

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: December 6, 2006
49th Day: January 24, 2007
180th Day: N/A
Staff: Fernie Sy-LB
Staff Report: December 28, 2006
Hearing Date: January 10-12, 2007
Commission Action:

**STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Dana Point

LOCAL DECISION: Approval with Special Conditions

APPEAL NUMBER: A-5-DPT-06-471

APPLICANT: Susan Morrison

AGENT: S. Glenn Eichler

APPELLANT: Timothy McFadden

PROJECT LOCATION: 24332 Santa Clara Avenue, Dana Point (Orange County)

PROJECT DESCRIPTION: Demolition of an existing single-family dwelling and the construction of a new single-family dwelling on a coastal bluff lot with a Minor Site Development Permit to allow building height to be measured from top of not more than 30" of fill.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Dana Point Local Coastal Development Permit No. 05-20
2. City of Dana Point Minor Site Development Permit No. 05-58(M)

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed because the project approved by the City of Dana Point is consistent with the City's certified Local Coastal Plan and the public access and recreation policies in Chapter 3 of the Coastal Act and the issues raised by this appeal are not substantial.

I. APPELLANT'S CONTENTIONS

On December 6, 2006, Timothy McFadden filed the appeal of the City of Dana Point approval of Local Coastal Development Permit No. 05-20 and Minor Site Development Permit No. 05-58(M) (Exhibit #3). Local Coastal Development Permit No. 05-20 approved the demolition and construction of the new single-family residence. Minor Site Development Permit No. 05-58(M) approved that the building height be measured atop of not more than 30" of fill.

The appellant has not asserted that the local government's action or the approved project violates the City's certified LCP. The appellant asserts only that the applicant's geotechnical investigation

regarding bluff edge and bluff stability were inaccurately completed and that the applicant's Minor Site Development Permit was inaccurately obtained. The appellant did not raise any impacts to public access or recreation. The appellant is requesting that the Commission make the applicant adhere to the City's requirements for obtaining a Local Coastal Development Permit and Minor Site Development Permit.

II. LOCAL GOVERNMENT ACTION

The City's record states that the City's Planning Commission conducted a public hearing on Coastal Development Permit No. 05-20 and Site Development Permit No. 05-58(M) at their October 4, 2006 meeting after continuing the item without conducting a hearing from their August 16, 2006 meeting. During the October 4, 2006 Planning Commission hearing, one speaker, the appellant, voiced concerns about the structural design of the residence, site drainage, bluff edge determination, and the proposed fill credit from which to measure height. After closing the hearing and discussing the item, the Planning Commission voted to approve the proposed development by a 4-0 vote, with one Commissioner absent. Timothy McFadden, the appellant, submitted a letter to the City Clerk on October 12, 2006, appealing the Planning Commission's approval to the City Council.

On November 20, 2006, the City of Dana Point City Council denied the appeal (3-0, with two Commissioners absent) by Timothy McFadden, the appellant, and upheld the City of Dana Point Planning Commission's approval of Coastal Development Permit No. 05-20 and Site Development Permit No. 05-58(M).

On November 22, 2006, Commission staff received the Notice of Final Action for Coastal Development Permit No. 05-20 and Site Development Permit No. 05-58(M) (Exhibit #2).

III. APPEAL PROCEDURES

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permit applications. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a) of the Coastal Act identifies which types of development are appealable. Section 30603(a) states, in part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*

- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The City approval of the proposed project is appealable because the project is located within the first public road and the sea and is within 300 feet of the top of the seaward face of a coastal bluff.

Section 13111 of Title 14 of the California Code of Regulations allows an appeal of a local government's decision on a coastal development permit application once the local appeal process has been exhausted. In accordance with Section 13573, an appellant shall be deemed to have exhausted local appeals once the appellant has pursued his or her appeal to the local appellate body, except that exhaustion of all local appeals shall not be required if:

- (1) *The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.*
- (2) *An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.*
- (3) *An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.*
- (4) *The local government jurisdiction charges an appeal fee for the filing or processing of appeals.*

The grounds for appeal of an approval of a local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

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

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If the Commission finds that a substantial issue is raised by the appeal, the de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, in order for the Commission to approve such projects, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

At the hearing on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons

qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

Pursuant to Section 30621 of the Coastal Act, a hearing on a coastal development permit appeal shall be set no later than 49-days after the date on which the appeal is filed with the Commission. An appeal of the above-described decision was filed on December 6, 2006. The 49th day falls on January 24, 2007. The only remaining Coastal Commission meeting scheduled between the date the appeal was filed and the 49-day limit is the January 10-12, 2007 meeting in Long Beach.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, staff requested on December 11, 2006 that the City of Dana Point forward all relevant documents and materials regarding the subject permit to the Commission's South Coast District office in Long Beach. The documents and materials relating to the City's approval of the project are necessary to analyze the project's consistency with the Coastal Act and the certified Local Coastal Program (LCP) in relation to the grounds of the appeal.

In order to be ready for the Commission's meeting, the staff report and recommendation for the appeal would have to be completed by December 28, 2006. On December 20, 2006, the requested information from the City of Dana Point was received. Therefore, the Commission staff was able to thoroughly analyze the appealed project and City approval in time to prepare a staff recommendation for the Commission's January 2007 meeting in Long Beach.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which an appeal has been filed pursuant to California Public Resources Code Section 30625(b)(2) and 30603(b)(1). As approved by the local government, the development is consistent with the access and recreation policies in the Coastal Act.

Staff recommends a **YES** vote on the following motion:

MOTION: *"I move that the Commission determine that Appeal No. A-5-DPT-06-471 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE FOR APPEAL NO. A-5-DPT-06-471:

The Commission finds that Appeal No. **A-5-DPT-06-471** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

The project site is a 10,903 square foot, bluff top lot developed with a 1,538 square foot, single-family residence, with a 920 square foot attached garage located above the Dana Point Harbor (Exhibit #1). The project site is bordered by existing single-family residential development to the east and multi-family residential development to the west. Across Santa Clara Avenue, to the north, is a mixture of multi- and single-family residential development. To the south of the site is the base of the bluff, Dana Point Harbor Drive and then the Dana Point Harbor. The subject site is designated as Residential Single-Family 7 DU/AC (RSF 7) and lies within the Coastal Zone Boundary of the City's Zoning Map. The proposal is also subject to review under the Dana Point Specific Plan/Local Coastal Program for "Coastal Medium Density Residential (C-RMD)." The subject site is designated Residential 3.5-7 DU/AC in the City's current General Plan Land Use Element.

The applicant is proposing to demolish the existing single-family residence and construct a new two-story single-family residence on the site as well as site walls and landscape improvements. The applicant is also requesting that height be measured from the top of 30-inches of fill in compliance with Zoning Code Section 9.05-110(a)(3). A Local Coastal Development Permit was required for the demolition and construction request and a Minor Site Development Permit was required for the fill request.

B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action taken after certification of its local coastal program unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of evidentiary and legal support for the local government's decision that the development is consistent with the certified LCP;
2. The extent and scope of the development as approved by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,

5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **NO SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed because the project approved by the City is consistent with the City's certified Local Coastal Plan and the public access and recreation policies in Chapter 3 of the Coastal Act as set forth below:

C. SUBSTANTIAL ISSUE ANALYSIS

Section II. A. 4. "Environmental Hazards" of the City's certified LCP states in part (Exhibit #4):

15. *Development Proposals will reflect full and complete investigation of potentially unstable area. Where necessary, land uses will be restricted to assure an adequate level of safety. (Dana Point Specific Plan Headlands Land Use Policy, Area A, page IV-21)*
18. *In areas of new development, above-ground structures will be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years. The City will determine the required setback. A geologic report shall be required by the City in order to make this determination.*

Section III. E. 1. "C-RMD: Coastal Medium Density Residential District" of the City's certified LCP states in part:

- j) *In areas of new development, above ground structures and swimming pools shall be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for 50 years. The setback shall be determined by the City. A geologic report shall be required by the City. In no case shall the setback be less than 25 feet.*

Zoning Code Section 7-9-118.3 states in part (Exhibit #5):

Coastal Bluff:

- (a) *Any bluff where the toe of the slope is now, or within the past 200 years has been, subject to marine erosion;*
- (b) *Any bluff where the toe of the slope is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in the Public Resources Code Section 30603 (a) (1) or (a) (2).*

As previously stated, the appellant has not asserted that the local government's action or the approved project violates any policies of the certified LCP. The appellant asserts only that the applicant's geotechnical investigation regarding bluff edge and bluff stability were inaccurately completed and that the applicant's Minor Site Development Permit was inaccurately obtained. The

appellant is requesting that the Commission make the applicant adhere to the City's requirements for obtaining a Local Coastal Development Permit.

