR REILLY: -- let's go to --

2 Are you through, for now, Commissioner?

3 COMMISSIONER NICHOLS: Yes.

4 CHAIR REILLY: All right, go to Commissioner
5 McClain-Hill, and then Commissioner Orr.

6 COMMISSIONER MC CLAIN-HILL: Actually, for me,
7 this one is a little easier, than the next one.

8 Basically, as you know, having both walked the
9 site, which is substantially different than looking at the
10 pictures that paint everything green, or yellow, or red, or
11 whatever, when you walk the site you get a very clear view of
12 what is on the ground.

13 And, having spent a good deal of time at this
14 Commission listening to, and working through evaluations
15 relative to ESHA, including work shops around Malibu on the
16 whole issue of all of the many factors that are used to
17 determine whether or not at the end of the day, a particular
18 habitat is going to be designated ESHA, and taking into
19 consideration the management plan which has been prepared
20 here -- and I appreciate, and in fact, for me, it is not
21 significant that, you know, when they say they didn't make an
22 ESHA determination, I mean, I understand that ESHA is a
23 matter that this Commission -- it is the way in which this
24 Commission approaches habitat protection.

25 As I look at the planning process that has taken

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1 place, it informs my view. It doesn't control my view. And,
2 it informs my view from the perspective that a great deal of
3 time and energy has been put into looking at this particular
4 property, from the perspective of how do you best maintain
5 habitat? how do you increase habitat? how do you deal with
6 what is, whether we like it or not, based on prior planning
7 decisions, and isolated infill projects, beautiful, in terms
8 of potential views, and in terms of what can be protected and
9 achieved, amazing.

10 So, as I look at the project, I am prepared to
11 accept, for purposes -- I am prepared to accept our staff's
12 determination that some portion of this site is ESHA. Not-
13 withstand, you know, any argument that the NCCP doesn't call
14 it that.

15 On the other hand, I also look to things like
16 where is the commercial development currently sited? With
17 respect to the management plan that was prepared, and the
18 thought that was put into it, and when you think about what
19 is sustainable, and what is not? and where are the pocket
20 mice? and you know, what are we looking at now and in the
21 future?

22 I am also prepared to adopt a position that there
23 are locations on this site that our staff has wrongly
24 designated ESHA. And, with respect to those specific sites,
25 you know, we, essentially, with respect to those sites, the

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1 policies that the staff has outlined concerning ESHA simply
2 should not apply.

3 And, the reason that I take comfort in moving in
4 that direction, is frankly I don't want to go through and
5 significantly alter the staff's ESHA policies. We sort of
6 went through this before, when we looked at the Malibu LCP.

7 And, staff said, "Look, these are policies. We
8 don't want to change ESHA policies, with some expectation
9 that they are -- in order to accommodate development."

10 So, my view, it is better to maintain the policies
11 that staff has determined for ESHA, but to really think
12 about, on this parcel, what in fact would be, and would not
13 be ESHA, and the way that I come down is those areas that
14 would be maintained as open space, are the areas that would
15 be appropriately designated ESHA. Those areas that would not
16 be, should not be.

17 And, therefore, we are not, then, forced to get
18 into a perversion of policies which should govern
19 construction, as opposed to -- and we are also not, frankly,
20 called upon to say there is no ESHA here. So, that is just
21 the way that I divide the baby in this particular matter,
22 because it is, in my view, very significant, that not all of
23 this area will be sustained, just because we say it is ESHA.

24 CHAIR REILLY: Before we go to Commissioner Orr,
25 let me say a couple of words about that.

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1 I am not ready to go there. I think our staff has
2 done, really, an excellent professional analysis of ESHA.
3 This project is unique in so many ways, and not the least of
4 which is the history of the project that we have been
5 grappling with, and you know people have testified about
6 using an ad hoc balancing method, or however you want to
7 characterize it, but I would suggest to folks out there, you
8 know, when we are aware that the current LCP, even though it
9 was subject to a community referendum, was approved at a
10 level of development much, much higher than what we are
11 seeing before us.

