

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W9d**ADDENDUM**

December 5, 2011

Click here to go
to the original staff report.

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W9d**, LOCAL COASTAL PROGRAM (LCP) MAJOR AMENDMENT **DPT-MAJ-2-10** FOR THE COMMISSION MEETING OF **December 7, 2011**.

1) Changes to Staff Report

Commission staff recommends additions to the List of Exhibits and Section III (Findings and Declarations) of the staff report to include an exhibit that provides a list of Visitor Serving Uses allowed in the Visitor/Recreation Commercial (V/RC) zoning designation found in Section 9.11.010 and 9.11.020(b) of the Certified LCP. Language to be added to the findings is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

Page 3 – Modify the List of Exhibits, as follows:

EXHIBITS

- 1) City Council Resolution No. 09-06-08-10.
- 2) City Council Resolution No. 09-06-08-11.
- 3) City Council Ordinance No. 09-06.
- 4) Map showing 34202 Del Obispo Street.
- 5) Letter from Rutan & Tucker, LLP (City of Dana Point City Attorney) dated November 1, 2011
- 6) City of Dana Point Adjacent Commercial & Visitor Uses Map
- 7) City of Dana Point Existing Recreational Facilities Map
- 8) Letter from SOCWA dated October 26, 2011
- 9) Letter from Mary Jeffries dated October 27, 2011
- 10) Copy of opposition flyer by Mary Jeffries
- 11) Recent opposition flyer by Mary Jeffries
- 12) Another recent opposition flyer by Mary Jeffries
- 13) List of Visitor Serving Uses allowed in the Visitor/Recreation Commercial (V/RC) zoning designation found in Section 9.11.010 and 9.11.020(b) of the Certified LCP**

Page 22 – Modify Section III.C.1.a, as follows:

...

a. Visitor Serving Commercial Uses

Visitor serving commercial uses are strongly preferred under the LUP. This type of use is preferred because it maximizes the number of people who can enjoy the unique experience available only along the coast. Thus, these uses need to be protected. As submitted, the IP Amendment amends the Zoning Code to protect these uses this by requiring under “Section 9.13.040 Special Development Standards (c)(3)” that the ground floor area of any building fronting Pacific Coast Highway, for a minimum depth of forty (40) feet, be restricted to visitor serving commercial uses.” However under “Section 9.13.010 Intent and Purpose”, it fails to clarify this requirement as well as reference where in the Zoning Code a description of “Visitor/Recreation Commercial (V/RC) uses are described **(Exhibit #13)**. Therefore, the IP does not carry out the LUP and must be denied as submitted.

...

2) Letter received November 22, 2011 from Mary Jeffries (Attached as Exhibit A)

Commission staff received a letter from Mary Jeffries on November 22, 2011 discussing her opposition/concerns regarding the proposed LCP Amendment similar to her previous letter, which has been included as Exhibit #9 of the November 17, 2011 CCC Staff Report. She states the following: 1) the 2008 Mitigated Negative Declaration is outdated; 2) the site is located in a Tsunami Zone; 3) air quality will be affected by traffic caused by allowing the LCP Amendment; 4) a sewer treatment plant is adjacent to the property; 5) a 24” gas line runs around the perimeter of the property; 6) coastal views will not be maintained because of the project; and 7) there is toxic ground water on site. Approval of this LCP Amendment does not approve development of an actual project. During the course of local review by the City for a Coastal Development Permit (and other local discretionary actions) for a specific project, conditions could be imposed such as additional setbacks, air quality, noise, requirement for an “odor easement”, and inspection and determination of hazards (i.e. toxics, etc) and utilities (i.e. gas lines, etc). Also, an up to date project specific CEQA review would be needed. Additionally, the Mitigated Negative Declaration imposed Mitigation Measure-2 to ensure that future development of the subject property complies with City requirements related to aesthetics. Mitigation Measure-2 states the following: *Visual simulations depicting the post-development characteristics of the subject property shall be prepared by the applicant of a future project on the site prior to approval of such project.*

Therefore, Commission staff continues to recommend approval of the LCP Amendment with the suggested modifications recommended in the staff report. Staff is not recommending any changes to the findings to address the issues raised by Mary Jeffries.

**3) Opposition flyers received December 5, 2011 from Mary Jeffries
(A copy has been attached as Exhibit B)**

Commission staff received additional copies of opposition flyers from Mary Jeffries on December 5, 2011. She asserts that these additional opposition flyers are 40 in total. She requests that these recent opposition flyers be filed with the other previously submitted flyers that she says claims were 618 in total.

**4) Letter received November 21, 2011 from Linda C. Brame
(Attached as Exhibit C)**

Commission staff received a letter from Linda C. Brame on November 29, 2011 discussing her opposition/concerns with the LCP Amendment. She states the following: 1) the site may be contaminated because of the adjacent South Orange County Wastewater Authority (SOCWA), ARCO gas station and nearby gas lines and thus, an Environmental Impact Report (EIR) and soil contamination report should be conducted; and 2) the buildings will be 4-5 stories high and because of that coastal views will be impacted. As stated above, approval of this LCP Amendment does not approve development of an actual project. During the course of local review by the City for a Coastal Development Permit for a specific project, conditions could be imposed such as inspection and determination of hazards (i.e. toxics, etc) and utilities (i.e. gas lines, etc). Also, an up to date project specific CEQA review would be needed. Regarding any buildings proposed on site to be 4-5 stories in height, the Development Standards found in the proposed Implementation Plan specifically state that the maximum height would be 31-35 feet/3-stories (Exhibit #3, page 12 of 14 of the November 17, 2011 CCC Staff Report). In addition, to analyze any view impacts, Mitigation Measure-2 in the Mitigated Negative Declaration has been imposed which states the following: *Visual simulations depicting the post-development characteristics of the subject property shall be prepared by the applicant of a future project on the site prior to approval of such project.*

Therefore, Commission staff continues to recommend approval of the LCP Amendment with the suggested modifications recommended in the staff report. Staff is not recommending any changes to the findings to address the issues raised by Linda C. Brame.

**5) Ex Parte Forms from Commissioner Brennan received
November 30, 2011 (Attached as Exhibit D) and Commissioner
Zimmer received December 5, 2011 (Attached as Exhibit E)**

**6) Letter received December 2, 2011 from the South Orange County
Wastewater Authority (SOCWA) (Attached as Exhibit F)**

Commission staff received a letter from the South Orange County Wastewater Authority (SOCWA) on December 2, 2011 discussing their opposition/concerns regarding the proposed LCP Amendment similar to their previous letter, which has been included as Exhibit #8 of the November 17, 2011 CCC Staff Report. They again argue that the proposed mixed use "Residential/Commercial" designation is inconsistent with the existing surrounding land uses and that placement of residential development adjacent to the SOCWA's water treatment plant

would subject future residents to all impacts that are typically associated with such a plant, including noise and occasional intermittent odors.

The previous use of the site as only a mobile home park, a private residential use, was not a priority use. Commercial uses and more so visitor serving commercial uses are strongly preferred under the Coastal Act. The LCP Amendment is to change the use of the site into a mixed use 'Residential/Commercial' use that will allow for the introduction of priority visitor serving commercial uses to the site. This type of use is preferred because it maximizes the number of people who can enjoy the unique experience available only along the coast.

Additionally, approval of the land use change does not approve development of an actual project. Separate approval of a Coastal Development Permit (and other local discretionary actions) for an actual project would take place separately. At that point, conditions would be imposed to deal specifically with the fact that a water treatment facility is located adjacent to the site. The SOCWA letter states that if the Commission is unwilling to deny the project, that conditions could be imposed to address issues such as odor and noise and requirement for an 'odor easement'. Such conditions would be imposed during the course of local approval for a site specific project.

Therefore, Commission staff continues to recommend approval of the LCP Amendment with the suggested modifications recommended in the staff report. Staff is not recommending any changes to the findings to address the issues raised by SOCWA.

Chapter 9.11

COMMERCIAL DISTRICTS

Sections:

- 9.11.010 Intent and Purpose.
- 9.11.020 Permitted Uses, Accessory Uses, Temporary Uses, and Conditional Uses.
- 9.11.030 Development Standards.
- 9.11.040 Special Development Standards.

9.11.010 Intent and Purpose.

The commercial districts permit a range of commercial uses to support the commercial and service needs of residents, visitors, and the City's workforce.

- (a) Neighborhood Commercial District. The Neighborhood Commercial (NC) district provides for a limited range of smaller-scale business activities which serve the needs of residents who live nearby. Typical businesses include, but are not limited to, small food and drug stores, child care, clothing stores, neighborhood serving convenience stores, professional and business offices. These regulations are intended to ensure that development within the Neighborhood Commercial zone is compatible with the surrounding area with respect to the type of use scale, intensity of development, architectural character, and other impacts upon the community, and that the activities serve the needs of the adjoining residential neighborhoods.
- (b) Community Commercial/Pedestrian District. The Community Commercial/Pedestrian (CC/P) district provides for medium intensity commercial uses that serve community-wide needs in a pedestrian-oriented environment. The Community Commercial/Pedestrian District provides for the high quality design of commercial areas that include, but are not limited to, commercial services, professional business offices, retail sales, child care, restaurants, entertainment uses, and community facilities. The regulations promote integrated commercial districts which are designed to encourage positive pedestrian activity and minimize pedestrian and vehicular conflicts. These regulations promote architecturally pleasing commercial structures, with human scale and pedestrian character including efficient internal access, ingress and egress, and pedestrian amenities such as plazas, courtyards, and attractive landscaping.
- (c) Community Commercial/Vehicular District. The Community Commercial/Vehicular (CC/V) District provides for higher intensity commercial uses that serve community and subregional needs with an emphasis on convenient automobile access while incorporating efficient, safe, and attractive pedestrian circulation. The Community Commercial/Vehicular District provides for the high quality design of commercial areas that include, but are not limited to, larger commercial uses such as department stores, furniture and appliances stores, grocery stores, drug stores, and automotive related uses. The regulations promote integrated commercial developments which are designed to accommodate high volume retail businesses with appropriate facilities for the access, circulation, and parking of cars. These regulations promote

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architecturally pleasing commercial structures situated and designed to facilitate the efficient circulation of motor vehicles.

- (d) **Visitor/Recreation Commercial (V/RC) District.** The Visitor/Recreation Commercial (V/RC) District provides for visitor-serving uses such as resorts, hotels, motels, restaurants, conference facilities, commercial-recreation uses, specialty and convenience shops, and recreation/open space uses. Supporting uses include, but are not limited to, community facilities, such as museums and theaters. Secondary uses may include offices, personal services, clinical services, and similar uses provided they are not the primary use on the site and do not occupy the first floor of the structure. Development within this district shall provide visitor-serving facilities in a manner which promotes fiscal stability and has minimal negative impact on surrounding land uses. Commercial uses shall provide high quality design of sites and structures with extensive landscaping, open space and public and private recreational opportunities.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 94-09, 5/24/94)

9.11.020 Permitted Uses, Accessory Uses, Temporary Uses, and Conditional Uses.

- (a) Several classes of uses are allowed in the Commercial Districts. Each of these classes must promote the commercial character of the individual districts. These classes of uses are:
- (1) **Permitted Use** — allowed by right if no discretionary review is required. Certain permitted uses, indicated by a P*, are also regulated by provisions contained in Chapter 9.07.
 - (2) **Accessory Use** — allowed by right if accessory to a permitted or conditional commercial development.
 - (3) **Temporary Use** — allowed on a temporary basis in accordance with the provisions of Chapter 9.39.
 - (4) **Conditional Use** — allowed subject to the approval of a Conditional Use Permit in accordance with the provisions of Chapter 9.65. Certain conditional uses, indicated by a C*, are also regulated by provisions contained in Chapter 9.07.
 - (5) **Prohibited Use** — not allowed in the subject commercial district.
- (b) The following Table lists the classification of allowable uses in Commercial Districts. Any use not expressly allowed is prohibited.