The appeal has not identified any portion of the locally approved development that raises a question of conformity with the certified LCP. Therefore, the appeal raises no substantial issue as to conformity with the certified LCP.

Applying the five factors listed in the prior section further clarifies that the appeal raises no "substantial" issue with respect to the City's certified Local Coastal Plan or the public access and recreation policies in Chapter 3 of the Coastal Act.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP. The appellant asserts that the applicant's geotechnical investigation regarding bluff edge and bluff stability were inaccurately completed. As required by the City's certified LCP (Section II. A. 4. "Environmental Hazards" shown above), a geotechnical investigation was required for the proposed project. The City's third party geotechnical consultant reviewed the applicant's geotechnical investigation and accepted the reports recommendations, conditionally approving the proposed development.

More specifically, the appellant questioned whether the bluff edge determination was correct (Zoning Code Section 7-9-118.3 shown above states how a coastal bluff is defined). The applicant's geologist determined that the bluff edge was located at approximate elevations between 161 and 161.7 feet and the City's third party geologist also agreed with this determination. The appellant did not provide any substantive evidence to counter this determination.

The appellant also more specifically questioned whether bluff stability was adequately analyzed. The applicant's geologist determined in a letter dated July 7, 2006 sent to the applicant that for gross static stability, the factor of safety is 1.67 (this exceeds the City of Dana Point's minimum factor of safety of 1.50) and that for pseudostatic analysis, the factor of safety is 1.39 (this exceeds the City of Dana Point's minimum factor of safety of 1.10). The applicant's geologist also determined that a 25-foot setback was adequate for the proposed project, which is also the required bluff edge setback in this area above the Harbor (Section III. E. 1. "C-RMD: Coastal Medium Density Residential District" shown above). The City's third party geologist reviewed this information and found this information to be correct and therefore conditionally approved the project. The appellant did not provide any substantive evidence to counter these determinations.

In addition, the Commission's staff geologist has also reviewed the geotechnical investigation information regarding the bluff edge location and bluff stability and has also determined that these issues were adequately analyzed and addressed with the proposed project, thus consistent with the LCP.

The appellant also asserts that the Minor Site Development Permit was inaccurately obtained. The appellant claims the applicant obtained this permit not to deal with drainage issues as required by the City, but instead due to a height issue. The proposed fill credit can only be approved if the proposed fill is (a) required only for the purpose of creating positive drainage flow (via gravity) to the street or to otherwise correct an existing drainage problem; and (b) necessary to create a minimum percentage grade for drainage flow consistent with a gravity flow drainage pattern as verified by the Director of Public Works; and (c) the minimum amount necessary to create the desired drainage pattern. The City's Public Works and Engineering Department determined that the appropriate drainage, via gravity as required for the fill credit, is being proposed to get new

impermeable surface drainage to Santa Clara Avenue. While this Minor Site Development Permit is not within Commission review, the reason for this Site Development Permit is to facilitate drainage away from the bluff face and this is consistent with policies of the LCP to protect bluffs. The applicant also claims that the measurement of height allowed with this permit for the proposed development would result in the project not being visually compatible with the surrounding area. However, even with the maximum allowed 30-inch fill credit, the proposed project will be lower than the 28-foot height limit for residential structures that is identified in the certified Implementation Plan for the site (see Site Development Standards for the C-RMD: Coastal Medium Density Residential District) and is even slightly below the more restrictive 26-foot height limit for the residence that is identified in the City's zoning code. In this case, the local government's decision correctly applied the policies of the City's LCP. Thus, the appeal raises no substantial issue regarding conformity therewith.

The second factor is the scope of the development approved by the local government. The scope of the approved development is limited to the demolition and construction of a single-family residence project. The scope of the approved development alone does not support a finding that the appeal raises a "substantial" issue.

The third factor is the significance of the coastal resources affected by the decision. The appellant does not assert that any coastal resources are affected. Also based on the City's review and the Commission review of the City's record, the development adheres to LCP requirements relative to setbacks from coastal bluffs and stability requirements for development upon bluff tops thus the coastal resources will not be impacted. Therefore, the appeal does not support a finding that it raises a "substantial" issue for Coastal Act purposes.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. This is designed to avoid leaving decisions in place that could create a precedent for how the relevant provision of the LCP is to be interpreted. As approved by the City, the development will not have a negative precedent for future decisions regarding bluff edge determination and bluff stability analysis since these items were adequately analyzed as required by the City's certified LCP. Therefore, the appeal does not raise any significant issue with respect to the precedential value of the local government's decision for future interpretations of its LCP.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. This appeal raises a localized issue related to the City's processing of a Local Coastal Development Permit, but the appeal does not raise any issues of statewide significance.

The appellant could also raise concerns with impacts of the proposed project to public access and recreation policies of the Coastal Act. However, the City determined that the project had no impacts to public access or recreation: "*That the proposed development is located between the nearest public roadway and the sea or shoreline of any body of water, and is in conformity with the public access and public recreation policies of Chapter three of the Coastal Act; because the proposed development requires the Irrevocable Offer to Dedicate an easement for connection to the bluff-top trail in accordance with the Dana Point Specific Plan/Local Coastal Program.*"

Therefore, in conclusion, the Commission finds that the local government's action does not raise any substantial Local Coastal Plan or Chapter 3 public access and recreation policy issues. Therefore, no substantial issue exists with respect to the approved project's consistency with the LCP or Chapter 3 public access and recreation policies.

CONCLUSION

The Commission finds that no substantial issues exist with respect to the grounds on which the appeal was filed, as there has been no showing of any manner in which the approved project is not in conformance with the City's certified LCP or the public access or recreation policies of the Coastal Act, the project is of modest scope, and the issues raised are local issues that do not affect coastal resources or have implications for the future interpretation of the certified LCP.

H:\FSY\Appeals\Jan07\A-5-DPT-06-471-[Morrison]NSI(DP)

POST SET UP APPEAL PERIOD

CITY OF DANA POINT



COMMUNITY DEVELOPMENT DEPARTMENT

DATE: November 21, 2006

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

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

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

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

Applicant: S. Glenn Eichler, Architect
Address: 30448 Rancho Viejo Road, #110, San Juan Capistrano, CA 92675
Telephone: (949) 248-5459

Project Address: 24332 Santa Clara Avenue
Assessor's Parcel No.: 682-071-04

Application File No.: Coastal Development Permit CDP05-20 and
Minor Site Development Permit SDP05-58(M)

Project Description: The project consists of the demolition of an existing single-family dwelling and the construction of a new single-family dwelling on a coastal bluff lot with a Minor Site Development Permit to allow building height to be measured atop of not more than 30" of fill.

Filing Date: August 25, 2005 – Application Deemed Complete July 27, 2006
Action Date: November 20, 2006
Action became final on: November 20, 2006

COASTAL COMMISSION

Action: Approved
 Approved with conditions
 Denied

EXHIBIT # 2
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Draft Findings and Conditions are attached.

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

City of Dana Point Contact: Kurth B. Nelson III, Consultant – Project Manager
Phone: (949) 248-3572

RESOLUTION NO. 06-11-20-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP05-20 TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY DWELLING AND THE CONSTRUCTION OF A NEW SINGLE-FAMILY DWELLING ON A COASTAL BLUFF LOT AND MINOR SITE DEVELOPMENT PERMIT SDP05-58(M) TO ALLOW BUILDING HEIGHT TO BE MEASURED ATOP OF NOT MORE THAN 30" OF FILL IN THE RESIDENTIAL SINGLE FAMILY 7 (RSF 7) ZONING DISTRICT AT 24332 SANTA CLARA AVENUE

Applicant: S. Glenn Eichler, Architect

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

WHEREAS, the applicant filed a verified application for a Coastal Development Permit to allow the demolition of an existing single-family dwelling and the construction of a new single-family dwelling on a coastal bluff lot and a Minor Site Development Permit to allow building height to be measured atop of not more than 30" of fill in the Residential Single Family 7 (RSF 7) Zoning District at 24332 Santa Clara Avenue (APN: 682-071-04); and

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

WHEREAS, the Planning Commission did, on the 4th day of October, 2006, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission approved Coastal Development Permit CDP05-20 and Minor Site Development Permit SDP05-58(M);

WHEREAS, on 12th day of October, 2006, an appeal was filed with the City Clerk by Timothy McFadden; and

WHEREAS, the City Council did, on the 20th day of November, 2006, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Council considered all factors relating to Coastal Development Permit CDP05-20 and Minor Site Development Permit SDP05-58(M) and denied the appeal;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Dana Point as follows;

- A) The above recitations are true and correct.