12 And, we are aware that there are old subdivisions
13 of land underlying all of this LCP, and that could be
14 actualized by the developer in a manner that would be, from
15 our perspective, I think, potentially much more destructive
16 than anything we are looking at here, when we are aware that
17 there were representations, at least in the current LCP, that
18 would be in conflict with the ESHA findings that are before
19 us today.

20 The combination of all of those things, I think,
21 has lead our staff, and both staff and counsel, to adopt what
22 is in a de facto way the ad hoc balancing that they have
23 applied so far to the revetment, and to 3.75-acres around the
24 bowl.

25 I, frankly, you know, would be more comfortable in

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1 utilizing that approach, if Commissioners feel that they
2 wanted to balance against another 3 acres for a hotel, or
3 wanting to try to approach it that way, rather than
4 countering and just in a de facto way making a finding that
5 our staff is in error, in determining ESHA.

6 So, that is my position on it.

7 Commissioner Orr.

8 COMMISSIONER ORR: Thank you.

9 Well, I just have to say that I am deeply troubled
10 by the way this discussion is going, and with all due respect
11 to Commissioner McClain-Hill, I think what I heard here
12 saying, basically, is that those areas that the applicant is
13 willing to treat as ESHA are what we should define as ESHA,
14 and that just is not how it should work.

15 And, indeed, the applicant's biologist was up
16 here, and in response to specific questions about the hotel
17 site, which I think, quite honestly, is what we are talking
18 about here, said that it had coastal sage scrub, and it was
19 used by gnatcatchers. Well, gnatcatchers are a federally
20 listed species under the *Endangered Species Act*. If that
21 isn't environmentally sensitive habitat area, I don't know --
22 as defined by our *Coastal Act* and our regulations -- I don't
23 know what is. So, it makes me very nervous.

24 It also makes me very nervous when our staff, and
25 our biologist, who we fought long and hard to get on staff,

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1 does what I think is a superb analysis, and when we find it
2 convenient, we decide that all of a sudden we are going to,
3 you know, call on the experts who, you know, are in the
4 employ of the applicant, and decide that, "Well, in this
5 case, we will ignore our own staff."

6 So, anyway, it is pretty clear how I am going to
7 vote on this. I am somewhat less concerned, although I will
8 vote against it, but with the 3.75 acres that the staff came
9 down and decided they would be willing to make some sort of
10 balancing on, I am really concerned when we walk away from
11 their recommendations, based on science, about this hotel
12 site.

13 So, that is my take on it.

14 CHAIR REILLY: Commissioner Wan.

15 COMMISSIONER WAN: Yes, I am equally disturbed --
16 well, at least equally disturbed relative to this.

17 Let's go to, just to being with, is the whole
18 process that we are going through, and we are doing this now,
19 and this is not the first time. But, the process of saying
20 we've got good scientific evidence from our staff, but we are
21 not going to accept that. We are going to go to the
22 applicant's agent, and the applicant's agent got up here, and
23 if you listen to what he said, he was basically telling you
24 that how you define ESHA is in terms of how the NCCP defines
25 ESHA. He is telling you that the only thing that really

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1 matters here is the habitat for the pocket mouse. There just
2 happens to be gnatcatchers in an area -- and I put that in
3 quotes -- that doesn't make it important, that doesn't make
4 it ESHA, because that is not what matters here. It is
5 finding it is the pocket mouse.

6 Well, ESHA is more than based on endangered
7 species. It is a whole assortment of the habitat. It is a
8 whole ecosystem. It is the coastal sage scrub. It is all of
9 the plant species that are involved, all of the special
10 status species.

11 And, when he was talking about the hotel area, he
12 very specifically said, "Well, it has coastal sage scrub, and
13 it has got gnatcatcher, and we can mitigate the losses."
14 That is not what you can do with ESHA. Section 30240 doesn't
15 allow you to mitigate for the loss. It is ESHA.