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SECTION 9.11.020(b)
COMMERCIAL DISTRICTS

LAND USES	NC	CC/P	CC/V	V/R
Administrative Office Uses	P	P	P	C
Adult Businesses	X	X	P*	P*
Adult Day Health Care	X	C	C	X
Alcoholic Beverage Outlets	P*/C*	P*/C*	P*/C*	P*/C*
Animal Hospital	X	P	P	X
Animal Shelter	X	C	C	X
Automotive Sales and Rental Uses	X	C*	C*	C*
Bed and Breakfast Inn	X	P	X	P
Building Materials Sales and Service Uses	X	P	P	C
Business Service Uses	P	P	P	X
Caretaker's Residence	X	C	C	C
Clinical Services	P	P	P	P
Commercial Antennas	C*	C*	C*	C*
Commercial Entertainment Uses	C	P	P	C
Commercial Recreation Uses	C	P	P	C
Construction and Maintenance Services	P	P	P	X
Cultural Uses	P	P	P	P
Dance Halls/Clubs	C	C	C	C
Day Care Centers	P	P	P	C
Drinking Establishments	P*/C*	P*/C*	P*/C*	P*/C*
Drive - Through Uses	C	C	C	C
Drug Abuse Recovery or Treatment Facility	X	C	C	X
Educational Uses	C	P	P	C
Emergency Shelter	C	C	C	X

LEGEND:

P = Permitted Use
C = Conditional Use
T = Temporary Use
X = Prohibited Use

P* = Permitted Use subject to special use standards (see Chapter 9.07)
C* = Conditional Use subject to special use standards (see Chapter 9.07)
T* = Temporary Use subject to special use standards (see Chapter 9.39)
A = Accessory Use

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9.11-3

(Dana Point Zoning Code 2-98)

EXHIBIT # 13
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SECTION 9.11.020(b)
COMMERCIAL DISTRICTS
 (continued)

LAND USES	NC	CC/P	CC/V	V/RC
Family Day Care Home, Large	X	C	C	X
Family Day Care Home, Small	X	C	C	X
Food Service Uses, Specialty	P	P	P	P
Fortune Telling	X	C*	C*	C*
Furniture Store	P	P	P	C
Hospital, Acute Psychiatric	X	C	C	X
Hospital, Chemical Dependency Recovery	X	C	C	X
Hospital, General Acute Care	X	C	C	X
Hospital, Special	X	C	C	X
Hotel	X	P	P	P
Institutional Uses	X	C	P	X
Kennel	C	P	P	X
Live Entertainment Uses	C*	C*	C*	C*
Major Automotive Uses	X	C	C	X
Marine Uses	P	P	P	P
Massage Establishments	X	C*	C*	C*
Medical Office Uses	P	P	P	X
Membership Organizations	X	P	P	C
Minor Automotive Uses	X	X ¹	C	X
Minor Repair Service Uses	P	P	P	X
Motel	X	X	P	P
Open Space	P	P	P	P
Park, Public	P	P	P	P

1 NOTE: All minor automotive uses existing prior to (final action date), or applications for such uses which were deemed complete prior to that date, shall be considered legal conforming uses and shall be exempt from the provisions of Chapter 9.63.

LEGEND:

P = Permitted Use
 C = Conditional Use
 T = Temporary Use
 X = Prohibited Use

P* = Permitted Use subject to special use standards (see Chapter 9.07)
 C* = Conditional Use subject to special use standards (see Chapter 9.07)
 T* = Temporary Use subject to special use standards (see Chapter 9.39)
 A = Accessory Use

COASTAL COMMISSION

SECTION 9.11.020(b)
COMMERCIAL DISTRICTS
 (continued)

LAND USES	NC	CC/P	CC/V	V/RC
Personal Service Uses	P	P	P	P
Photographic, Reproduction and Graphic Service Uses	P	P	P	P
Professional Office Use -On the second floor or above, or below street level -Street Level	P P	P P	P P	P C
Recreational Uses	C	P	P	P
Recycling Facilities	P*	P*	P*	X
Religious Uses	X	C*	C*	X
Research and Development Uses	C	P	P	X
Residential Care Facility for the Elderly	C	C	C	X
Residential Facility	C	C	C	X
Restaurant	P	P	P	P
Restaurant, Drive-Through	C	C	P	P
Restaurant, Fast Food	C	C	P	P
Restaurant, Take-Out	P	P	P	P
Restaurant, Walkup	C	P	P	P
Retail Sales Uses	P	P	P	P
Single Room Occupancy	X	C	C	C
Skilled Nursing Facility	X	C	C	X
Social Rehabilitation Facility	X	C	C	X
Tattoo Parlors	X	C*	C*	C*
Temporary Uses	T*	T*	T*	T*
Timeshares	X	X	X	X
Transportation Uses	X	X	P	P
Video Arcades or Game Rooms	C	C	C	C

LEGEND:

P = Permitted Use
 C = Conditional Use
 T = Temporary Use
 X = Prohibited Use

P* = Permitted Use subject to special use standards (see Chapter 9.07)
 C* = Conditional Use subject to special use standards (see Chapter 9.07)
 T* = Temporary Use subject to special use standards (see Chapter 9.39)
 A = Accessory Use

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9.11-5

(Dana Point Zoning Code 2-98)

EXHIBIT # 13
 PAGE 5 OF 5

MARY JEFFRIES
www.wethepeopledp.com
33521 Atlantic Ave
Dana Point, Ca 92629

November 21, 2011

RECEIVED
South Coast Region

NOV 22 2011

COASTAL COMMISSION
200 Oceangate #100
Tenth floor
Oceanside, Ca 90802

CALIFORNIA
COASTAL COMMISSION

Re: Major Amendment Request No. 2-10 to the City of Dana Point Certified
Local Coastal Program GPA 07-01, ZTA 07-02 ZONE change 07-01, LCPA 07-
01

Dear Commissioners:

On Nov 2nd I testified at the Commission hearing regarding the above matter.
In 2009-2010 I ran ads in the local papers to alert the citizens to the
proposed "Major Amendment Request" and I received more than 600 original
signed opposition responses to my notices. The City had copies of every one
of these flyers, and I personally delivered +600 to Ferni Sy on November 10th

A Brief summary from my viewpoint:

The proposed "Major Amendment" **does not meet the mission** of the
Coastal Act. The Commission was appointed to allow the public more access to
coastal recreational uses by access, views, air quality, and recreation. This
very property is ZONED Coastal Recreational, and should not be built out into
fixed housing. ACT sections 30222, 30213

1) The Mitigated Declaration of 2008 is outdated. Many issues raised in
it are **not current**. The traffic study only projected out to 2010. There is
a new application going through right now for a 258-room hotel, restaurant,
banquet rooms, etc across PCH from this project at the very same congested
intersection. They are requesting 4-5 story buildings!

- 2) Tsunami zone. Since these findings in the (Proposed) 2008 MND,
Dana Point has developed a Tsunami Evacuation Route. This property
lies in a Tsunami Zone, a floodplain and liquefaction zone as well.
- 3) Air Quality: Idling Traffic standing on the entrance bridge to Dana
Point will compromise the air quality. It is currently congested. (The
traffic study is outdated)

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EXHIBIT # A
PAGE 1 OF 4

- 4) Sewer treatment plant contiguous to property: I personally heard Mobile Home Residents testify as to raw sewage overflow and noise and smells emanating from the plant that were very unxious. And, stepping in raw sewer was a common occurrence, I did it myself.
- 5) This proposed "Major Amendment" does not promote the **public interest**. A recent explosion of a 24" gas main resulted in injury and death to some living near the line. There is such a 24" line running the perimeter of this property on two sides: Del Obispo and PCH.
- 6) Views are not maintained: The view of the San Juan Hills and Saddleback mountain will be changed to tall buildings, completely obstructing any valley views from PCH northeast. Entering Dana Point from I-5 Bridge, will be a wall of buildings nearly the height of our new pedestrian bridge, Gateway to Dana Point. Not promoting public interest, or preserving Coastal views, which includes hills from the coast route. **See attached** exhibit photos
- 7) Toxic ground water. The Proposed Mitigated Negative Declaration states at Page 46 at d: recommends a "human health risk assessment to evaluate the potential risk to construction workers and future residents from VOCs in the groundwater. Such an assessment *would be required prior to approval of a site development permit or other land use entitlement.*" It is not prudent to grant this blanket residential use when there is clearly contamination underground that has not been fully investigated. It needs to be investigated prior to any zone change to Residential; not just mentioned as a mitigating measure!
- 8) Dana Point is 6.5 square miles, 6 miles long, it needs careful study prior to issuing permission for tall cluster buildings/no garages on this potentially toxic site, or other areas around the city

Please deny this MAJOR ZONE AMENDMENT. The Citizens of Dana Point are relying on you!

Very truly yours,


MARY S. JEFFRIES

COASTAL COMMISSION

EXHIBIT # A
PAGE 2 OF 4

San Juan hills view now



PCH/Del Obispo south



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EXHIBIT # A
PAGE 3 OF 4

Exhibit To MAR#2-10
34202 del OBISPO. Dana Point



County 1 and A's Burgers on the Bridge



County 1 and A's Burgers on the Bridge



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THE CITY OF DANA POINT **has approved** a MAJOR ZONE AMENDMENT they started with a very important 8.86 acre site that used to be a Mobile Home Park. IT IS CURRENTLY SCHEDULED FOR HEARING BEFORE THE COASTAL COMMISSION DEC 7-9 IN SAN FRANCISCO.

THE **MAJOR ZONE CHANGE IS AGAINST THE COASTAL ACT ITSELF!** It proposes to make this **COASTAL RECREATIONAL** site into Commercial/Residential 18/units per acre, 20,000 sf commercial. (Read 35' high cluster condos 18 ea acre)


The Coastal Act has on it's **priority**, recreational and visitor serving areas **above** residential properties. THIS IS ONE PROPERTY actually zoned **COASTAL RECREATIONAL** just because it was leased as a Mobile Park for 50 years doesn't "takeaway the R/C zoning" **Commissioner Ester Sanchez**, Oceanside 11/2/11. THIS ZONING will affect the entire town for **years to come!**

Besides Height and Density issues, the **Application** and responses are **outdated**. The study dated **2008!** Traffic study is outdated. No Toxic studies, it's contiguous to the sewage treatment plant, there is a 24" gas line running the perimeter of the property on two sides. This is what exploded in San Bruno this year, and caused deaths. There is a new hotel application in progress across PCH. It's in a floodplain and **Tsunami** district. ALL reasons to **DENY** this request now, and return it to the City for further studies! To the City of Dana Point and the California Coastal Commission:

_____ strongly oppose the City's Major Zone Amendment to change our Coastal Recreational Space at 34202 Del Obispo St. Dana Point. It is ill conceived, **studies outdated** and is **against the Coastal Act** Sec 30222,30213

thepeople.dp.com
P.O. Box 93
Dana Point

Mary Jeffries
Fax: 949 493 2425
Dana Point Resident 1972


Signed
MARY JEFFRIES
Print name

COASTAL COMMISSION

3521 ATLANTIC AVE
DANA POINT
Address

RETURN ASAP RETURN ASAP

EXHIBIT # A
PAGE 4 OF 4

PAID ADVERTISEMENT

The city of Dana Point is currently planning to change zoning on a very important property zoned Coastal Recreational Space. This 8.65 Ac. Site has been leased as a mobile home park for all these years. It is now cleared and ready to be developed. Makar Properties, LLC sold the site to a new investor. This matter came before the Coastal Commission Nov 2, 2011. See Cal-span.org item #15a, or at 33:34:35, streaming video-meeting. The City did not represent your interest and opposition to this. I went to the hearing and produced all of your 598 flyers, and the CC continued the matter to Dec 7, 2011 because it was the first they had heard of any opposition to this project.