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Findings:

- B) Based on the evidence presented at the public hearing, the City Council adopts the following findings and approves a Coastal Development Permit CDP05-20, subject to the following conditions:
- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that the site and architectural design of the proposed improvements promote Urban Design Element Goal 2 "*Preserve the individual positive character and identity of the City's communities*", and the applicant has provided the appropriate geotechnical studies and setbacks as required by policies of the Conservation/Open Space Element.
 - 2) That the proposed development is located between the nearest public roadway and the sea or shoreline of any body of water, and is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act; because the proposed development requires the Irrevocable Offer to Dedicate an easement for connection to the bluff-top trail in accordance with the Dana Point Specific Plan/Local Coastal Program.
 - 3) That the proposed development conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) in that the project qualifies for a Categorical Exemption Type 3 in that the project entails the demolition of an existing single-family residence and the construction of a new single-family residence to replace the existing residence.
 - 4) That the proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views to and along the coast from any public road or from a recreational area in that adequate access exists nearby and the development is setback 25-feet from the bluff face, and the applicant is required to make an Irrevocable Offer to Dedicate (IOD) an easement for connection to the bluff-top trail in accordance with the Dana Point Specific Plan/Local Coastal Program.
 - 5) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that the proposed development is sited on an existing single-family residence in a developed community. Placing the new single-family residence beyond the required 25-foot coastal bluff edge will not impact any such habitat.

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located in adjacent parks and recreation areas.

- 6) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards in that the proposed development will incorporate the use of fill to facilitate drainage of runoff from the improved areas of the lot to Santa Clara while there is no grading proposed within the required 25-foot bluff edge setback and the stability analysis for the lot indicates that suitable factors of safety exist under the location of the proposed dwelling to accommodate traditional footings and will be designed in compliance with appropriate Building Codes and other City regulations concerning grading, drainage, fire, and flood hazards.
 - 7) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas in that the proposed development is located in a previously developed community with no degraded areas and the new residence will introduce updated materials and architecture that will be compatible with the surrounding neighborhood.
 - 8) That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or other applicable adopted plans and programs in that the proposed project conforms with the requirements of the Residential Single Family 7 DU/AC (RSF 7) designation of the Dana Point Municipal Code, the Coastal Medium Density Residential (C-RMD) Land Use District of the Dana Point Specific Plan/Local Coastal Program and the Residential Single Family 7 DU/AC designation in the City's General Plan regarding development of single-family residences adjacent to coastal bluffs.
- C. Based on the evidence presented at the public hearing, the City Council adopts the following findings and approves Site Development Permit SDP05-58(M) subject to conditions:
- 1) That the site design is in compliance with the development standards of the Dana Point Zoning Code in that the existing lot slopes downward from front to the back and the proposal calls for the use of fill to facilitate drainage to the street over those portions of the lot that are being improved. Zoning Code Section 9.05.110(a)(3) allows the measurement of building height from no more than 30 inches of fill. The proposal calls for the approval of the maximum 30 inches of fill to facilitate drainage, via gravity, to the street over the improved portions of the property and in compliance with Section 9.05.110(a)(3)

as confirmed by the City's Public Works and Engineering Department.

- 2) That the site is suitable for the proposed use and development in that the proposed use of fill will facilitate drainage of the improved areas of the lot to Santa Clara Avenue, away from the coastal bluff, and result in a single-family dwelling meeting the height requirements and all other development standards of the RSF 7 Zoning District and the local coastal program.
- 3) That the project is in compliance with all elements of the General Plan and all applicable provision of the Urban Design Guidelines that the proposed fill will facilitate site drainage of the improved areas of the lot away from the bluff and towards the street, while resulting in structures that will be in compliance with the City's height regulations.
- 4) That the site and structural design is appropriate for the site and function of the proposed use, without requiring a particular style, that the proposal requests the use of approximately 30 inches of fill dirt by which positive drainage flows (via gravity) to the street will occur and new retaining walls to support the raised grade, which do not require a particular style of architecture.

Conditions:

A. General:

1. Approval of this application is to allow the demolition of an existing single-family dwelling and the construction of a new single-family dwelling on a coastal bluff lot and a Minor Site Development Permit to allow building height to be measured atop of not more than 30" of fill in the Residential Single Family 7 (RSF 7) Zoning District located at 24332 Santa Clara Avenue. Subsequent submittals for this project shall be in substantial compliance with the plans presented to the City Council, and in compliance with the applicable provisions of the Dana Point General Plan/Local Coastal Program, and the Dana Point Zoning Code.
2. This discretionary permit(s) will become void two (2) years following the effective date of the approval if the privileges authorized are not implemented or utilized or, if construction work is involved, such work is not commenced within such two (2) year time period or; the Director of Community Development or the Planning Commission, as applicable grants an extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the initial two-year approval period or any subsequently approved time extensions.

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3. The application is approved for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plans, he may approve the amendment without requiring a new public hearing.
4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant or any successor-in-interest shall defend, indemnify, and hold harmless the City of Dana Point ("CITY"), its agents, officers, or employees from any claim, action, or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void, or annul an approval or any other action of the CITY, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation.

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these

COASTAL COMMISSION

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PAGE 6 OF 17

conditions.

8. The construction site shall be posted with signage indicating that construction shall not commence before 7 a.m. and must cease by 8 p.m., Monday through Saturday, and no construction activity is permitted on Sundays or Federal holidays.
9. The applicant shall obtain all applicable permits for the proposed improvements.
10. The applicant, property owner or successor in interest shall prepare a Waste Management Plan to the City's C&D official per the Dana Point Municipal Code. A deposit will be required upon approval of the Waste Management Plan to ensure compliance.
11. The Waste Management Plan shall indicate the estimated quantities of material to be recycled and the locations where the material is to be taken for recycling. Said plan shall be reviewed and approved by the City's C&D Compliance Official prior to issuance of any permits.
12. The applicant's Consultants (C.E.G. and R.C.E./G.E.) shall sign the final dated grading, foundation/construction, and landscaping plans, per City Code, thereby verifying the plans' geotechnical conformance with the Consultant's original report and associated addenda.
13. Prior to the issuance of any permits, the applicant shall determine the prioritization of the pollutant threat posed by the project during construction by completing the Urban Runoff Threat Assessment Form, available at the Permit counter.
14. During construction, the project shall address the pollution prioritization by implementing and maintaining all applicable minimum Best Management Practices (BMP) as required by the Director of Public Works. BMPs, assigned by priority level, may be found in the City's Construction Urban Runoff Best Management Practices (BMPs) Requirements Manual.
15. Prior to issuance of any permit, the applicant shall submit plans for approval that demonstrate appropriate permanent (post-construction) BMPs. These shall include any urban runoff control measures deemed necessary by the Director of Public Works, and BMPs that:
 - Fulfill all the requirements of the City's Standard Urban Stormwater Mitigation Plan (SUSMP, also known as the City's WQMP is Exhibit 7.V of the City's Local Implementation Plan).
 - Address Site Design BMPs such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero impervious" areas, and conserving natural areas.