16 And, I have to tell you that not only are we
17 violating 30240(a) which says you can't do anything in ESHA,
18 but the way the applicant wants to put in the hotel, and deal
19 with the fuel modification, and those are major impacts to
20 not only questionable ESHA -- if you want to call it
21 questionable, and I don't think it is, based on everything
22 that I know about what ESHA is -- you can't site development
23 adjacent to ESHA that is going to have an impact on it,
24 according to 30240(b) and that is what you are doing when you
25 put the hotel where you put it.

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1 So, we are doing more than just destroying a few
2 acres of ESHA here, if you add all of the effects of the fuel
3 modification.

4 But, again, I am going back to, what is your
5 scientific basis for redefining what is ESHA, and just simply
6 for convenience sake, because you want to allow the develop-
7 ment, saying it is not ESHA. We did that last month, at the
8 Monterey Hotel, apparently that is the --

9 CHAIR REILLY: Hospital.

10 COMMISSIONER WAN: Oh, you are right, hospital.

11 That is the new thing: we've got ESHA, it is in
12 the way of development, you simply declare it is not ESHA.

13 CHAIR REILLY: Commissioner Krueer.

14 [Audience Reaction]

15 You know, it doesn't really get us farther when
16 you do that. I have asked you not to do that. I please ask
17 you to respect that, because you are going to hear things
18 that you like, things you don't like, and I would ask you to
19 respect both view points.

20 COMMISSIONER KRUEER: Yes, Mr. Chairman.

21 I just want to weigh in on the balancing part. I
22 think that we cannot ignore the fact that the LCP on this
23 project now, with the project that came before us today, is
24 less than 25 percent, the residential units, of the approved
25 501. It is the commercial area is less than 15 percent of

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1 the LCP. The hotel area is 33 percent of LCP. The open
2 space is over 100 percent increase than what is in the LCP
3 standards. The beach accessway is a five times increase.
4 And, all of the public access issues, and public visitor
5 facilities, there are zero in the certified LCP, and there
6 area 6 here.

7 We cannot ignore the fact that there are some
8 rights here, entitlements, not only with the LCP, but also
9 with the final map that was recorded many years ago. And,
10 these issues you must put into your formula of considering
11 this, and I certainly see these benefits of the lowering,
12 dramatically lowering the intensity of this development, and
13 pursuant to the Certified LCP, certainly, I can use the
14 balancing provision.

15 CHAIR REILLY: Mr. Director, you have a comment?

16 EXECUTIVE DIRECTOR DOUGLAS: Yes, Mr. Chairman.

17 I know that the Commission is trying to struggle
18 through this and find a way out the other end, and not that
19 the staff is recommending this, but as I hear what you are
20 saying, it seems to me that the best way to get to where some
21 of you want to go -- if that is where you want to go -- is to
22 use the balancing approach, but add all of the factors that
23 are in play here, including the water quality improvements,
24 that haven't been mentioned, but that are clearly a part of
25 this, which but for the approval of the hotel wouldn't occur,

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1 as well as the access improvements that are part of this, as
2 well as the underlying provisions that Commissioner Krueer
3 just mentioned.

4 So, looking at the totality of those elements that
5 are applicable here that make it unique to this particular
6 site, that that would be a way, if a majority of you want to
7 approve the other elements of what is being proposed here,
8 that you could get there.

9 CHAIR REILLY: All right.

10 EXECUTIVE DIRECTOR DOUGLAS: And, that, to me,
11 would be much more sensible, and I think defensible than
12 saying something isn't ESHA when your staff biologist clearly
13 has presented the evidence that it is.

14 If you want to say it is not ESHA, then I think
15 you have to look at the substantial evidence issue, but the
16 balancing is, to me, the better way to go, and I suggest that
17 you consider that, if that is the way you want to go.

18 CHAIR REILLY: Thank you, Peter.

19 Go to Commissioner McClain-Hill.

20 COMMISSIONER MC CLAIN-HILL: This is just a
21 comment, I just want to make -- it is 8:10? Okay, I'll make
22 a motion, then.

23 First, I move -- well, help me, if we are trying
24 to wrap this up, with respect to the modifications that we
25 make, is it a -- what part of the staff recommendation would

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1 we modify, were we seeking to include the hotel, as a part of
2 the area of ESHA that could be developed?