This property is currently zoned Coastal Recreational. Ask the CC to keep it that way. The Developer's proposal is to grant them a Zone Change that would affect the entire City to a new zone of 18/units per acre plus mixed commercial. That's 18 units.



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Dana Point and A's Bridge at the Bridge

The Founding Fathers master planned this area to preserve open recreational space for us and the visitors to the Coast. We don't have any time to spare. Please express your opinion and fax to me for forwarding to the Coastal Commission directly, showing our opposition to taking away this open and recreation zoning in our City. There are height and density issues, traffic, traffic, sewer treatment plant issues, and a 24" gas main running the perimeter of the property on two sides. If you want to write your own letter to the editor, I would appreciate it. Please. You decide and make your voice heard!

To the City of Dana Point and the California Coastal Commission:

I strongly oppose the city's proposed zone change of our coastal recreational space at 34202 Del Obispo St. Dana Point. Please DENY this zone change.

We the People O.P.
P.O. Box 93
Dana Point, Ca 92028
Return ASAP

Fax or Mail
fax: (949) 493 2425
See www.wethepeopleop.com
Mary Jeffries
Dana Point Resident

Signed: Alan Dias
Name print: Alan Dias
Address: Dana Point, CA
Phone or Email Contact: 213 248-5434

COASTAL COMMISSION

EXHIBIT # B
PAGE 1 OF 1

RECEIVED
South Coast Region

NOV 21 2011

CALIFORNIA
COASTAL COMMISSION

20
November
2011

RE: Re-zoning application: Property location 34202 Del Obispo, Dana Point, CA 92629
continued from November 2, 2011

Dear Coastal Commissioners:

Reference Coastal Act 30222 coastal/recreational will take priority over residential.

I am writing you because I am opposed to this rezoning application from coastal/recreational to residential/commercial. This application is premature inasmuch as the land may be contaminated from the adjacent Sanitation Waste District, the ARCO gas station and the large nearby gas lines. Because of these issues I believe an EIR report and a soil contamination report ought to be done to determine whether this land is suitable for residential use.

In addition, there are some large projects proposed for the corners of Del Obispo and Pacific Coast Highway. The buildings proposed are 4 to 5 stories and the buildings proposed on the 34202 property are also 4 to 5 stories and will be as tall or taller than the new gateway bridge into Dana Point. There will no longer be ocean or mountain views and the area will look like a walled village. More auto congestion, more pollution.

Once this property is rezoned, it will change the Specific Plan for Dana Point, Monarch Beach and Capistrano Beach in a way that is not in the best interest of all citizens.

Thank you for considering my request for denial of the zone change.

Sincerely,



Linda C. Brame
33511 Atlantic Ave
Dana Point, CA 92629

CC: Dana Point City Council
Mr. Fernie Sy, California Coastal Commission

COASTAL COMMISSION

EXHIBIT # C
PAGE 1 OF 1

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: W 9D- LCP amendment request No. 2-10

Date and time of receipt of communication: November 30, 2011 – 9:30 am

Location of communication: 800 S. Victoria Ave., Ventura

Type of communication (letter, facsimile, etc.): Phone call

Person(s) initiating communication: Dave Neish- Senior

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

Had short phone conversation with Dave Neish regarding the City of Dana Point's LCP amendment No.2-10. Mr. Neish stated the City was in support of staff's recommendations and he went on to clarify the question of the public hearing process that was advanced by Mary Jeffries at the recent Commission hearing in Oceanside. He stated that there was 5 meeting in front of the Planning Commission, 1 workshop and 4 formal hearing and then two subsequent hearing in front of the City Council.

11/30/11
Date


Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

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EXHIBIT # D
PAGE 1 OF 1

RECEIVED
South Coast Region

NOV 30 2011

CALIFORNIA
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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.:
Date and time of receipt of communication:
a.m.. _____

W9d Dana Point
Dec 5 2011 11:15-11:25

RECEIVED
South Coast Region

Location of communication:
Barbara _____

Santa

DEC - 5 2011

Type of communication (letter, facsimile, etc.):
_telecon_____

CALIFORNIA
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Person(s) initiating communication:

Donna Andrews, Edgar Gutierrez

Donna stated that there was no anticipation at the last hearing that there would be opposition. The main issue was that the City had done outreach and participation. The staff report has outlined the meetings all the way back to 2006. She offered to go over that and I indicated that was not necessary.

The city did not have a chance to give a rationale, of why they wanted to do zone modifications. City believes this would lead to greater recreation and access.

Last issue is clear: had to do with the spill. Addendum explains that. They wanted to add reference to the letter from Rutan and Tucker.

Edgar pointed to: exhibit 5 of staff report. Appellate court ruled against the District. Findings included that new zoning ordinance is not inconsistent with the General Plan

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

COASTAL COMMISSION

EXHIBIT # E

Date

Signature of Commissioner

PAGE 1 OF 2

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the

Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

COASTAL COMMISSION

EXHIBIT # E
PAGE 2 OF 2



South Orange County Wastewater Authority

RECEIVED
South Coast Region

DEC - 2 2011

CALIFORNIA
COASTAL COMMISSION

November 28, 2011

W-9d

Mary K. Shallenberger, Chair, and Commissioners
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

COASTAL COMMISSION

re: **City of Dana Point LCP Amendment Request No. DPT-MAJ-2-10**
34202 Del Obispo Street
Agenda Item No. 9(d) – Request for denial and/or postponement

EXHIBIT # F
PAGE 1 OF 3

Dear Chair Shallenberger and members of the Commission:

As before, we appreciate the opportunity to comment on the Coastal Commission's consideration of the City of Dana Point LCP Amendment Request No. DPT-MAJ-2-10 ("Subject Property"), agendaized as Item 9(d) at the December 7 meeting of the Commission. The South Orange County Wastewater Authority ("SOCWA") submits this letter as a supplement to its letter previously submitted in advance of the Commission's meeting held on November 2, 2011.

We believe this application raises important policy matters the Commission will need to address, if not with this application, then with the subsequent Coastal Development Permit application, or with subsequent projects before the Commission. It is unlikely that even five years ago a three-story mixed-use development would have been proposed immediately adjacent to a wastewater treatment plant, but with the decreasing availability of development sites in the Coastal Zone, the Commission will be faced with more cases like this that raise new issues related to incompatible use. The Coastal Act essentially is designed to protect the existing environment from the impacts of new development, but this item illustrates the growing need for the Commission to consider how the existing environment – in this case, a wastewater treatment plant – could impact new development, and how both the existing uses and the future users of the new development need protection.

As you are aware, SOCWA opposes the approval of the LCPA as proposed, on the grounds that the conversion of the Subject Property from coastal recreational use to mixed-used residential use is inconsistent with existing surrounding land uses. Specifically, the proposed residential use of the Subject Property is inconsistent with SOCWA's operation of the J.B. Latham Treatment Plant on land immediately to the north of the Subject Property. SOCWA's operations are a vital and irreplaceable component of the maintenance of a healthy coastal

environment for both human and marine life. The treatment plant must operate 24 hours a day, 7 days a week to protect the local environment from the harmful pollutants associated with the unavoidable waste impacts of human development in South Orange County.

SOCWA operates a clean and efficient plant, having received the Platinum Peak Performance Award from the National Association of Clean Water Agencies, as well as numerous other recognitions stemming from its consistent compliance with applicable environmental regulations, including those necessary to protect our coastline. Despite all of the safeguards in place, and all of the efforts untaken to shield or mute the 24-hour operation of lighting, pumps, and motors, the fact remains that SOCWA's plant is an industrial operation that is incompatible with the proposed development on the Subject Property. Maintenance, when necessary, often must be performed immediately, regardless of the time of day, in order to minimize disruptions to plant operations and impacts on the local environment. The plant will undoubtedly also be the site of ongoing future construction necessary to keep the plant up to date with current environmental technologies, including the planned construction of a wastewater recycling facility, which will likely be proposed for construction on SOCWA's property adjacent to the Subject Property.

With respect to day to day operations, despite existing air treatment equipment, fleeting musty odors are always possible—and if the biological function of the plant is disrupted, more noticeable odors will occur, affecting residents of the Subject Property if homes are built in such close proximity to the plant. Moreover, SOCWA continuously utilizes trucks to remove biosolids from the plant, utilizing an access point along the southern boundary of the plant immediately adjacent to the Subject Property.

Consequently, the Commission's approval of residential development on the Subject Property would ultimately lead to unavoidable conflict between the industrial operations of the SOCWA plant and the residential and commercial uses on the Subject Property. Conflict between the two uses will foreseeably inhibit SOCWA's operations—operations that are critical to the protection of the local coastal environment.

At its November meeting, the Commission postponed action on this item to allow the City of Dana Point additional time to discuss the proposed LCPA with neighbors who raised concerns at the hearing. We have not been approached by the City since the hearing despite the direction provided by the Commission, so our concerns remain unaddressed.

As such, SOCWA urges the Commission to deny the City of Dana Point's requested amendment of its Local Coastal Program, unless adequate measures are taken to significantly reduce the inherent conflicts in use that will arise if approved. Aside from barring residential development on the Subject Property, SOCWA has identified steps that can be taken to reduce such conflict, including the covering of the plant's odor generating settling tanks (estimated to cost approximately \$4 million), or the imposition of architectural restrictions that could be tailored to reduce exposure to odor and noise. An odor easement, as suggested in SOCWA's November 2011 letter, would likewise provide some protection to SOCWA. A copy of such an easement is attached.

COASTAL COMMISSION

EXHIBIT # F
PAGE 2 OF 3

As before, SOCWA would be willing to meet with the Commission or its staff to discuss options of this nature in more detail.

Sincerely,

Thomas R Rosales

Tom Rosales
General Manager

cc: Fernie Sy, California Coastal Commission
Jeffrey Hoskinson, Bowie, Arneson, Wiles & Giannone

COASTAL COMMISSION

EXHIBIT # F
PAGE 3 OF 3

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W 9d

November 17, 2011

TO: Commissioners and Interested Persons

**FROM: Sherilyn Sarb, Deputy Director
Teresa Henry, South Coast District Manager
Karl Schwing, Orange County Area Supervisor
Fernie Sy, Coastal Program Analyst II**

SUBJECT: Major Amendment Request No. 2-10 to the City of Dana Point Certified Local Coastal Program (For Public Hearing and Commission Action at the December 7-9, 2011 (meeting in San Francisco).

SUMMARY OF LOCAL COASTAL PROGRAM (LCP) AMENDMENT REQUEST NO. 2-10

The City of Dana Point presently has two (2) groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated that still apply to the central geographic area of the City (i.e. that area generally located between Monarch Beach to the north and Capistrano Beach to the south) including the site located at 34202 Del Obispo Street, that is also the subject of the proposed Local Coastal Program (LCP) Amendment. Commission staff has generally referred to these older documents as the Dana Point Specific Plan Local Coastal Program or '1986' LCP. In addition, there is a more recent group of documents that includes three (3) elements of the City's General Plan (the Land Use Element (LUE), Urban Design Element (UDE), and Conservation Open Space Element (COSE)), the City's Zoning Code, the Town Center Plan, the Monarch Beach Resort Specific Plan, and the Headlands Development Conservation Plan which apply to those areas of the City which are not covered by the '1986' LCP. We've generally called these more recent documents the '1996' LCP.