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- Incorporate the applicable Routine Source Control BMPs as defined in the SUSMP,
 - Incorporate Treatment Control BMPs, as defined in the SUSMP, as applicable,
 - Generally describe the long-term operation and maintenance requirements for the BMPs, as applicable
 - Identify the entity that will be responsible for long-term operation and maintenance of the BMPs, as applicable, and
 - Describe the mechanism for funding the long-term operation and maintenance of the BMPs, as applicable.
16. The defined bluff edge and the required 25-foot bluff edge setback shall be illustrated in compliance with the topography map signed and dated by the applicant's certified engineering geologist on April 20, 2006, on all site, floor, grading, and landscaping plans submitted for review by the City.
17. Separate review, approval, and permits are required for:
- Demolition of structures
 - Fire sprinklers
 - Site Walls over 3'
 - Swimming Pool/Spa
18. Site walls as illustrated on the preliminary grading and landscaping plan shall comply with height limitations provided in the Zoning Code. Any site wall proposed on a common property line shall require approval from the adjacent property owner. Prior to demolition of existing walls, if any, the property shall be surveyed and marked to determine the precise location of the property lines. Any shoring required to maintain walls on adjacent properties shall be included as part of the wall permit.

Site walls proposed seaward of the Code required 25-foot bluff edge setback shall be open work or clear glass with non-continuous footings and are limited to the minimum height required to meet the appropriate pool safety barrier requirements adopted by the City. Should a larger footing be required to accommodate structural and/or wind loads for the glass wall, the appropriate geotechnical analysis shall be provided for review and approval by the City's third party geotechnical consultant prior to issuance of a wall permit.

B. Prior to the issuance of a grading permit the applicant shall meet the following conditions:

19. Prior to issuance of any permits a California licensed surveyor shall stake the property and identify the bluff edge and 25-foot bluff edge setback as noted on the project geotechnical consultant's April 20, 2006, topography map, and provide certification of such staking to the Planning Department.

20. During the construction phase, all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into coastal waters by wind, rain, tracking, tidal erosion or dispersion.
21. All runoff from improved areas shall be directed to Santa Clara Avenue or to an approved drainage device. Runoff from improved areas shall not be directed to adjacent lots or to the bluff area.
22. The applicant shall submit a grading and drainage plan, in compliance with City standards, for review and approval by the Director of Public Works. All grading work must be in compliance with the approved plan and completed to the satisfaction of the Director of Public Works. All slopes within this project shall be graded no steeper than 2:1, unless otherwise approved by the Director of Public Works. Said plan shall incorporate the following design objectives:
 - a. On-site drainage and subdrain systems shall not drain over the blufftop. All roof gutter drains shall be required to connect into a tight line drainage pipe or concrete swales that drain to an acceptable drainage facility, as determined by the Director of Public Works. Sump pumps may not be utilized to drain improved portions of the property, and must be drained, via gravity, to the street pursuant to Section 9.05.110(a)(3) of the Zoning Code to receive the fill credit approved as part of SDP05-58(M)
 - b. A soils/geotechnical report addressing the extent of uncompacted fill and remedial grading on-site. The report, including the recommended bluff protection measures and vibration monitoring system, shall be submitted for the review and approval of the Director of Public Works. Heavy vibrating compaction equipment will not be allowed near the bluff face.
 - c. A landscape plan utilizing native drought tolerant landscape materials. Irrigation lines are not permitted in the rear yard area.
 - d. Incorporate all recommendations of the approved soils/geotechnical report into the construction design of the project.
23. Grading/drainage plans shall show and label all existing improvements and existing easements on site and 20 feet around property lines, clearly indicating their location, purpose and width or measurements. A copy of any recorded easements shall be included along with the plan submittal for review by the Director of Public Works.
24. All grading and improvements on the subject property shall be made in accordance with the Grading Ordinance and Grading

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Manual to the satisfaction of the Director of Public Works.

25. The site shall not be permitted to discharge storm or irrigation runoff from impermeable surfaces over the bluff edge. The site shall be graded in such a manner to discharge runoff from all improved areas to the street.
26. Area drains shall be used to convey nuisance flows only. All runoff shall surface flow to the street. If area drains are to be used as the main conveyance of runoff, the applicant shall provide a drainage report prepared by a licensed civil engineer. The report shall include hydrology and hydraulics calculations and shall account for 50% clogging of the area drains. Calculations shall be based on the 100-year storm event.
27. If an automatic irrigation system is proposed for this project, it shall be designed to avoid excess watering resulting in irrigation runoff. The system shall be designed to automatically shut off in case of a pipe break or other malfunction. The automatic shut-off system, moisture shut-off sensors, and other advanced controls will be required for the installation of an automatic irrigation system.
28. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures as approved by the Director of Public Works. The erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Director of Public Works prior to the start of any other grading operations. Prior to the removal of any erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods as may be required by the Director of Public Works. The applicant shall maintain the temporary erosion control devices until the Director of Public Works approves of the removal of said facilities.
29. The applicant shall participate in the Master Plan of Drainage in a manner meeting the approval of the Director of Public Works, including payment of fees and/or the construction of the necessary facilities and the dedication of necessary easements. The design, location and size of all drainage improvements and easements shall be in accordance with the Master Plan of Drainage and to the satisfaction of the Director of Public Works.
30. The applicant shall submit a geotechnical report for review and approval by the Director of Public Works. This report shall include an assessment of potential soil related constraints and hazards such as slope instability, settlement, liquefaction, or related secondary seismic impacts, where determined appropriate by the Director of Public Works. The report shall also include an evaluation of potentially expansive soils and recommend

COASTAL COMMISSION

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construction procedures and/or design criteria to minimize the effect of these soils on the proposed development. All reports shall recommend appropriate mitigation measures and be completed in the manner specified by the Orange County Grading Manual and Orange County Subdivision Ordinance.

31. The final grading and drainage plans shall concur with the approved conceptual grading plan from Coastal Development Permit CDP05-20.
32. Applicant shall submit a copy of the approved conceptual grading plan from CDP05-20.
33. Letters of permission from the adjacent property owners must be submitted to the Engineering Department for construction of the property line walls. A grading permit will not be issued without said letter.
34. The grading/drainage plan shall include the following notes:
 - a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
 - b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
 - c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.
35. Retaining wall plans shall be submitted and approved prior to or concurrently with the issuance of grading permit. Any proposed retaining wall outside of the building footprint requires a permit from the Building Department. Retaining Wall plans shall include a site plan, property lines, existing conditions/improvements and proposed improvements including elevations, dimensions and cross sections to ensure this project does not adversely affect adjacent properties during and after construction.

Three sets of plans must be submitted to the Building Department for review and approval with copies of the retaining wall calculations for review and approval by the Building Department. Applicant shall indicate on plans how many cubic yards will be imported as part of the retaining wall construction. Said plans shall also call out finish materials of the proposed retaining walls, and the height and finish materials for any required guardrails needed for retaining walls resulting in a grade change of 30 inches or more. The finish material shall be reviewed and approved by the Director of Community Development prior to issuance of a permit.

COASTAL COMMISSION

Any temporary shoring required for the construction of the proposed retaining walls is subject for review by the Building Department prior to the issuance of wall permit.

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36. The applicant shall obtain an encroachment permit from the Public Works and Engineering Department prior to commencements of any work, including the following items in the Santa Clara Avenue right-of-way:
- a. The removal and replacement of curb and gutter.
 - b. Driveway approaches.
 - c. Planting and irrigation.
 - d. The removal and replacement of broken sidewalk.
 - e. New connections for required drainage improvements.
37. The applicant shall submit "will serve" letters from the applicable water and sewer districts.
38. All proposed utilities within the project site shall be installed underground to the nearest off-site connection.
39. The geotechnical consultant recommends over-excavation of soils within five (5) feet of the footprint of the building line. Grading shall not encroach within the 25-foot coastal bluff setback.
40. A lateral access easement shall be irrevocably offered for dedication to ensure implementation of the bluff top trail system shown in the Dana Point Specific Plan/Local Coastal Program. Said easement shall be ten (10) feet wide and setback a sufficient distance from the bluff edge to assure safety from the threat of erosion for 50 years. Said dedication shall be in the form of a recorded, irrevocable offer to dedicate until the City acquires the same rights from continuous bluff top property owners. This offer to dedicate shall be valid for 21 years or until the City accepts the easement, or until an amendment of the Local Coastal Program deleting the requirement of dedication of a lateral access easement for trail purposes, whichever occurs first. The irrevocable offer to dedicate shall be in the standard City format or, if prepared by the property owner(s), submitted for review and approval by the Director of Community Development and the City Attorney prior to being executed and ultimately recorded.
41. The applicant shall execute the City's standard deed restriction or, if prepared by the owner(s), shall be submitted for review and approval by the City Attorney. The deed restriction shall provide that; (1) the applicant understands that the subject site is subject to bluff retreat and that the owner(s) assumes the liability from these hazards; (2) the owner(s) unconditionally waive any claim of liability on the part of the City or any other public agency from any damage from such hazards; and (3) the owner(s) assume all liability for damages incurred as a result of any required on-site grading. The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney.