3 EXECUTIVE DIRECTOR DOUGLAS: I believe that the
4 staff report includes a motion that -- because you asked us
5 to provide that: if you wanted to approve the hotel, what
6 would the suggested modification be, and I believe that is in
7 the staff report.

8 COMMISSIONER MC CLAIN-HILL: What page?

9 EXECUTIVE DIRECTOR DOUGLAS: What page is that on?
10 It is Appendix A, Carl indicates.

11 COMMISSIONER MC CLAIN-HILL: Appendix A?

12 EXECUTIVE DIRECTOR DOUGLAS: Yes, this is relative
13 to the hotel, right, 173.

14 CHAIR REILLY: And, the motion is consistent with
15 the concepts you discussed previously, Mr. Director?

16 EXECUTIVE DIRECTOR DOUGLAS: If that is the
17 direction from the Commission, then that would be the basis,
18 of that motion would pass.

19 CHAIR REILLY: Okay.

20 COMMISSIONER MC CLAIN-HILL: Okay, so essentially
21 -- I am sorry, because I have to read the precise motion, is
22 that correct?

23 CHIEF COUNSEL FAUST: Mr. Chairman.

24 CHAIR REILLY: Counsel.

25 CHIEF COUNSEL FAUST: If I might suggest, if it is

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1 the intent of the maker of the motion to simply incorporate
2 the language that staff has suggested in Appendix A, a motion
3 to amend the suggested modification pursuant to the language
4 in Appendix A, period, would do it.

5 [MOTION]

6 COMMISSIONER MC CLAIN-HILL: Okay.

7 I move that the staff recommendations be amended
8 to approve the language in Appendix A, relative to the
9 inclusion of the hotel.

10 COMMISSIONER KRUER: Second.

11 COMMISSIONER MC CLAIN-HILL: With respect to a
12 discussion of the motion.

13 CHAIR REILLY: Moved by McClain-Hill, seconded by
14 Krueer.

15 COMMISSIONER MC CLAIN-HILL: I think it is just
16 consistent with the comments that have been made.

17 I would, as the maker of the motion, request a
18 "Yes" vote, of course, and would indicate to expect staff to
19 draft findings that would indicate, or reflect, the motion
20 being made in recognition of the factor cited by Commissioner
21 Krueer, as amplified by Director Douglas, with respect to the
22 balancing that would be the basis for the amendment.

23 CHAIR REILLY: All right, we have a motion and a
24 second.

25 Does the seconder have any discussion on this?

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1 COMMISSIONER KRUER: No, Mr. Chair.

2 Any other discussion on the motion?

3 COMMISSIONER NICHOLS: May I ask a question, as I
4 think this is on order.

5 In our staff report, we have a number of specific
6 suggested modifications to the Land Use Plan. The
7 modifications to the Land Use Plan that deal with the ESHA
8 issue, and I think are designed to get to where the staff was
9 recommending, are 69 through 72, at least. How are these
10 affected? or are they affected by the motion that has just
11 been made?

12 CHAIR REILLY: Go to staff.

13 EXECUTIVE DIRECTOR DOUGLAS: Well, it is my under-
14 standing that if the motion that is on the floor passes, then
15 you will have approved the siting of the hotel where it is
16 being proposed, based on the approach I suggested, if you
17 were inclined to use that, using the balancing approach in
18 the findings. And, we would have to come back with modified
19 findings to reflect that.

20 CHAIR REILLY: All right.

21 EXECUTIVE DIRECTOR DOUGLAS: And, that would, as I
22 understand it, that motion would allow the hotel, with those
23 findings.

24 And, I don't believe the other --

25 CHAIR REILLY: Wouldn't modify any of the ESHA

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1 findings, though?

2 EXECUTIVE DIRECTOR DOUGLAS: No, it wouldn't.

3 CHAIR REILLY: Does that answer your question,
4 Commissioner.

5 COMMISSIONER NICHOLS: Yes.

6 CHAIR REILLY: All right, is there any further --
7 Commissioner Peters.

8 COMMISSIONER PETERS: I just want to just say, at
9 this point, I think that there is evidence in the record that
10 would support -- I think it is unclear about the ESHA in this
11 particular site, I think that could go either way, and I
12 don't really care about how we get there.