In the proposed City of Dana Point amendment request, the City proposes to change the land use designation of an 8.9 acre "U"-shaped property located at 34202 Del Obispo, formerly occupied by a mobile home park, from an open space/recreation land use designation to a mixed-use residential/commercial land use designation. This is proposed to be accomplished by amending the Local Coastal Program (LCP) as follows: 1) include a new Land Use designation "Residential/Commercial" in the Land Use Element (LUE) of the General Plan, as outlined in General Plan Amendment GPA07-01; 2) include a new Zoning Category "Residential Commercial-18 (R/C-18)" in the Zoning Ordinance, as outlined in Zone Text Amendment ZTA07-02; and 3) change the designation of the subject site located at 34202 Del Obispo Street, from "Dana Point Specific Plan Local Coastal Program or '1986 LCP' designation "Recreation" and the Zoning designation of "Coastal Recreation

Space” to ‘1996 LCP’ Land Use Element (LUE) designation of “Residential/Commercial” and the Zoning designation of “R/C-18”, as outlined in Zone Change ZC07-01. Besides this action being applied to the area within the ‘1996’ LCP, this amendment would also apply to the site located at 34202 Del Obispo Street since this amendment will remove it from being within the jurisdiction of the Dana Point Specific Plan Local Coastal Program (LCP) or ‘1986’ LCP and now placing it in the jurisdiction of the ‘1996’ LCP.

Staff is recommending **Denial** of the LUP and IP amendment as submitted, and **Approval** of the LUP Amendment and IP Amendment if modified as suggested. The suggested modifications would do the following: 1) amend the LUP and IP to minimize vehicle miles traveled and prioritize visitor serving uses; and 2) amend the IP to minimize vehicle miles traveled, protect recreational use onsite as well as provide public access onsite to the adjacent bike trail and also maximize public access by preventing gating of all streets and pedestrian and bike accessways.

ADDITIONAL INFORMATION

Copies of the staff report are available on the Commission’s website at www.coastal.ca.gov and at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Fernie Sy in the Long Beach office at (562) 590-5071. The City of Dana Point contact for this Local Coastal Program (LCP) Amendment is Kyle Butterwick, Director of Community Development, who can be reached at (949) 248-3560.

STAFF NOTE

The proposed LCP Amendment was previously heard at the November 2011 Commission Hearing in Oceanside. Prior to the hearing, 2 letters were received in opposition to the LCP Amendment, as well as, a request for clarification from the City regarding their ability to reserve off-street parking to support proposed development. These concerns were addressed in an addendum dated October 31, 2011 for the November 2011 Hearing. A description of the correspondence from each of these parties is found below:

Commission staff received a letter from the South Orange County Wastewater Authority (SOCWA) on October 26, 2011 discussing their concerns regarding the proposed LCP Amendment (Exhibit #8). They argue that the proposed mixed use “Residential/Commercial” designation is inconsistent with the existing surrounding land uses and that placement of residential development adjacent to the SOCWA’s water treatment plant would subject future residents to all impacts that are typically associated with such a plant, including noise, light, and occasional intermittent odors.

Commission staff also received a letter from Mary Jeffries on October 27, 2011 discussing her concerns with the staff recommendation (Exhibit #9). She states that there is litigation between the South Orange County Wastewater Authority (SOCWA) and Makar, the previous owners, regarding responsibility of mitigating the raw sewage odor from SOCWA that would be smelled from the site. Additionally, she states that there is a 24” gas main

that runs around the perimeter of the property from Del Obispo and along Pacific Coast Highway and states that no residential development within 100 yards of such a line can be built. Lastly, she asks if staff received copies of what she asserts to be 598 opposition flyers that were submitted to the City of Dana Point during the course of their approval of the LCP Amendment (a copy of the flyer has been included as Exhibit #10).

Additionally prior to the hearing, City staff provided verbal comments requesting clarification regarding the suggested modification which prohibits gating and other development that would impact public coastal access. More specifically, the City wanted clarification as to whether the requirement would interfere with their ability to reserve off-street parking to support the proposed development.

At the November 2011 Hearing, public speakers raised the following concerns with the proposed LCP Amendment: that the asserted 598 opposition flyers were never acknowledged by the City or Commission staff; that the site has a history of raw sewage spills; that the rezoning would allow 42' high buildings; that the only technical evaluation completed by the City for the rezoning was a traffic study; that the site is an ideal location for Coastal Recreational Uses and that use should remain on site.

The Commissioners at the November 2011 Hearing were concerned that Commission staff was not aware of the extent of local concern regarding the LCP Amendment. Thus, the Commission voted to continue the LCP Amendment to the December 2011 Hearing in order for staff to reassess whether the proposed LCP Amendment can be found to conform with the recreation and public access provisions of the Coastal Act and to address the public concerns.

Lastly, Ms. Jeffries has recently submitted copies of 2 more recent opposition flyers (a copy of those flyers have also been included as Exhibit #11 & #12).

EXHIBITS

- 1) City Council Resolution No. 09-06-08-10.
- 2) City Council Resolution No. 09-06-08-11.
- 3) City Council Ordinance No. 09-06.
- 4) Map showing 34202 Del Obispo Street.
- 5) Letter from Rutan & Tucker, LLP (City of Dana Point City Attorney) dated November 1, 2011
- 6) City of Dana Point Adjacent Commercial & Visitor Uses Map
- 7) City of Dana Point Existing Recreational Facilities Map
- 8) Letter from SOCWA dated October 26, 2011
- 9) Letter from Mary Jeffries dated October 27, 2011
- 10) Copy of opposition flyer by Mary Jeffries
- 11) Recent opposition flyer by Mary Jeffries
- 12) Another recent opposition flyer by Mary Jeffries

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

Deny the Land Use Plan Amendment, as submitted, and **approve it if modified** as provided below.

Deny the Implementation Plan Amendment, as submitted, and **approve it if modified** as provided below.

The motions to accomplish this recommendation are found on pages 7-9. As proposed, the Land Use Plan (LUP) portion of the Local Coastal Program (LCP) Amendment does not meet the requirements of and is not in conformity with the Chapter 3 policies of the Coastal Act. As submitted, the Implementation Plan (IP) portion of the amendment is inconsistent with and inadequate to carry out the City's certified Land Use Plan. Only if modified as recommended will the Land Use Plan (LUP) Amendment meet the requirements of and be in conformity with the Chapter 3 policies of the Coastal Act. Only if modified as recommended will the Implementation Plan (IP) be consistent with and adequate to carry out the City's certified Land Use Plan (LUP), as amended.

STANDARD OF REVIEW

The standard of review for the proposed amendment to the Local Coastal Program (LCP) Land Use Plan (LUP) is consistency with the Chapter 3 policies of the Coastal Act. The standard of review for the proposed amendment to the Local Coastal Program (LCP) Implementation Plan (IP) is conformance with and adequacy to carry out the provisions of the certified Dana Point Land Use Plan (LUP).

SUMMARY OF PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states:

During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

The City Planning Commission held public hearings for the proposed Local Coastal Program (LCP) Amendment on February 2, 2009, April 6, 2009, and May 4, 2009, and the City Council held a public hearing for the proposed Local Coastal Program (LCP) Amendment on June 8, 2009. A chronology of the local approval process, as provided by the City, is found below:

1. June 28, 2006: City Council approves General Plan Amendment initiation request, (GPA05-01).
2. May 25, 2007: Application for Zone Change, Zone Text Amendment, General Plan Amendment, and Local Coastal Plan (LCP) Amendment was submitted for a proposed Mixed-Use (Residential/Commercial) Zone of 22 units/ acre and 10% of the site area (38,768 sq. ft.) developed for commercial uses.
3. February 22, to March 24, 2008: The City circulated the 1st Mitigated Negative Declaration (MND) on this proposal with a “reasonable development scenario” of 150 units and 10,000 sq. ft. of commercial floor area. The MND was based on a comprehensive set of technical studies totaling over 1,100 pages and consisting of: (1) a Phase I and Phase II Environmental Assessment; (2) an Air Quality Analysis; (3) a Noise Impact Analysis; (4) an Aesthetic/Visual Analysis; and (5) a Traffic Impact Analysis. The City received a total of 11 written comments. No petitions were received.
4. October 31, to December 1, 2008: The City circulated a 2nd MND on this proposal with a “worst case development scenario” of 214 residential units (22 units/acre) and 38,768 sq. ft. of commercial floor area for public comment. The City received 7 letters and a petition signed by 160 individuals in opposition to the LCP Amendment at the end of the comment period.
5. January 30, 2009: The Planning Commission conducted a site visit which was attended by approximately 70 members of the public.
6. February 2, 2009: The 1st Planning Commission hearing was held. A total of 13 people testified in opposition at the hearing. The Commission continued the hearing and directed staff to evaluate alternatives to the proposed density and commercial intensity and also to analyze traffic in peak summer months and weekends.
7. April 6, 2009: The 2nd Planning Commission hearing was held on the proposal. The City received a petition opposing the proposal with 99 signatures. A total of 10 people testified in opposition at the hearing. City Staff presented 3 proposal alternatives which were: 1) Applicant’s original request of 22 units/acre, with 10% of the site’s area for commercial square footage; 2) Residential density of 12 units/acre with an increase in commercial floor area to 15% of the total site area; and (3) Residential density of 18 units/acre with commercial area limited to a maximum of 10% of the total site (with commercial area for the site limited to 25,000 sq. ft.). The Planning Commission continued the public hearing again so staff could present additional development scenarios and prepare additional traffic analysis. In order to address any seasonal fluctuations in coastal traffic patterns between winter and summer months, the Planning Commission required 2 additional modeling analyses to supplement the traffic analysis.

8. May 4, 2009: The 3rd Planning Commission public hearing was conducted on the proposal. The City received a petition with 57 signatures in opposition to the proposal, and a letter from SOCWA's legal counsel. A total of 7 people testified at the meeting in opposition of the proposal. Staff presented 3 proposal alternatives with updated traffic analysis. One of the alternatives was carried over from the last meeting while 2 new alternatives were added to the report. The alternatives were: 1) Residential density of 18 units/acre with commercial area limited to a maximum of 10% of the total site (with commercial area for the site limited to 25,000 sq. ft.); 2) Residential density of 12 units/acre with commercial area limited to maximum of 10% of the total site (with commercial area for the site limited to 25,000 sq. ft.); and 3) Residential density of 16 units/acre with commercial area limited to maximum of 10% of the total site (with commercial area for the site limited to 20,000 sq. ft.). After deliberations, the Commission recommended approval of the new Mixed-Use Zone that would allow residential density of 18 units/acre with commercial floor area limited to 10% of the site's area (with a limitation of 20,000 sq. ft. on this particular parcel).
9. June 8, 2009: The City Council conducted a public hearing on the proposal. The City received a petition with 29 signatures in opposition to the proposal. A total of 6 people testified in opposition at this meeting. After deliberations, the Council unanimously approved the proposal.
10. July 27, 2009: The Council conducted second reading of the Ordinance.
11. August 10, 2010: The proposal was submitted to the California Coastal Commission for a Local Coastal Plan Amendment

During the course of the City's environmental review and local approval process before the Planning Commission and City Council, opposition petitions/flyers were submitted to the City. According to City records, a total of 515 flyers were filed with the City. Notwithstanding the number of petitions, the City states that the actual level of public testimony against the proposal was minimal by comparison. At the 1st Planning Commission Hearing 13 people testified in opposition to the item; 10 people testified against the proposal at the 2nd Hearing and 7 people expressed concern about the proposal at the 3rd Hearing. At the City Council Hearing, only 6 people testified in opposition to the item.