-
42. The applicant shall submit a final landscape and irrigation plan for review and approval by the Engineering Department and Community Development Department. The plan shall be prepared by a State licensed landscape architect and shall include all proposed and existing plant materials (location, type, size, quantity), an irrigation plan, note wall/fence locations, a grading plan, an approved site plan and a copy of the entitlement conditions of approval. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code, the preliminary plan approved by the Planning Commission and further, recognize the principles of drought tolerant landscaping especially within the bluff edge setback and the removal of any existing irrigation systems with the bluff edge setback.

C. Prior to Building Plan Check Submittal

43. The cover sheet of the building construction documents shall contain a blue-line print of the City's conditions of approval and it shall be attached to each set of plans submitted for City approval or shall be printed on the title sheet verbatim.
44. Building plan check submittal shall include 2 sets of the following construction documents:
- Building Plans (3 sets)
 - Energy calculations
 - Structural Calculations
 - Soils/geology report
 - Drainage Plan

All documents prepared by a professional shall be wet-stamped and signed.

45. Fire Department review is required. Submit three (3) separate sets of building plans directly to the Orange County Fire Authority for review and approval.
46. Fire sprinkler system is required.
47. Buildings shall comply with local and State building code regulations, including 2001 CBC Series. Also conform to State amendments for energy conservation.
48. Foundation system to provide for expansive soils and soils containing sulfates unless a soils report can justify otherwise. Use Type V cement, w.c. ration of 0.45, F'c of 4,500 psi.
49. Building address shall be located facing street fronting property. Addresses shall be 4" high with 1" stroke and **COASTAL COMMISSION** contrasting materials.
50. A minimum roofing classification of type "A" is required.

51. The spa equipment illustrated on the landscape plan must maintain four (4) feet of clearance from the heater vent to the property line.
52. Spa equipment shall be placed no closer than five (5) feet to the side property line pursuant to Zoning Code Section 9.05.080(p). If proposed closer than five (5) feet a Minor Site Development Permit application in accordance with Section 9.05.080(p), Footnote "P" shall be submitted for the location of the spa equipment to the Planning Department for the requisite review.
- D. Prior to Issuance of a Building Permit or release on certain related inspections, the applicant shall meet the following conditions:
53. Applicant shall submit a rough grade certification for review and approval by the Director of Public Works by separate submittal. The rough grade certification by the civil engineer (along with the City's standard Civil Engineer's Certification Form for Rough Grading) shall approve the grading as being substantially completed in conformance with the approved grading plan to the satisfaction of the City Engineer. The civil engineer and/or surveyor shall specifically certify that the elevation of the graded pad is in compliance with the vertical (grade) position approved for the project.
54. An as graded geotechnical report (along with the Geotechnical Engineer's Certification Form for Rough Grading) shall be prepared by the project geotechnical consultant following grading of the subject site. The report should include the depths of all footings, results of all field density testing, depth of reprocessing and recompaction, as well as a map depicting the limits of grading, locations of all density testing, and geologic conditions exposed during grading. The report shall include conclusions and recommendations regarding applicable setbacks, foundation recommendations, erosion control, and any other relevant geotechnical aspects of the site. The City's third party geotechnical consultant shall review and approve the as-graded geotechnical report, if deemed necessary by the City Engineer.
55. Proof of all approvals from applicable outside departments and agencies is required, including the Orange County Fire Authority (OCFA), particularly for residential fire sprinkler requirements.
56. The applicant shall submit payment for any and all supplemental school, park, water, sewer, Transportation Corridor, and Coastal Area Road Improvement and Traffic Signal fees.
57. The applicant shall submit payment of a fee of \$275 for each residential unit into the Coastal Access fund in compliance with the Dana Point Specific Plan/Local Coastal Program.

COASTAL COMMISSION

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58. Prior to commencement of framing, the applicant shall submit a foundation certification, by survey that the structure will be constructed in compliance with the dimensions shown on plans approved by the Planning Commission, including finish floor elevations and setbacks to property lines included as part of CDP05-20 and SDP05-58(M). The City's standard "Line & Grade Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval. Certification shall verify that the location of the structure is in compliance required 25-foot bluff edge setback as indicated on the approved plans.
59. Prior to release of the roof sheathing inspection, the applicant shall certify by a survey or other appropriate method that the height of the structure is in compliance with plans approved by the Planning Commission and the structure heights included as part of CDP05-20 and SDP05-58(M). The City's standard "Height Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval before release of final roof sheathing is granted.

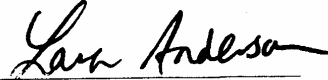
E. Prior to the issuance of a certificate of occupancy, the applicant shall meet the following:

60. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. A State licensed landscape architect shall certify that all plant and irrigation materials have been installed in accordance with the specifications of the final plan and shall submit said certification in writing to the Director of Community Development. The Community Development Department shall inspect the final landscaping to ensure that the installation matches the approved landscaping plan.
61. All improvements permitted in the Santa Clara Avenue right-of-way shall be inspected and finalized by the Public Works and Engineering Department.
62. The applicant shall be responsible for payment of applicable development impact fees including General Government, Fire Protection and Transportation.
63. A certified engineering geologist shall certify that the "as built" grading, drainage and landscaping are satisfactory to sustain bluff stability.
64. An as-graded geotechnical report (along with the Geotechnical Engineer's Certification Form for Precise Grading) shall be prepared following the completion of site grading, including 2 results of all density testing, and in-grading expansion testing, and

geologic map depicting as-graded geologic conditions, locations of all subdrainage elements, keyways, and fill density tests. The City's third party geotechnical consultant shall review and approve the as-graded geotechnical report, if deemed necessary by the City Engineer.

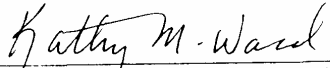
65. Written approval by the project civil engineer (along with the Geotechnical Engineer's Certification Form for Precise Grading) approving site improvements as being substantially in conformance with the City approved grading plan to the satisfaction of the City Engineer.

PASSED, APPROVED, AND ADOPTED this 20th day of November, 2006.



LARA ANDERSON, MAYOR

ATTEST:



KATHY M. WARD, ACTING CITY CLERK

COASTAL COMMISSION

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

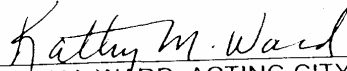
I, KATHY M. WARD, Acting City Clerk of the City of Dana Point, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 06-
11-20-02, adopted by the City Council of the City of Dana Point, California, at a regular
meeting thereof held on the 20th day of November, 2006, by the following vote to wit:

AYES: Council Member Harkey, Mayor Pro Tem Chilton
and Mayor Anderson

NOES: None

ABSENT: Council Members Lacy and Rayfield

(SEAL)



KATHY M. WARD, ACTING CITY CLERK

COASTAL COMMISSION

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STATE OF CALIFORNIA - THE RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 591-5084

FAXED

ARNOLD SCHWARZENEGGER

12-6-06 562-5905084



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Timothy McFadden
Mailing Address: 24342 Santa Clara Ave.
City: Dana Point Zip Code: 92629

RECEIVED
South Coast Region
DEC 6 - 2006

Phone: 949-406-3806
CALIFORNIA
COASTAL COMMISSION

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Dana Point Planning Commission and City Council

2. Brief description of development being appealed:

Costal Development Permit CDP05-20 and Site Development Permit SDP05-58 (M) for new single family dwelling at 24332 Santa Clara Ave. Dana Point, CA 92629.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

24332 Santa Clara Ave. Dana Point, CA 92629.

4. Description of decision being appealed (check one):

- Approval; no special conditions
- Approval with special conditions:
- Denial

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

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	<u>A5-DPT-06-471</u>
DATE FILED:	<u>12.6.06</u>
DISTRICT:	<u>Long Beach</u>