13 My question still has to do with the strand. That
14 is what I am more concerned with, and if I were balancing, I
15 would balance towards the hotel, and not the strand, and that
16 is why I will support the motion.

17 CHAIR REILLY: All right --

18 COMMISSIONER HART: Mr. Chair.

19 CHAIR REILLY: Commissioner Hart.

20 COMMISSIONER HART: Just a question of clarifica-
21 tion for the maker of the motion.

22 There is also the area of the park, with the light
23 house, and the memorial in that area, too. Are we looking at
24 it in the same way, and including that in this discussion?

25 CHAIR REILLY: One thing at a time, Commissioner.

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1 COMMISSIONER HART: Okay.

2 CHAIR REILLY: All right, the motion before us
3 relates specifically to the hotel, and to what extent the
4 current balancing provisions that staff has used for the
5 revetment and the 3.75 acres around the bowl, to that area,
6 as well -- as I understand it -- with reference to a number
7 of the criteria issues that the Executive Director has
8 mentioned.

9 The maker of the motion is asking for a "Yes"
10 vote, will the secretary please call the roll.

11 SECRETARY GOEHLER: Commissioner Iseman?

12 COMMISSIONER ISEMAN: Yes.

13 SECRETARY GOEHLER: Commissioner Kruer?

14 COMMISSIONER KRUER: Yes.

15 SECRETARY GOEHLER: Commissioner McClain-Hill?

16 COMMISSIONER MC CLAIN-HILL: Yes.

17 SECRETARY GOEHLER: Commissioner Orr?

18 COMMISSIONER ORR: No.

19 SECRETARY GOEHLER: Commissioner Nichols?

20 COMMISSIONER NICHOLS: Yes.

21 SECRETARY GOEHLER: Commissioner Peters?

22 COMMISSIONER PETERS: Yes.

23 SECRETARY GOEHLER: Commissioner Potter?

24 COMMISSIONER POTTER: No.

25 SECRETARY GOEHLER: Commissioner Wan?

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1 COMMISSIONER WAN: No.

2 SECRETARY GOEHLER: Commissioner Woolley?

3 COMMISSIONER WOOLLEY: No.

4 SECRETARY GOEHLER: Commissioner Burke?

5 COMMISSIONER BURKE: Yes.

6 SECRETARY GOEHLER: Commissioner Hart?

7 COMMISSIONER HART: Yes.

8 SECRETARY GOEHLER: Chairman Reilly?

9 CHAIR REILLY: Yes.

10 SECRETARY GOEHLER: Eight, four.

11 CHAIR REILLY: All right, the motion carries.

12 All right, are there any others? We still have
13 the open motion on the LUP before us, on the main motion.

14 Okay, we'll wait a minute while our reporter
15 reloads, because I know somebody is going to want to buy this
16 transcript from you, Priscilla.

17 [Pause in proceedings.]

18 COURT REPORTER: Okay, I am all set now, thank
19 you.

20 CHAIR REILLY: Are there any other amending
21 motions that any Commissioner wants to offer, before we get
22 to the main motion?

23 [MOTION]

24 COMMISSIONER HART: Mr. Chair, I would like to,
25 basically, substitute the same language, and the same

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1 reasoning for the area of the park and the lighthouse area,
2 that whole additional area.

3 CHAIR REILLY: Basically, the additional develop-
4 ment elements that have been proposed by the city?

5 COMMISSIONER HART: Yes, thank you.

6 CHAIR REILLY: Is there a "second" to that motion?

7 COMMISSIONER ISEMAN: Second.

8 CHAIR REILLY: Moved by Commissioner Hart,
9 seconded by Commissioner Iseman.

10 Any discussion?

11 COMMISSIONER ORR: Yes.

12 CHAIR REILLY: Commissioner Orr.

13 COMMISSIONER ORR: I would just make a plea to not
14 add insult to injury here, where in doing this balancing --
15 and I voted the other way -- but I assumed there was some
16 thought that we were putting some economic value in this
17 project by allowing the hotel to go forward.