The City has acknowledged receipt of this opposition flyer during their local approval process and copies of these flyers were submitted to Coastal Commission Staff as part of the LCP Amendment application. Commission staff was aware of the opposition to the proposed LCP Amendment and took the concerns raised into consideration during the course of analyzing the LPC Amendment request. Staff shared some of the same concerns, which are reflected in the suggested modifications.

This Local Coastal Program (LCP) Amendment request is consistent with the submittal requirements of the Coastal Act and the regulations that govern such proposals (see, e.g.,

Sections 30501, 30510, 30512, 30513 and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

I. STAFF RECOMMENDATION

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings.

A. Denial of the Land Use Plan (LUP) Amendment as Submitted

MOTION: *I move that the Commission certify Land Use Plan (LUP) Amendment No. 2-10 to the City of Dana Point as submitted.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Land Use Plan (LUP) Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY:

The Commission hereby denies certification of the Land Use Plan (LUP) Amendment No. 2-10 as submitted by the City of Dana Point and adopts the findings set forth below on the grounds that the amendment does not meet the requirements of or conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan (LUP) Amendment would not comply with the California Environmental Quality Act (CEQA) because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment (LUP) may have on the environment.

B. Approval of the Land Use Plan (LUP) Amendment with Suggested Modifications

MOTION: *I move that the Commission certify Land Use Plan (LUP) Amendment No. 2-10 for the City Dana Point if it is modified as suggested by staff.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the Land Use Plan (LUP) Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN (LUP) WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan (LUP) Amendment No. 2-10 for the City of Dana Point if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan (LUP) Amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan (LUP) Amendment if modified as suggested complies with the California Environmental Quality Act (CEQA) because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan (LUP) Amendment may have on the environment.

C. Denial of the Implementation Plan (IP) Amendment as Submitted

MOTION: *I move that the Commission reject the Implementation Plan (IP) Amendment No. 2-10 for the City of Dana Point as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan (IP) Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PLAN (IP) AS SUBMITTED:

The Commission hereby denies certification of the Implementation Plan (IP) Amendment No. 2-10 submitted for the City of Dana Point and adopts the findings set forth below on grounds that the Implementation Plan (IP) Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan (LUP) as amended. Certification of the Implementation Plan (IP) would not meet the requirements of the California Environmental Quality Act (CEQA) as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan (IP) as submitted

D. Approval of the Implementation Plan (IP) Amendment with Suggested Modifications

MOTION: *I move that the Commission certify the Implementation Plan (IP) Amendment No. 2-10 for the City of Dana Point if it is modified as suggested by staff.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Plan (IP) with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN (IP) WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Plan (IP) Amendment No. 2-10 for the City of Dana Point if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan (IP) Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP) as amended. Certification of the Implementation Plan (IP) Amendment if modified as suggested complies with the California Environmental Quality Act (CEQA), because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan (IP) on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

Certification of City of Dana Point Local Coastal Program (LCP) Amendment Request No. 2-10 is subject to the following modifications.

Language as submitted by the City of Dana Point is shown in straight type.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in ~~Strike-Out~~.

LAND USE PLAN (LUP) SUGGESTED MODIFICATIONS

A. Suggested Modifications to the Land Use Element (LUE) of the General Plan (GP)

1. Suggested Modification No. 1

Mixed Use Designation

...

Residential/Commercial: The Residential/Commercial designation provides for a mixture of residential, commercial, and office uses in the same building, or on the same parcel. Residences in the Mixed Use designation provide housing near sources of employment or commercial and professional services. **New Mixed Use development within Residential/Commercial designated areas shall be sited in a manner that minimizes vehicle miles traveled (VMT). In consideration of minimizing VMT, this alternative Mixed Use housing and commercial designation adds to the City's supply of housing opportunities, reduces commute time distance between home and work, provides housing development within walking distance to existing or proposed transit stops and promotes a strong, stable, and desirable pedestrian-oriented business environment. When mixture of uses occur in the same building, retail uses or offices are usually located on the ground floor with residential or office uses above. When Residential/Commercial development is located in areas that support general public visitors, including, but not limited to, areas bordering the Pacific Coast Highway, visitor serving uses are strongly preferred uses over all other uses for ground floor commercial spaces. In such areas, lower cost visitor commercial facilities shall be protected, encouraged, and, where feasible, provided.** The mixed uses are usually located in areas where multiple activities and pedestrian orientation are considered to be desirable objectives.

...

IMPLEMENTATION PLAN (IP) SUGGESTED MODIFICATIONS

B. Suggested Modifications to the Development Standards for Mixed Use Districts

2. Suggested Modification No. 2

9.13.010 Intent and Purpose.

(a) Commercial/Residential (C/R).

...

(b) Residential/Commercial-18 (R/C-18). The Residential/Commercial-18 (R/C-18) district provides for a mixture of residential uses with commercial and office uses in the same building or on the same parcel. Allowable commercial and office uses include those which are visitor serving in nature and at the same time are compatible with residential uses, such as bed and breakfast inns, restaurants, specialty and convenience shops, and recreation/open space uses, **such as coastal recreation equipment rental shops and environmental education facilities related to coastal ecology**. This district provides for a residential density of eighteen units per acre. **New development within Residential/Commercial-18 shall be sited in a manner that minimizes the residential development residents' vehicle miles traveled (VMT). VMT siting considerations shall include, but not be limited to: close proximity of the new development to existing or planned transit stops (efforts should be made to site residential development within ½ mile to existing or planned transit stops); walkability to commercial development like restaurants, grocery stores and cultural venues; and close proximity to, and/or provision of, bicycle amenities like bicycle racks and bicycle lanes or dedicated bicycle pathways.** It implements the State's Mello Act and the City's goals, objectives and policies for production of affordable housing by requiring that any project of new construction with more than ten residential units, which is located within the Coastal Overlay District, shall be required to provide a minimum ten percent (10%) of the total housing units as "affordable units", as defined in the Housing Element of the City's General Plan and pursuant to the provisions of the aforementioned State's Mello Act. The only projects allowed in this district are mixed use (residential/commercial) projects. The gross floor area for commercial uses is limited to a maximum of ten (10) percent of the total site area. Properties fronting Pacific Coast Highway are required, at a minimum, to provide **visitor serving** commercial uses on the ground floor of all the buildings fronting Pacific Coast Highway, for a minimum depth of forty (40) feet. **(Visitor Serving Uses are those allowed under the Visitor/Recreation Commercial (V/RC) zoning designation in Section 9.11.010 and 9.11.020(b)).**

~~(b)-(c)~~ Professional/Residential (P/R).

...

3. Suggested Modification No. 3

9.13.040 Special Development Standards.

...

(d)...

(e)...

(f) In addition to the Special Development Standards located above, the following shall also apply to the site located at 34202 Del Obispo Street:

(1) There shall be at least a 25-foot setback from the property line adjacent to the San Juan Creek Bike Trail. Only development necessary to provide landscape features, pedestrian and bicycle uses and for passive park purposes are allowed within this setback area.

(2) Public pedestrian and bicycle access to the San Juan Creek Bike Trail shall be provided onsite.

(3) All streets and pedestrian and bicycle accessways shall be ungated and available to the general public for parking, vehicular, pedestrian, and bicycle access. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets, on-street parking areas, or pedestrian and bicycle accessways shall be prohibited.

III. FINDINGS

The following findings support the Commission's denial of the proposed Land Use Plan (LUP) Amendment as submitted and denial of the proposed Local Coastal Program (LCP) Implementation Plan (IP) Amendment as submitted and approval of the LUP and IP Amendments if modified as suggested by staff. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

Proposed Local Coastal Program Amendment (LCPA) request No. 2-10 consists of the following: 1) include a new Land Use designation "Residential/Commercial" in the Land Use Element (LUE) of the General Plan (a part of the Local Coastal Program, Land Use Plan), as outlined in General Plan Amendment GPA07-01; 2) include a new Zoning Category "Residential Commercial-18 (R/C-18)" in the Zoning Ordinance (a part of the Local Coastal Program, Implementation Plan), as outlined in Zone Text Amendment ZTA07-02; and 3) change the designation of the subject site located at 34202 Del Obispo Street, from "Dana Point Specific Plan Local Coastal Program or '1986 LCP" designation "Recreation" and the Zoning designation of "Coastal Recreation Space" to '1996 LCP' Land Use Element (LUE) designation of "Residential/Commercial" and the Zoning designation of "R/C-18", as outlined in Zone Change ZC07-01. Besides this action being applied to the area within the '1996' LCP, this amendment would also apply to the site located at 34202 Del Obispo Street, currently owned by A&M Capital Real Estate, since this amendment will remove it from being within the jurisdiction of the Dana Point Specific Plan Local Coastal Program (LCP) or '1986' LCP and now placing it in the jurisdiction of the '1996' LCP.

Proposed LCP Amendment Request No. 2-10 was submitted for Commission certification by City Council Resolution No. 09-06-08-11, which has been included as Exhibit #2. That Resolution and also Resolution No. 09-06-08-10, which contains the City's proposed changes to the Land Use Plan (LUP) and Implementation Plan (IP), are attached as Exhibits #1-2. In addition, Ordinance No. 09-06 approving the Zone Text Amendment and the Zone Change has been included as Exhibit #3.

As stated previously, besides this action being applied to the area within the '1996' LCP, this amendment would also apply to the subject site (Exhibit #4) located at 34202 Del Obispo Street in the City of Dana Point (APN 668-271-04). The "U" shaped site, which encompasses 8.9 acres, is located to the North of Pacific Coast Highway, South of the South Orange County Wastewater Authority (SOCWA) J.B. Latham Regional Sewage Treatment Plant, West of the San Juan Creek Flood Control Channel, and to the East of Del Obispo Street, some undeveloped lots and then single family residences. Existing Commercial uses including a gas station, commercial strip mall and a restaurant (Denny's) are located adjacent to the "U" shaped site. Dana Point Harbor and the Pacific Ocean are located approximately 0.25 mile South of the site. Doheny State Beach is located across Pacific Coast Highway from the subject site. The subject site is located within the Coastal Overlay District.

The South Orange County Wastewater Authority (SOCWA) previously filed litigation with Makar, the previous owners, regarding responsibility of mitigating the raw sewage odor from SOCWA that would impact the site. As stated in a letter (Exhibit #5) from the office representing the City of Dana Point, serving as its City Attorney, SOCWA lost the case as the trial court ruled in favor of the City and no appeal has been filed by SOCWA. Additionally, it had been raised that there was a history of sewage spills on site that had affected the subject site when the mobile home park was present. However, the City of Dana Point has confirmed that there are no records/complaints regarding sewage spills from the SOCWA facility that have affected the previous mobilehome park.

The subject site was previously occupied by a 90-space mobilehome park. The mobilehome park was established in 1965 and was vacated in 2003/2004. The site has been vacant since the closure of the mobilehome park although some circulation improvements and landscaping features remain on the site from its previous use.