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
 City Council/Board of Supervisors
 Planning Commission
 Other

6. Date of local government's decision: 11/20/2006

7. Local government's file number (if any): cdp05-20 and sdp05-58

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Susan Morrison 24332 Santa Clara Ave. Dana Point, CA 92629

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Timothy McFadden 24342 Santa Clara Ave. Dana Point, CA 92629 for Appellant

(2) Dana Point City Council
Attn: Kathy Ward, Acting City Clerk
33282 Golden Lantern
Dana Point, CA 92629

(3) Dana Point Planning Commission
Attn: Kurth Nelson, Planning Commission
33282 Golden Lantern
Dana Point, CA 92629

(4) Geo Soils INC. 1446 East Chesnut Ave. Santa Ana, CA 92701 attn: Ben Shahrvin

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PAGE 2 OF 6

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. Our Appeal to City Council covers three key areas of concern already addressed at the 10.04.06 Planning Commission Meeting.

a. City's Third Party Geo-Technical Consultant (Zeiser Cling) and Planning Commission review of Bluff Edge (Defined as Top of Bluff on plans). Page 3 of Mr. Butterwick agenda report references conceptual drawings in exhibit 1.

b. City's Third Party Geo-Technical Consultant (Zeiser Cling) and Planning Commission review of Bluff Stability (Caissons). According to 11.20.06 Agenda Report this has been accepted by Third Party Geo-Technical Consultant and Staff.

c. Permit SDP05-58 (M) Minor Site Development to allow no more than 30" of fill in residential single family 7 (RS 7) at 24332 Santa Clara Ave.

2. We would like to address each section individually.

a. Top of Bluff definition: See Support Document I page 53 and 54 of 11.20.06 Agenda Report. This section clearly states our case. We spent thousands of dollars and time with Zeiser Cling, Planning Commission, and our team to clearly define top of slope as the last break in the slope. You will see the applicants definition has allowed for much more lenient allowance at the cost of allowing top of bluff to be within 25 feet of cities top of bluff definition. During our review of our setback by Zeiser Cling Two Years ago the setback was moving towards 40 Feet from defined top of bluff.

b. Bluff Stability (Caissons) - Support Document H Page 52 submitted at 10.04.06 Planning Commission Meeting prepared by DEJ Consultants Inc. We also requested a review of the applicant's soil report by our Geo Technical Company Geo Soils who is our soils consultant for our project. Geo Soils worked with Zeiser Cling and Planning during our construction. We would like to submit four pages for your review.

i. Based on California Special Publication 117 dated March 13, 1997 by CDMG the soils report submitted and approved at planning commission should provide both Static and Seismic Slope Stability analysis. The soils report is not supported by this required analysis.

ii. The soils report does not meet the foundation setback requirements of section 1806.5.2 of the uniform Building Code (California Building Code). Copy is enclosed with this submittal.

iii. The soils report does not meet the foundation set back requirements of Dana Point. (General Plan prepared by Zeiser Geotechnical) Piers should be provided within 33 Degree projection line, not 45 Degrees. Zeiser Cling is the cities Third party Geo-Technical Consultant for this project and performed the same duties for our

iv. The soils report should specify how far (Distance) form the bluff, where a safety factor

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EXHIBIT # 3
PAGE 3 OF 6

of 1.5 could be obtained. That will determine the area where the foundation setback should be in accordance with UBC.

1. Please note the four areas of our appeal for caissons are independent publications, uniform building codes, general plan submitted by the third party consultant for the City of Dana Point, and in accordance with UBC.

2. Please note our soils report is being used by applicant. Our soils report was prepared by Geo Soils and reviewed by Zeiser Cling as the third party consultant for the City of Dana Point.) The final acceptable caisson and sump system required a massive caisson system with drainage from top of bluff to Santa Clara Ave (two sump pumps) at a cost of over \$375,000 for Caissons, Footings, and sump pump system.

3. Applicant's initial soils report required Caissons but the final approved soils report propose traditional spread footings. We do not understand how the same City Consultant and City Planning Department could approve this type of system.

c. 30" fill credit: See Support Document J Pages 55 to 61. We also wanted to submit Section 9.05.110 (a) (3) of the Zoning Code to include the total section. The Agenda Report submitted today is not completed and a key area of interest and concern is covered under this Zoning Code. The area of concern is building height covered under the Zoning Code. This section states "Should the proposed fill be deemed by the Director of Community Development to be proposed for any purpose other than providing the drainage pattern promoted by this section, the application shall be denied".

i. During Planning Commission 10.04.06 a member of Planning Commission asked Mr. Kurth Nelson who was responsible for utilizing the fill credit section: Mr. Nelson responded that this was his ideal since the applicant had a Height Issue. Height Issue is not to be approved under this zoning code.

ii. Please review our comments regarding our conditions of approval on pages 55 to 61 under supporting document J. This is a complete review of requirement and conditions of approval for our project.

1. One Typo regarding page 57 section F. Our precise grading plan was off 1/100th of an inch versus 1/10th of one inch of Natural Grade. (We had height issues also)

2. Please review page 56 item E support document J condition 7 of commission resolution no 05.01.19.01 costal development permit cdp04-19 that requires the proposed development will be visually compatible with the character of surrounding areas. A 30" fill will not allow this to occur from our backyard.

3. Please review page 3 last paragraph of Agenda Report by Mr. Kyle Butterwick regarding the use of the word "Choice" for sump pumps and the availability of fill credit. This was not a choice but a requirement stipulated by Planning Commission and to allow for final building permits.

In closing the City Council was not given factual information from the Soils Engineer for Applicant (Earth Systems) presentation did not show correct top of bluff as defined by City of Dana Point Planning Commission and Zeiser Cling properly. We also heard the term Minimal Standards allowed for Costal Bluff being approved by Zeiser Cling (Third Party Consultant for Dana Point), Earth Systems, and City Council Members. Diane Harkey City Council came up to me after the vote and stated "We must take a look at Minimal Standards". The time to review Minimal Standards is prior to issue of building permit for this applicant or other applicant building on the costal bluff. Our Soils Company Geo Soils contacted Zeiser Cling (Matt) after the City Council Meeting and was told that Dana Point would not have to adhere to sections b above and minimal standards are now allowed.

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We also issued many written reports to support appeal. The file is available upon request.

Thank for your time and consideration to protect our investment and Costal Bluff.

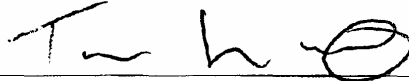
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 12/05/2006

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

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10. Landscape materials which impede erosion on sloped surfaces will be required where necessary.
11. Natural drainage channels and open space areas will be utilized as mechanisms to minimize erosion through percolation.
12. Limitations on the nature and quantity of materials discharged in the drainage channels and coastal waters will be developed in cooperation with the San Diego Water Quality Control Board (SDWQCB).
13. Wastewater reclamation procedures, where feasible, will be implemented in coordination with the Dana Point Sanitary District.
14. Completion of the storm drain system in prospective development areas should be completed to mitigate siltation problems. In particular, the storm drain located in the Street of the Golden Lantern should be extended through the ~~Sanctuary~~ Project to control runoff over the bluffs and the resulting siltation.
15. Drainage facilities will be constructed in conjunction with Master Plan of Drainage to direct runoff from imperious surfaces in proposed development areas.
16. The number of crossings of major watercourses should be minimized. It will be necessary to design specific road alignments to ensure that water runoff will be properly directed towards planned drainage and flood control facilities.
17. The potential for bluff erosion will be mitigated through proper grading and streetflow drainage within the required building setback from the bluff.

4. Environmental Hazards

a. Geologic Hazards

Existing Conditions

Several geologic units exist in Dana Point. The region is near the middle of the Peninsular Range Province, a major northwest trending block of the earth's crust that has been deformed and uplifted along several major fault zones. Marine sedimentary bedrock of the Upper Miocene - Lower Pliocene Capistrano Formation underlies most of the subject area. Minor outcrops of the Middle Miocene San Onofre Breccia are present in the western portion.

The Capistrano Formation is a predominantly claye **COASTAL COMMISSION**
with lesser sandy siltstone that is well known for its
inherent weakness and susceptibility to slope failure and

accelerated erosion. The San Onofre Breccia is predominantly a sedimentary breccia and conglomerate unit composed of sandstone and siltstone.