18 I really see no reason whatsoever to put a light-
19 house that wasn't there before, and facilities that can
20 easily be place somewhere else, outside of ESHA, in ESHA.

21 So, I will just leave it at that, but I couldn't
22 let that go unsaid.

23 CHAIR REILLY: Any other discussion?

24 [No Response]

25 All right, does everybody understand the motion?

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1 [No Response]

2 The maker of the motion is asking for a "Yes"
3 vote.

4 Does the secretary want to call the roll.

5 SECRETARY GOEHLER: Commissioner Kruer?

6 COMMISSIONER KRUER: Yes.

7 SECRETARY GOEHLER: Commissioner McClain-Hill?

8 COMMISSIONER MC CLAIN-HILL: Commissioner Orr's
9 observations are fair.

10 No.

11 SECRETARY GOEHLER: Commissioner Orr?

12 COMMISSIONER ORR: No.

13 SECRETARY GOEHLER: Commissioner Nichols?

14 COMMISSIONER NICHOLS: No.

15 SECRETARY GOEHLER: Commissioner Peters?

16 COMMISSIONER PETERS: No.

17 SECRETARY GOEHLER: Commissioner Potter?

18 COMMISSIONER POTTER: No.

19 SECRETARY GOEHLER: Commissioner Wan?

20 COMMISSIONER WAN: No.

21 SECRETARY GOEHLER: Commissioner Woolley?

22 COMMISSIONER WOOLLEY: No.

23 SECRETARY GOEHLER: Commissioner Burke?

24 COMMISSIONER BURKE: No.

25 SECRETARY GOEHLER: Commissioner Hart?

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1 COMMISSIONER HART: Yes.
2 SECRETARY GOEHLER: Commissioner Iseman?
3 COMMISSIONER ISEMAN: Yes.
4 SECRETARY GOEHLER: Chairman Reilly?
5 CHAIR REILLY: No.
6 SECRETARY GOEHLER: Three, nine.
7 CHAIR REILLY: All right, the motion fails.
8 Are there any other amending motions that the
9 Commissioners want to offer?
10 Commissioner McClain-Hill.
11 COMMISSIONER MC CLAIN-HILL: Yeah, I just have a
12 question, because I don't know if it is here, or if it is in
13 the other motion that this gets discussed, and it goes to the
14 local agency review permits and additional studies, does that
15 -- because we can only have one opened at a time, so is that
16 this document? or is that relative to the second motion that
17 we are making?
18 DEPUTY DIRECTOR LEE: Through the Chair.
19 Commissioner McClain-Hill, it is involved in both.
20 COMMISSIONER MC CLAIN-HILL: It is involved in
21 both.
22 DEPUTY DIRECTOR LEE: Some of the fall under the
23 Land Use Plan, and some are under the Implementation
24 component.
25 COMMISSIONER MC CLAIN-HILL: All right, then I

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1 actually do have one more set of issues, and those issues go
2 to what the city has cited, or has characterized as local
3 agency/permits additional studies section of their handout.

4 And, I guess my question is with respect to
5 modifications that we have made to their plan, in this
6 particular area, I have some concerns about the degree to
7 which the Commission would remain involved in reviewing
8 applications, or permit applications, after the adoption of
9 the LCP.

10 And, just, you know, if you will bear with me, it
11 seems that the Coastal Act is pretty specific with respect to
12 our jurisdiction, and with respect to the regulatory scheme
13 that they put in place. In that regard, we issue LCPs, and
14 so long as the local agency is issuing coastal permits
15 consistent with that LCP our business is done.

16 It seems to me that what we are requiring through
17 these modifications is substantial interaction with every
18 single permit that is issued at the local level with respect
19 to homes that are being built. So, if you could help me
20 understand how this works, in connection with the additional
21 studies that we are requiring, that be brought back to the
22 Commission, and you know, once the LCP is done, doesn't the
23 city then issue the Coastal Permit, consistent with the LCP?
24 and provided it is consistent with the LCP, how much
25 additional review, and how much additional studies are we

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