The subject site is located within the "Dana Point Specific Plan Local Coastal Program or '1986 LCP" area, which was adopted by the County of Orange in 1986 and accepted by the City when Dana Point incorporated in 1989. The existing Land Use designation of the subject site in the Specific Plan is "Recreation" district. Zoning "Coastal Recreation Space" adopted by the City of Dana Point for the site is consistent with the land use designation. Uses allowed include 'riding and hiking trails', 'buffer greenbelts', 'parks and playgrounds', 'scenic overlook', 'archaeological sites', 'historical preserves', 'beach access', 'golf courses', 'park and district offices and facilities', 'outdoor commercial recreation', 'commercial stables and riding clubs', and 'camping and associated recreational facilities'.

In 1991 and in 1993 the City adopted its first Citywide General Plan (GP) and Zoning Ordinance respectively. The subject site was then designated and approved by the City as "Commercial/Residential" for both the General Plan (GP) and Zoning maps. The new Zoning and General Plan (GP) designations/amendments were submitted to the California Coastal Commission (CCC) for certification, but, as described below, that request was ultimately withdrawn by the City. In 1996, the City's application for CCC certification of their Citywide GP and Zoning Ordinance was segmented into three (3) areas. In 1997/1998 the CCC certified the other two (2) segments in the City (Monarch Beach and Capistrano Beach), however the update for the area within the "Dana Point Specific Plan

Local Coastal Program or '1986 LCP" at the City's request, wasn't acted on by the Commission. In 2002 this application was withdrawn by the City to allow the Coastal Commission staff adequate time to review the Headlands project. As a result, to this date, many properties located within the "Dana Point Specific Plan Local Coastal Program or '1986 LCP", including the subject site, are governed by the "Dana Point Specific Plan Local Coastal Program or '1986 LCP" and not by the Citywide General Plan and Zoning Ordinance, '1996' LCP.

1. Land Use Plan (LUP) Amendment

In the proposed City of Dana Point amendment request, the City proposes to include a new Land Use designation "Residential/Commercial" in the Land Use Element (LUE) of the General Plan, as outlined in General Plan Amendment GPA07-01. Additionally, the amendment would change the land use designation of the subject site located at 34202 Del Obispo Street, from "Dana Point Specific Plan Local Coastal Program or '1986 LCP" designation "Recreation" and the Zoning designation of "Coastal Recreation Space" to "General Plan '1996 LCP"" designation of "Residential/Commercial". This amendment would remove the site located at 34202 Del Obispo Street from the Dana Point Specific Plan Local Coastal Program (LCP) or '1986' LCP and place it in the '1996' LCP.

The Land Use Element of the General Plan currently has one Mixed Use designation titled "Commercial/Residential". The primary uses within this designation are commercial; with residential uses only allowed when developed in conjunction with commercial development. This proposed designation correlates with the two (2) current zoning designations of Commercial/ Residential (C/R) and Professional/Residential (P/R). The description in the General Plan for the "Commercial/Residential". use is very specific and includes densities for residential uses, and floor area ratios. The "Commercial/Residential" also requires that commercial uses shall be the primary use for any new projects.

The proposed new land use designation of "Residential/Commercial" in the Land Use Element of the General Plan will also provide for a mix of residential uses with commercial and/or office uses. It however, does not require commercial uses as primary use and does not have specific density and floor area ratio standards. However, the Zoning Code that implements this land use designation does require that any commercial use fronting Pacific Coast Highway be zoned as visitor serving commercial.

2. Implementation Plan (IP) Amendment

The proposed IP Amendment component includes a new Zoning Category "Residential Commercial-18 (R/C-18)" in the Zoning Ordinance. This zoning provides for a mixture of residential uses with commercial and office uses in the same building or on the same parcel. The commercial and office uses which would be allowed by this designation include uses which are visitor serving in nature, but also at the same time are compatible with residential uses such as bed and

breakfast inns, restaurants, specialty and convenience shops and recreation/open space uses. The only projects that would be allowed in this district are mixed use (residential/commercial) projects.

The proposed development standards for this new zoning category (R/C-18) are similar to those already certified for the existing 'commercial/residential' (C/R) designation, and include a 3-story, 31-35 foot height limit (consistent with other mixed uses and commercial uses throughout the City), maximum lot coverage of 40%, and minimum 200 sq.ft. of private/common area open space per residential dwelling unit (du).

B. DENIAL OF LAND USE PLAN (LUP) AMENDMENT AS SUBMITTED AND APPROVAL OF LAND USE PLAN (LUP) AMENDMENT AS MODIFIED

1. Findings for DENIAL of the Land Use Plan (LUP) Amendment as Submitted

The proposed LCP Amendment No, 2-10, would amend the Land Use Element (LUE) of the General Plan (GP) (a part of the Local Coastal Program, Land Use Plan) to include a new Land Use designation "Residential/Commercial".

As stated previously, the standard of review for the proposed amendment to the LCP LUP, pursuant to Sections 30512.2 and 30514 of the Coastal Act, is conformance the Chapter 3 policies of the Coastal Act. As stated previously, this amendment would also remove the site located at 34202 Del Obispo Street from the Dana Point Specific Plan Local Coastal Program (LCP) or '1986' LCP and place it in the '1996' LCP. Thus, the '1996' LCP LUP would become the standard of review for the City's issuance of Coastal Development Permits and not the '1986' LCP any longer. The '1996' LCP LUP is composed of three (3) elements of the City's General Plan (the Land Use Element (LUE), Urban Design Element (UDE), and Conservation Open Space Element (COSE). The City's LUP mirrors policies in the Chapter 3 policies of the Coastal Act that prioritizes visitor-serving commercial development over residential development. However, the proposed LUP Amendment is not in conformity with the visitor serving commercial priority and the minimization of vehicle miles traveled policies found in Chapter 3 of the Coastal Act. The proposed amendment is consistent though with the public access/recreation policies found in Chapter 3 of the Coastal Act. Applicable provisions found in Chapter 3 of the Coastal Act include the following:

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30212 of the Coastal Act states in relevant part:

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

(2) adequate access exists nearby...

Section 30213 of the Coastal Act states in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred

Section 30253 of the Coastal Act states in relevant part:

New development shall do all of the following:

(d) Minimize...vehicle miles traveled.

The proposed LCP Amendment will have an adverse affect on priority visitor serving commercial policies found in Chapter 3 of the Coastal Act. The proposed LCP amendment also does not explicitly address the Coastal Act requirement to minimize vehicle miles traveled for new development projects, especially in mixed use land use designations. The following discussion below explains how the proposed LCP Amendment is not consistent with the Chapter 3 policies of the Coastal Act addressing priority visitor serving commercial uses and the minimization of vehicle miles traveled for new development projects:

a. Visitor Serving Commercial Uses

One of the legislative mandates of the Coastal Act is ensuring the adequate provision of visitor serving commercial uses in the Coastal Zone. Section 30213 of the Coastal Act requires that lower cost visitor and recreational

facilities be protected, encouraged and where feasible provided. Section 30222 of the Coastal Act places a higher priority on the provision of visitor serving commercial uses designed to enhance public opportunities for coastal recreation than on residential, industrial, or general commercial uses.

The proposed LUP Amendment would allow a Residential/Commercial designation that provides a mixture of residential, commercial, and office uses in the same building, or on the same parcel. Visitor serving commercial uses in the Coastal Zone provide greater public benefit than general commercial (i.e. office uses) and private residential uses because a larger segment of the population is able to take advantage of and enjoy the use. In addition, visitor serving commercial areas provide services to the visiting beach user, including providing places to stay overnight, dine and shop.

Visitor serving commercial uses are strongly preferred under the Coastal Act. This type of use is preferred because it maximizes the number of people who can enjoy the unique experience available only along the coast, especially for a site such as the subject site that is located near public amenities to the coast (i.e., Doheny State Beach, San Juan Creek Bike Trail, etc). Private residential development, such as the single previous use of the site, alone along the coast is of highly limited use for the general public, being usable only by those able to afford coastal living. Furthermore, lesser priority uses, such as residential and general commercial, are not dependent upon being located within the Coastal Zone. Such uses can accomplish their functions virtually anywhere; whereas the coastal visitor experience is available only along the coast. Moreover, population growth in general creates greater demand for visitor serving amenities within the Coastal Zone.

As submitted, the proposed Residential/Commercial land use does not specify that the proposed commercial use component of the mixed use would encourage visitor serving commercial uses for development in areas that support visitors besides other typical types of commercial uses. Thus, the preferred visitor serving commercial uses are not being protected. Therefore, the LUP does not carry out the Chapter 3 policies of the Coastal Act and must be denied as submitted.

b. Minimization of Vehicle Miles Traveled

An equally important mandate is found in Section 30253(d), requiring new development projects to minimize certain adverse impacts. One of the impacts that requires minimization under section 30253(d) is vehicle miles traveled. The California Legislature, recognizing the need to reduce vehicle miles traveled in California, passed, and the Governor signed into law, Senate Bill 375 in 2008, which requires, in part, regional governments to develop planning strategies to implement in-fill development in a manner that is aimed at reducing vehicle miles traveled among the regional residents and visitors. While the Commission is not bound to enforce the provisions within

Senate Bill 375, the Commission recognizes that minimizing vehicle miles traveled, as required under section 30253(d), is an important goal for smart growth, high density mixed use development. Thus, the Commission is suggesting modifications to the proposed land use designation to ensure consistency with its own provisions governing the minimization of vehicle miles traveled. Therefore, as submitted, the proposed Residential/Commercial land use designation is not consistent with section 30253(d), relating to minimization of vehicle miles traveled, and requires suggested modifications to bring it into compliance with this Chapter 3 policy of the Coastal Act.

2. APPROVAL of the Land Use Plan (LUP) Amendment, as Modified

The findings for denial of the LUP Amendment as submitted are herein fully incorporated.

a. Visitor Serving Commercial Uses

As stated, the Coastal Act strongly prefers visitor serving commercial uses. However, the previous use of the site as a residential mobile home park since the mid 1960's, a private residential use, was not a priority use. Thus, the commercial component of the proposed mixed use land use designation must be modified to require that for areas where development supports general public visitors, such as along Pacific Coast Highway, that the ground floor area of any building is most appropriately occupied by visitor serving commercial uses. Because of the large number of other visitor serving commercial uses including 5 hotels, community and senior center, 2 shopping centers, Dana Point Harbor, and Doheny State Beach, near the subject site, requiring the entire site to be visitor-serving commercial was not deemed necessary (Exhibit #6). As modified, the LUP is consistent with the Chapter 3 policies of the Coastal Act which protects visitor serving commercial uses.

b. Public Access/Recreation

Protection of public access/recreation is an important mandate in the Coastal Act. Currently, the subject site is designated "Recreation" in the LUP and zoned for "Coastal Recreation Space". Despite this designation and zoning, the site has been used as a residential mobile home park since before the Coastal Act. Uses allowed include 'riding and hiking trails', 'buffer greenbelts', 'parks and playgrounds', 'beach access', 'park and district offices and facilities', among other similar uses. The proposed amendment would create a new mixed use land use designation involving "Residential/Commercial". Thus, converting land use and zoning of the site from a priority use to a lesser priority use because of the residential component. The City did complete a study of the City's recreational resources and demands, which they titled a 'Service Area Analysis', which

evaluated the existing recreational opportunities in the City and it also identified the need for any future facilities. This analysis was used to recently complete an extensive update to the City of Dana Point's Parks, Recreation and Open Space Master Plan, which serves as the principal resource document for setting priorities for parks and recreation programs and facilities in the City over the next 20-year timeframe. That analysis pointed out that, even though the site was designated for recreation/open space purposes, the City never included the site at 34202 Del Obispo as part of the City's inventory of public spaces. The City currently already operates and maintains approximately 65.7 acres of parkland at 21 sites located throughout the City (Exhibit #7, page 2). Neither the City's General Plan nor their parks/open space plan identifies the subject site for recreational purposes. The City attributes the current land use designation of the Del Obispo site to a holdover from the period when this area was unincorporated, and the extensive City-wide network of public open spaces that currently exists did not exist at that time. Furthermore, the City points out that the site has not historically been used for any type of recreational purpose, but, in fact, has been used solely for residential purposes (as a mobilehome park). The City's Service Area Analysis assumes a goal of 6 acres per 1,000 residents (which exceeds other guidelines calling for 5 acres per 1,000 residents). Based on that ratio, and not factoring in the public beaches that exist in the City (which are mostly under State or County ownership/management), the City determined that the amount of recreational area in the City had surpassed their goal and anticipated need; therefore, the City determined it was unnecessary to require that the subject site remain entirely for "Coastal Recreation" purpose. Further, as shown in Exhibit #7, page 1, within ½ mile of the site there are 4 parks, open space, recreation and trail uses, in addition to Doheny State Beach. However, the City does point out that adding residential units at this site will increase the City's population and create additional demand on park resources. Thus, the City acknowledges that some open space exaction will be required during the discretionary permit process. The City's LCP already includes provisions that address these requirements. Thus, the LUP Amendment to change the land use from recreation to mixed use residential/commercial is consistent with Chapter 3 policies of the Coastal Act regarding public recreation; however, it must be modified to be consistent with the visitor serving commercial use and the minimization of vehicle miles traveled policies found in Chapter 3 of the Coastal Act as discussed above and below.