Mapped surficial deposits include undifferentiated marine and non-marine terrace deposits, consisting of interbedded gravels, sands and silts; landslide debris; and undifferentiated alluvium, older alluvium, and colluvium. Alluvium and older alluvium sediments are recently deposited in stream channels and in the San Juan Creek floodplain. Colluvium is unusually thick soil which has accumulated to at least a four to five foot thickness through weathering and slope wash.

Areas have a consistent direction of shallow bedding dip. A significant proportion of the bedrock observed is not fractured and lacks structure. Overall, the predominant Capistrano Formation exhibited more bedding surfaces than is common in the general Orange County area; however, bedding is still "poorly developed." The second most pervasive structural feature of the site is jointing. These tensional cracks, developed during uplift and erosion, dip at consistently steep angles.

Numerous slides and possible slide areas have been identified along the steep coastal bluffs and areas extending from Laguna Niguel to San Juan Creek (Figure 2). The principal reasons for movement in these areas are the expansive qualities of local soils and high potential for erosion along steep, degraded slopes. General construction activities and continual downcutting has removed support in these areas. The structural weakness of the underlying, deeply weathered and fractured Capistrano Formation siltstone and the presence of clay seams, bedding planes parallel to the angle of slope, and joints or fractures in the rock increase the risk of landslides. In addition, conditions may be aggravated by ground-shaking from local earthquakes or water saturation.

Dana Point contains relatively thick clayey cohesive soil underlying more erodible sands. Soils consist primarily of clayey silts, sandy silts, silty sands, and gravels. These materials are potentially collapsible/compressible and frequently require removal and recompaction to provide satisfactory foundation material. Alluvial soils are locally collapsible/compressible requiring special foundation considerations.

According to the Soil Survey of Orange County and Western Part of Riverside County, California, Dana Point soils may also be classified in the following three categories:

Myford Association: Nearly level to moderately steep, moderately well-drained sandy loams that have a moderately developed subsoil, on coastal terraces: somewhat excessively drained and well-drained, strongly sloping to very steep soils

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of coastal foothills, The Myford Association is characterized by severe slope, shrink-swell potential and low strength for building and road construction.

Metz-San Emigdio Association: Nearly level, somewhat excessively drained and well-drained, calcareous loamy sands and fine sandy loams on alluvial fans and floodplains. The Metz San Emigdio Association is generally considered suitable for building and road construction.

Alo-Bosanko Association: Strongly sloping to steep, well-drained clays on coastal foothills. The Alo-Bosanko Association shows severe shrink-swell potential, low strength and slope for building and road construction.

The study area is vulnerable to seismic activity along faults in the Newport-Inglewood Fault Zone, which runs offshore in Dana Point to the southern edge of the Santa Monica Mountains in Los Angeles County. A concealed fault from this system stretches from the Dana Point Harbor area northwest across the Headlands into Laguna Niguel (Figure 2). The fault juxtaposes the Capistrano and San Onofre Breccia Formations and consists of a zone of highly deformed and sheared rock about 250 feet wide. Although the weak sheared rock does present slope stability problems, the fault itself is considered inactive since it does not offset the terrace deposits. Numerous inactive splinter faults have been identified in the vicinity. It is believed that these faults were formed in response to the general uplift and movement of the land along the major boundary fault systems.

The Newport-Inglewood Fault Zone produced the Long Beach earthquake in 1933, which registered a magnitude of 6.3 on the Richter Scale. In the past 50 years, shocks along this zone have ranged from 3.0 to 5.0 magnitude. It is believed that the zone is capable of generating a 7.0+ magnitude earthquake within the next 50-100 years.

Ground-shaking typically accounts for more property damage and personal injury than ground rupture or any visible movement along an earthquake fault. The shaking would be greatest in the most recent unconsolidated deposits, where depth to groundwater is less than 50 feet. Saturated alluvium can be expected to exhibit the potential for liquefaction during or immediately following groundshaking. The potential is expected to be relatively high in the alluvial area of Lower San Juan Creek. Seismic activity could cause slope failure in areas of unstable soils, including landslides in vulnerable bluff and slope areas. The extent of damage from earthquakes and associated shocks will depend on the magnitude of the tremor and distance from the epicenter of the earthquake. An earthquake could also cause a tsunami (tidal wave), damaging shoreline developments. However, the Dana Point beaches are protected from tsunamis in that they are situated at an oblique angle from offshore faults. Offshore EXHIBIT # provide further protection from this hazard.

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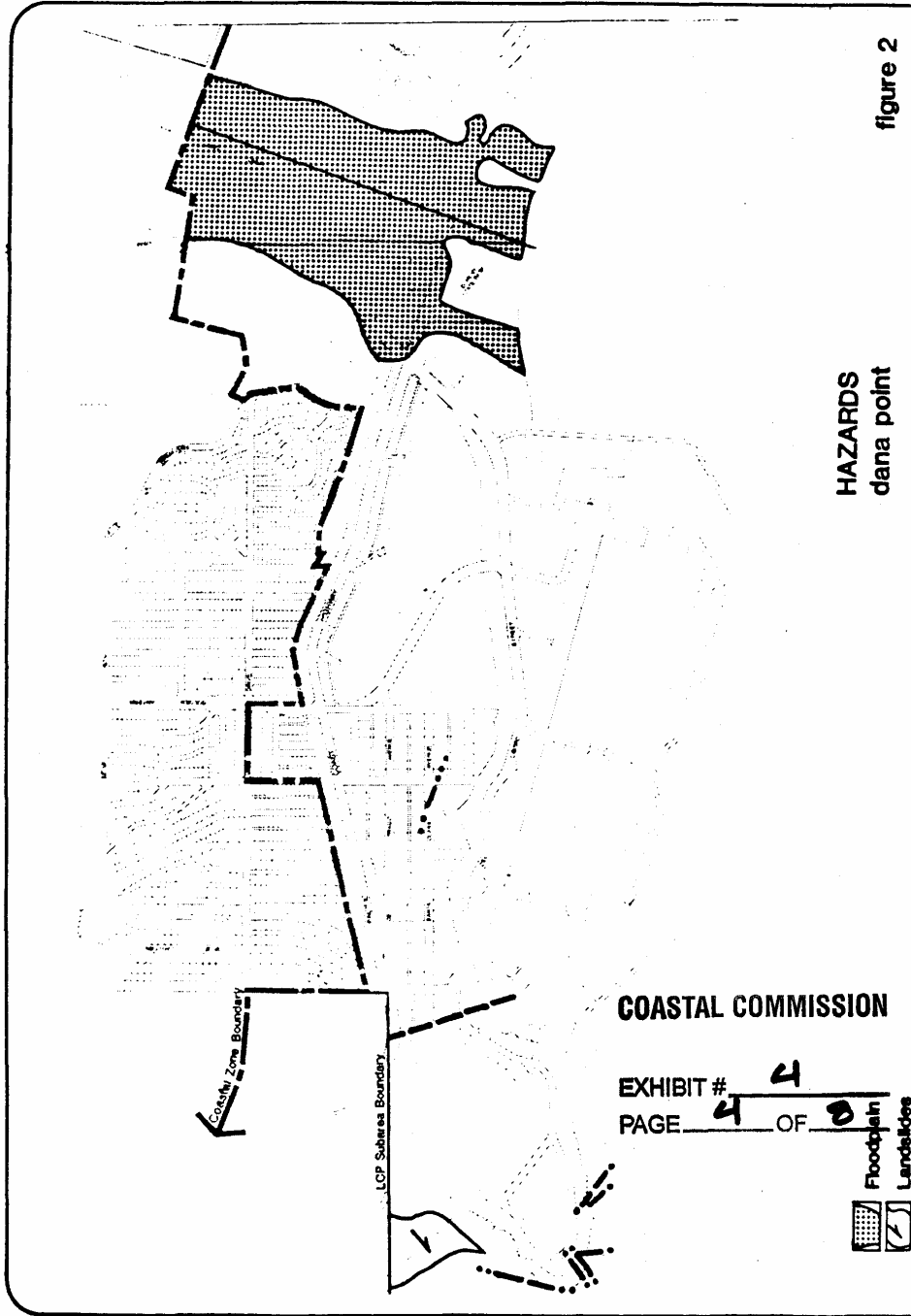


figure 2

HAZARDS
data point

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Floodplain
Landslide

Issue Analysis

New development within the Dana Point area will be affected by or affect the exposure of individuals and/or property to geologic hazards in the following manner:

1. Soils within the alluvium colluvium and older alluvium, which are potentially collapsible/compressible, may subject fills placed upon the soils to differential settlement. Roadbed surfaced, faced, curbs, gutters, and subsurface utilities could be damaged.
2. On and off-site erosion on bluff tops and slopes will be increased by new development due to the increase in urban runoff and changing erosion patterns.
3. New development may be exposed to seismic activity along regional fault system. The area is susceptible to earthquake hazards such as liquefaction, flow landslidings, seismically-induced settlement, and ground lurching or cracking due to the potentially for relatively high intensities of ground shaking and the presence of loose sandy soils or alluvial deposits and shallow ground water conditions. However, the potential for these events to occur is considered low since intense ground shaking is not anticipated and insignificant qualities of alluvial deposits and groundwater.