While the LUP Amendment is consistent with Chapter 3 policies of the Coastal Act regarding public access/recreation, the proposed IP Amendment (to be discussed next in this staff report) has been denied as submitted and modified in order to bring it to consistency with the LUP regarding public access/recreation.

c. Minimization of Vehicle Miles Traveled

As noted above, it is important for new mixed use residential/commercial development to minimize vehicle miles traveled as mandated by section 30253 of the Coastal Act. Thus, the Commission suggests modifying the LUP amendment submittal, requiring the siting of new mixed use residential/commercial development in a manner that minimizes vehicle miles traveled. As noted in the proposed LUP amendment submittal, residential development within Residential/Commercial areas will provide housing near sources of employment or commercial and professional services and will add to the City's supply of housing opportunities, reduces commute distance between home and work, provides housing development within walking distance to existing or proposed transit stops and promotes a strong, stable, and desirable pedestrian-oriented business environment. All of these mixed use development goals are consistent with minimizing vehicle miles traveled for new development and are, thus, consistent with section 30253(d) of the Coastal Act.

3. CONCLUSION

Therefore, the Commission finds that only if modified as suggested to require changes to the LUP to minimize vehicle miles traveled and protect visitor serving commercial uses can the LUP be found consistent with the Chapter 3 policies of the Coastal Act.

C. DENIAL OF IMPLEMENTATION PLAN (IP) AMENDMENT AS SUBMITTED AND APPROVAL OF IMPLEMENTATION PLAN (IP) AMENDMENT AS MODIFIED

1. Findings for DENIAL of the Implementation Plan (IP) Amendment as Submitted

The proposed LCP Amendment No. 2-10, would amend the Zoning Code, which serves as the IP for the '1996' LCP to allow a new Zoning Category "Residential Commercial-18 (R/C-18)".

The City's LUP mirrors policies in the Coastal Act that encourages the minimization of vehicle miles traveled, the provision of public access/recreation and prioritizes visitor-serving commercial development over residential development. However, the proposed IP Amendment is not in conformity with the minimization of vehicle miles traveled, public access/recreation and visitor serving commercial priority policies of the City's LUP. Applicable provisions of the City's LCP include the following:

Land Use Element (LUE) Policy 1.4: Assure that adequate recreational areas and open space are provided as a part of new residential development to assure that the recreational needs of new residents will not overload nearby coastal recreation areas. (Coastal Act/30252)

Land Use Element (LUE) Policy 2.11, in relevant part: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.... (Coastal Act/30222)

Land Use Element (LUE) Policy 2.12: The location and amount of new development should maintain and enhance public access to the coast by assuring that the recreational needs of new residents will not overload nearby coastal recreation areas through the correlation of the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development. (Coastal Act/30252(6))

Land Use Element (LUE) Policy 3.6: Encourage patterns of development necessary to minimize air pollution and vehicle miles traveled. (Coastal Act/30250)

Land Use Element (LUE) Policy 3.12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)

Land Use Element (LUE) Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

Land Use Element (LUE) Policy 9.3: Encourage resident-serving uses within walking distance of areas designated on the Land Use Diagram for residential use, where possible, to minimize the encroachment of resident serving uses into visitor-serving areas, to minimize the use of primary coastal access roads for non-recreational trips, and to minimize energy consumption and vehicle miles traveled by encouraging the use of public transportation. (Coastal Act/30222, 30252, 30253)

Urban Design Element (UDE) Policy 4.3: Develop stronger pedestrian, bicycle and visual linkages between public spaces and to and along the shoreline and bluffs. (Coastal Act/30210, 30212)

Urban Design Element (UDE) Policy 4.6: Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving developments in the coastal zone. (Coastal Act/30210, 30212)

Conservation Open Space Element (COSE) Policy 5.4: Provide commercial areas that are conducive to pedestrian and bicycle circulation.

Conservation Open Space Element (COSE) Policy 5.6: Encourage bicycle/trail systems to reduce air pollution.

Conservation Open Space Element (COSE) Policy 7.6: Encourage the development of parks and acquisition of open space areas to serve the needs of visitors as well as local residents.

The proposed LCP Amendment will have an adverse affect on vehicle miles traveled, public access/recreation and priority visitor serving commercial policies of the City's LUP. The following discussion below explains how the proposed LCP Amendment will not be consistent with the LUP policies addressing the minimization of vehicle miles traveled, public access/recreation and priority visitor serving commercial uses:

a. Visitor Serving Commercial Uses

Visitor serving commercial uses are strongly preferred under the LUP. This type of use is preferred because it maximizes the number of people who can enjoy the unique experience available only along the coast. Thus, these uses need to be protected. As submitted, the IP Amendment amends the Zoning Code to protect these uses this by requiring under "Section 9.13.040 Special Development Standards (c)(3)" that the ground floor area of any building fronting Pacific Coast Highway, for a minimum depth of forty (40) feet, be restricted to visitor serving commercial uses." However under "Section 9.13.010 Intent and Purpose", it fails to clarify this requirement as well as reference where in the Zoning Code a description of "Visitor/Recreation Commercial (V/RC) uses are described. Therefore, the IP does not carry out the LUP and must be denied as submitted.

b. Public Access/Recreation

One of the strongest legislative mandates of the LUP is the preservation of coastal access. A portion of the subject site at 34202 Del Obispo Street should be retained as a recreational area because of its location adjacent/near to San Juan Creek and Doheny State Beach. The subject site is located adjacent to the San Juan Creek and the San Juan Creek Bike Trail, which is a Class 1 paved trail that ends at Doheny State Beach Park. Many properties along the creek that are similarly situated include landscaped and passive park areas between the developed areas and the

bike trail. Continuation of that landscaped/passive area would be interrupted if it is not provided on the subject site. The IP Amendment fails to include regulations that would enhance recreational use of appropriate portions of the site and access to this bike trail. Additionally, the IP Amendment does not provide regulations that would prevent this prime site from being gated. The lack of such provisions would prevent the general public from having parking, vehicular, pedestrian and bike access onsite, which is important for coastal access and recreation. Therefore, the IP does not carry out the LUP and must be denied as submitted.

c. Minimization of Vehicle Miles Traveled

As stated in the Coastal Act, it is important for new mixed use residential/commercial development to minimize vehicle miles traveled. As proposed, the amendment does not provide clarification for the importance of minimizing vehicle miles traveled. Doing so would result in minimization of air pollution, energy consumption, encourage the use of public transportation, etc.. Therefore, the IP does not carry out the LUP and must be denied as submitted.

2. APPROVAL of the Implementation Plan (IP) Amendment, as Modified

The findings for denial of the IP Amendment as submitted are herein fully incorporated.

a. Visitor Serving Commercial Uses

As stated, the LUP strongly prefers visitor serving commercial uses. Thus, policies must be included that would protect this type of use. The Implementation Plan (IP) does clarify in one location (Section 9.13040 Special Development Standards) that this type of use is required for commercial development that fronts Pacific Coast Highway; it fails to make this clear within the description of the actual description of the new Zoning. Only as modified to require clarification within the description of the new Zoning of "Residential/Commercial" that the ground floor area of any building fronting Pacific Coast Highway, for a minimum depth of forty (40) feet, is restricted to visitor serving commercial uses and that a reference is included to where in the Zoning Code a description of such uses can be found can the Implementation Plan (IP) be found in conformance with and carry out the Land Use Plan (LUP) as amended.

Approval of this zone change does not approve development of an actual project. During the course of local review by the City for a Coastal Development Permit for a specific project, conditions could be imposed such as additional setbacks, noise, requirement for an "odor easement", and inspection and determination of utilities, such as gas lines.

As modified, the Implementation Plan (IP) is consistent with the City's certified and modified Land Use Plan (LUP) which protects visitor serving commercial uses.

b. Public Access/Recreation

In order to protect public access/recreation as stated in the City's LUP, policies need to be included in order to reflect the importance of protecting public access/recreation. The location of the subject site affords an opportunity to provide access to the coast via the adjacent San Juan Creek Bike Trail. Additionally, because of the previous zoning of the site and its ideal location to these amenities, recreational opportunities should be protected onsite. Thus, policies have been suggested that would protect recreational use onsite as well as provide public access onsite to the adjacent bike trail and also prevent gating of all streets and pedestrian and bike accessways. The policy to be added regarding gating states "...*All streets and pedestrian and bicycle accessways shall be ungated and available to the general public for parking, vehicular, pedestrian, and bicycle access. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets, on-street parking areas, or pedestrian and bicycle accessways shall be prohibited....*" The purpose of this regulation is to ensure that streets and accessways constructed in conjunction with a submittal are open and available for general public use. However, this policy wouldn't prevent the City from requiring that some off-street parking spaces, which are necessary to support the development proposed, be reserved for that use. For instance, signs could be posted in the off-street parking lot which state that those parking spaces are for the customers of the proposed business establishment. However, such signs could not be placed along streets; instead those spaces must be made available to the general public. As modified, this would be consistent with the City's certified and modified Land Use Plan (LUP) which protects public access/recreation.

c. Minimization of Vehicle Miles Traveled

In order to minimize vehicle miles traveled associated with new mixed use development, policies need to be included that would reduce vehicle miles traveled. Such policies, would encourage use of public transportation, reduce the use of primary coastal access roads for non-recreational trips, and reduce energy consumption. As modified, the Implementation Plan (IP) is consistent with the City's certified and modified Land Use Plan (LUP) which would minimize vehicle miles traveled.

3. CONCLUSION

Therefore, the Commission finds that only if modified as suggested to require changes to the IP to minimize vehicle miles traveled, protect public access/recreation and visitor serving commercial uses can the IP be found consistent with the City's certified and modified LUP.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an Environmental Impact Report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of an LCP. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Dana Point LCP Amendment No. 2-10 consists of an amendment to both the LUP and IP.