Policies

1. To protect irreplaceable beaches and coastal bluffs from development and natural erosional processes, to provide for the replenishment of beach sands, and to strive for increased public control and access to the beaches and the coastline. (Conservation Element, page III-4)
2. To enact and enforce regulations which will restrict development in areas subject to substantial hazards to persons and property due to seismic activity and surface soil hazards. (Land Use Element, page 12)
3. To ensure the health and safety of County residents by identifying, planning for and managing/regulating open space areas, including, but not limited to, areas which require special consideration because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, floodplains, watersheds, areas presenting high fire risks, areas required for the protection and enhancement of air quality. (Open Space Element, page VI-9)
4. Slope-density regulations are necessary to **COASTAL COMMISSION** intensity of development to the steepness of terrain in

order to minimize grading, removal of vegetation, runoff, erosion, geologic hazards, fire hazards, and to help ensure utilization of land in balance with its natural capabilities to support development. (Conservation Element Hillside Development Management Guideline Number 1a, page VI-2)

5. Grading for pads and roadways needs to be contoured to maintain the appearance of natural hillsides. (Conservation Element Hillside Development Management Guideline Number 1b, page VI-2)
6. Limits need to be established for the vertical and horizontal extent of cuts and fills allowed without a special review process. (Conservation Element Hillside Development Management Guideline Number 1c, page VI-8)
7. Plans for erosion and sediment control measures, including landscaping and provisions for maintenance responsibilities need to be established as a requirement of the approval processes. (Conservation Element Hillside Development Management Guideline Number 1d, page VI-8)
8. Evidence of fault inactivity notwithstanding, prudent planning and construction practices dictate that permanent structures not be located over fault lines. (Capistrano Valley Area Land Use Element Supplement, Public Health and Safety Development Guideline Number 10, page 7)
9. Development concepts which minimize the amount of graded slope area and thus reduce the probability of hillside erosion problems would be favored because of the grading factor. (Capistrano Valley Area Land Use Element Supplement, Public Health and Safety Development Guideline Number 12, page 7)
10. The more unstable areas should be left essentially upgraded and undeveloped with consideration given to their potential for greenbelt or other open space uses. (Capistrano Valley Area Land Use Element Supplement, Public and Safety Development Guideline Number 13, page 7)
11. Some specific existing slide areas, without extensive corrective measures, may be feasible for development of relatively low unit densities or less intensive uses such as mobile home developments, or cluster type development incorporating open space and greenbelt areas. (Capistrano Valley Area Land Use Element Supplement, Public Health and Safety Development Guideline Number 14, page 8)
12. Each site with a liquefaction potential should be evaluated individually. (Capistrano Valley Area Land Use

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Element Supplement, Public Health and Safety Development Guideline Number 15, page 8)

13. A ground stability analysis should be required as part of obtaining a permit for proposed developments primarily located within the floodplain of San Juan Creek or in areas where shallow groundwater (20 feet or less) underlain by alluvium or terrace deposits is encountered. (Capistrano Valley Area Land Use Element Supplement, Public Health and Safety Development Guideline Number 16, page 8)
14. Private geotechnical consultants should be employed to evaluate expansive clay soil conditions and make appropriate design recommendations for individual structures on a site-by-site basis in order to prevent the serious damage that such soils can cause to lightly loaded structures, pavements, driveways, sidewalks, and flood control channels. (Capistrano Valley Area Land Use Element Supplement, Public Health and Safety Development Guideline Number 17, page 8)
15. Development proposals will reflect full and complete investigation of potentially unstable areas. Where necessary, land uses will be restricted to assure an adequate level of safety. (Dana Point Specific Plan Headlands Land Use Policy, Area A, page IV-21)
16. Applications for grading and building permits, and applications for subdivision will be reviewed for adjacency to, threats from, and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other geologic hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report shall be required. Mitigation measures will be required where necessary.
17. Major structures will be sited a minimum of 50 feet from a potentially active, historically active, or active fault. Greater setbacks may be required if local geologic conditions warrant.
18. In areas of new development, above-ground structures will be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of 50 years. The County will determine the required setback. A geologic report shall be required by the County in order to make this determination.
19. The setback area mentioned in Policy 18 will be dedicated as an open space easement as a condition of the approval

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of new development. Further setback requirements are specified in the Access Component.

20. Within the required bluff top setback, drought-tolerant vegetation will be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements that do not impact public views or bluff stability, may be permitted.
21. Development and activity of any kind beyond the required bluff top setback will be constructed to insure that all surface and subsurface drainage will not contribute to the erosion of the bluff face or the stability of the bluff itself.
22. No development will be permitted on the bluff face, except for engineered staircases or accessways to provide public beach access. Drainpipes will be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face will not be permitted if the property can be drained away from the bluff face.
23. A waiver of public liability shall be a condition of new development approvals for all property located in identified hazard areas (e.g., geologic, flood, fire, etc.).

b. Flood Hazards

Existing Conditions

San Juan Creek at its confluence with the Pacific Ocean is located at the eastern boundary of the Dana Point area (Figure 2). The creek drains a large basin and has been channelized between concrete-lined flood control embankments for most of its length in the subarea. Existing flood control facilities, however, are inadequate to prevent widespread damage during unusually wet years.

Areas adjacent to the San Juan Creek in the 100-year floodplain are susceptible to flooding in heavy rains. The average annual surface flow from the San Juan-Trabuco drainage basin to the ocean is estimated by the Army Corps of Engineers to be 10,500 acre-feet. (Danielian, Moon Sempieri and ILg (DMSI), Land Use Plan Study, Orange County General Plan, Capistrano Valley Area, 1973.) Rapid runoff following winter rains heightens the groundwater table, causing additional flooding.

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Appealable development: Any coastal development permit application that may be appealed to the California Coastal Commission pursuant to the Coastal Act of 1976, as amended.

Approving authority: Any person, committee, commission or board authorized by the applicable zoning or specific plan regulations, or by the provisions of this district to approve, conditionally approve or disapprove a coastal development permit or discretionary permit application or project.

Certified Local Coastal Program: A plan for the use of property within the Coastal Zone, together with the zoning ordinance, zoning district maps and other necessary implementing actions, which has been adopted by the County of Orange and certified by the California Coastal Commission pursuant to the Public Resources Code.

Coastal bluff:

- (a) Any bluff where the toe of the slope is now, or within the past 200 years has been, subject to marine erosion;
- (b) Any bluff where the toe of the slope is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in the Public Resources Code section 30603(a)(1) or (a)(2).

Coastal Commission: The California Coastal Commission established pursuant to the California Coastal Act (Division 20 of the Public Resources Code).

Coastal Development Permit: A permit issued by the County of Orange or the Coastal Commission which in an approval of a use subject to the provisions of section 7-9-118 and the Coastal Act.

Coastal Zone: That area of land and water extending seaward to the State's outer limit of jurisdiction and the unincorporated portion of the County of Orange specified on a Coastal Zone map adopted by the State Legislature as adjusted by the Coastal Commission pursuant to the requirements of the California Coastal Act.

Development: Means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, and kelp harvesting.

Development project: Any of the uses, activities or structures defined under the definition of "development" when carried out, undertaken or established individually or independently of any other such use, activity or

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