As outlined in this staff report, the proposed LUP Amendment is inconsistent with the Chapter 3 policies of the Coastal Act and the IP Amendment is inconsistent with the policies of the certified LUP. However, if modified as suggested, the LUP Amendment will be consistent with the Chapter 3 policies of the Coastal Act. In addition, if modified as suggested, the IP Amendment will be consistent with the policies of the LUP. Thus, the Commission finds that the LUP Amendment, if modified as suggested, is consistent with the Chapter 3 policies of the Coastal Act and that the IP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request 2-10 if modified as suggested herein.

RESOLUTION NO. 09-06-08-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 07-01, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT BY CREATING A NEW LAND USE CATEGORY OF "RESIDENTIAL/COMMERCIAL", AND CHANGES THE GENERAL PLAN DESIGNATION OF THE SUBJECT SITE, 34202 DEL OBISPO STREET, FROM "DANA POINT SPECIFIC PLAN - COASTAL RECREATION SPACE" TO "RESIDENTIAL/COMMERCIAL", AND SUBMISSION OF GPA 07-01 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: Makar Properties, LLC

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

WHEREAS, on July 9, 1991, the City of Dana Point adopted its General Plan; and

WHEREAS, the City of Dana Point has prepared a Mitigated Negative Declaration which has been reviewed and approved by the City Council; and

WHEREAS, the City may amend all or part of an adopted General Plan to promote the public interest up to four times during any calendar year pursuant to Government Code Section 65358; and

WHEREAS, the City of Dana Point adopted a Local Coastal Program, which was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the General Plan Amendment GPA07-01 is the first General Plan Amendment processed for 2009; and

WHEREAS, the proposed amendment would make changes to the Land Use Element of the General Plan and will also change the designation of the subject site from "Dana Point Specific Plan - Coastal Recreation Space" to "Residential/Commercial"; and

WHEREAS, the amendment is internally consistent with other elements of the General Plan; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code; and

WHEREAS, the Planning Commission did on February 2, April 6, and May 4, 2009, held duly noticed public hearings as prescribed by law to consider the said amendments and recommended the City Council approve the General Plan Amendment and Local Coastal Program Amendment; and

EXHIBIT # 1
PAGE 1 OF 5

COASTAL COMMISSION

WHEREAS, the City Council did on June 8, 2009 hold a duly noticed public hearing as prescribed by law to consider the General Plan Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to GPA07-01 and LCPA07-01; and

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

- A. That the above recitations are true and correct;
- B. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- C. That the General Plan Amendment under GPA07-01 is in the public interest;
- D. That the Local Coastal Program Amendment (LCPA07-01) is consistent with, and will be implemented in full conformity with the Coastal Act;
- E. That the Planning Commission has reviewed and considered the Mitigated Negative Declaration;
- F. That the Mitigated Negative Declaration for the proposed project is complete and adequate for the consideration of the General Plan Amendment;
- G. That the City Council adopts the following findings:
 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.
 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the General Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the Implementation Program Amendment is in conformance with and adequate to implement the Land Use Plan.
 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a General Plan Amendment and Local Coastal Program Amendment, no specific development is proposed. Any proposed

development will be reviewed for compliance with the City's Local Coastal Program and (in addition) for proposed development located within the Commission's appeal area, the public access policies of the Coastal Act.

4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's Zoning Code is being amended concurrently with the LCP amendment.

H. That the City Council recommends the following in the Resolution:

1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
2. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
3. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
4. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA07-01 be submitted to the Coastal Commission for certification.

I. That the amendments to the City General Plan are shown in Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference.

J. That the currently adopted 1996 Local Coastal Program (City of Dana Point General Plan) be amended as shown in Exhibit "A".

K. That the 1986 Dana Point Local Coastal Program (Dana Point Specific Plan and Orange County Zoning Code) as it applies to the subject site be replaced with the 1996 Local Coastal Program (as amended).

COASTAL COMMISSION

EXHIBIT # 1
PAGE 3 OF 5

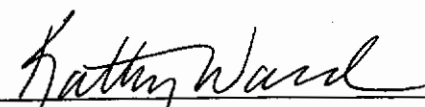
- L. The City Council approves that the "Residential/Commercial" land use designation replace in its entirety the Dana Point Specific Plan for the subject site.
- M. GPA07-01, ZC07-01, and ZTA07-02, and other remaining applicable sections of the City's General Plan and Zoning Code constitute the LCP for the subject site.

The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 8th day of June, 2009.


LISA BARTLETT, MAYOR

ATTEST:


Kathy Ward
City Clerk


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

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 09-06-18-10 was duly adopted and passed at a regular meeting of the City Council on the 8th day of June, 2009, by the following roll-call vote, to wit:

AYES: Council Members Bishop, Schoeffel, Mayor Pro Tem Weinberg, and Mayor Bartlett

NOES: None

ABSENT: Council Member Anderson


KATHY WARD
CITY CLERK

COASTAL COMMISSION

EXHIBIT # 1
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EXHIBIT "A"

General Plan Amendment GPA07-01

Modification of Land Use Element of the General Plan: The "Mixed Use Designation" shall be amended to add a new Land Use category of "Residential/Commercial" as follows (inserts are underlined):

Residential/Commercial: The Residential/Commercial designation provides for a mixture of residential, commercial, and office uses in the same building, or on the same parcel. Residences in the Mixed Use designation provide housing near sources of employment or commercial and professional services. This alternative housing adds to the City's supply of housing opportunities, reduces commute time between home and work, and promotes a strong, stable, and desirable pedestrian-oriented business environment. When mixture of uses occur in the same building, retail uses or offices are usually located on the ground floor with residential or office uses above. The mixed uses are usually located in areas where multiple activities and pedestrian orientation are considered to be desirable objectives.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 5 OF 5

RESOLUTION NO. 09-06-08-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, REGARDING LOCAL COASTAL PROGRAM AMENDMENT
LCPA07-01 AND REQUESTING CERTIFICATION BY THE CALIFORNIA
COASTAL COMMISSION.**

WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Dana Point Planning Commission held public hearings on February 2, April 6, and May 4, 2009, to consider the adoption of Dana Point Local Coastal Program Amendment LCPA07-01 and recommended its approval to the City Council; and

WHEREAS, the City Council, after giving notice as prescribed by law, held a public hearing on June 8, 2009, regarding the proposed Dana Point Local Coastal Program Amendment LCPA07-01, and the City Council finds that the proposed amendment is consistent with the Dana Point General Plan, the Local Coastal Program and the California Coastal Act; and

WHEREAS, the City Council of the City of Dana Point certifies that it intends to implement the Local Coastal Program in a manner fully consistent and in conformance with the California Coastal Act; and

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

Section 1. That the above recitals are true and correct and incorporated herein.

Section 2. That the Dana Point City Council approved Dana Point Local Coastal Program Amendment LCPA07-01 pursuant to Resolution 09-06-08-10 and Ordinance No. 09-06. LCPA07-01 pertains to the inclusion of a new land use category in the Land Use Element of the General Plan, as outlined in General Plan Amendment GPA07-01, inclusion of a new Zoning category in the Zoning Ordinance as outlined in Zone Text Amendment ZTA07-02 and to change the designation of the subject site, 34202 Del Obispo Street, from "Dana Point Specific Plan – Coastal Recreation Space" to the General Plan designation of "Residential/Commercial" and the Zoning designation of "R/C-18" as outlined in Zone Change ZC07-01. A copy of Resolution No. 09-06-08-10 approving GPA07-01 and LCPA07-01 and Ordinance No. 09-06 approving ZTA07-02, ZC07-01 and LCPA07-01 with the specific content of the proposed amendments is attached hereto as Exhibit A and is incorporated herein by this reference as though fully set forth herein.

Section 3. That the California Coastal Commission is hereby requested to consider, approve and certify Dana Point Local Coastal Program Amendment LCPA07-01 which replaces the Dana Point Specific Plan Local Coastal Program for the subject site (34202 Del Obispo Street).

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 2

Section 4. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Dana Point Local Coastal Program Amendment LCPA07-01 will automatically take effect immediately upon California Coastal Commission approval, as provided in Public Resources Code Section 30512, 30513 and 30519.

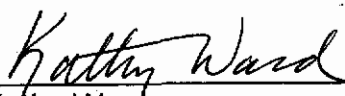
Section 5. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 8th day of June, 2009.



LISA BARTLETT, MAYOR

ATTEST:



Kathy Ward
City Clerk

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

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 09-06-08-11 was duly adopted and passed at a regular meeting of the City Council on the 8th day of June, 2009, by the following roll-call vote, to wit:

AYES: Council Members Bishop, Schoeffel, Mayor Pro Tem Weinberg, and
 Mayor Bartlett

NOES: None

ABSENT: Council Member Anderson



KATHY WARD
CITY CLERK

Exhibit: A – Resolution No. 09-06-08-10 approving GPA07-01 and LCPA07-01 and Ordinance No. 09-06 approving ZTA07-02, ZC07-01 and LCPA07-01

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2

ORDINANCE NO. 09-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA07-02 AND ZONE CHANGE ZC07-01 TO ESTABLISH A NEW ZONING CATEGORY OF "RESIDENTIAL/COMMERCIAL-18" (R/C-18) IN CHAPTER 9.13 OF THE ZONING ORDINANCE AND TO CHANGE THE DESIGNATION OF THE SUBJECT SITE, 34202 DEL OBISPO STREET, FROM "DANA POINT SPECIFIC PLAN - COASTAL RECREATION SPACE" TO "R/C-18", AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: Makar Properties, LLC
File No.: GPA 07-01/ZC07-01/ZTA07-02/LCPA 07-01

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

WHEREAS, in January, 1994, the City of Dana Point adopted its Zoning Code and Zoning Map; and

WHEREAS, the City seeks to amend the Zoning Code and Zoning Map, affecting the subject site located at 34202 Del Obispo Street; and

WHEREAS, the proposal is for a Zone Text Amendment, Zone Change and Local Coastal Program Amendment to amend the Dana Point Zoning Code by adding a new category of "R/C-18" in Chapter 9.13 of the Zoning Ordinance, and to amend the Dana Point Zoning Map to designate the subject site as "R/C-18"; and

WHEREAS, the Zone Text Amendment and Zone Change will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan, as amended; and

WHEREAS, the R/C-18 zoning designation of the subject site will be harmonious with the zoning of the surrounding properties; and

WHEREAS, the Planning Commission held duly noticed public hearings as prescribed by law on February 2, April 6, and May 4, 2009, to consider the amendments and recommended the City Council approve the said Zone Text Amendment, Zone Change and LCPA; and

WHEREAS, the City Council held a duly noticed public hearing as prescribed by law on June 8, 2009, to consider Mitigated Negative Declaration and, specifically said Zone Text Amendment, Zone Change, and Local Coastal Program Amendment; and

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 14

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 07-02, ZC 07-01, and LCPA 07-01; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. That the new zoning category of "R/C-18" is attached hereto as Exhibit "B" and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of state law and local Ordinances;
- D. That the Zone Text Amendment (ZTA07-02), and Zone Change (ZC07-01) are in the public interest;
- E. The City Council has reviewed and adopted the Mitigated Negative Declaration;
- F. The preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code;
- G. The proposed amendment to the Zoning Code and Zoning Map will be consistent with the amended General Plan;
- H. The City Council adopt Zone Text Amendment ZTA07-02 and Zone Change ZC07-01 for the reasons outlined herein including but not limited to: provision of higher density residential uses; provision of affordable housing in the Coastal Overlay District; increasing pedestrian-oriented retail and commercial uses with residential uses to create a more dynamic, interesting and attractive place for both residents and visitors; creating a continuity of activities along Pacific Coast Highway from the Town Center area by allowing for a more accessible and walkable project for the subject site;
- I. That the City Council adopt the following findings:
 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.

COASTAL COMMISSION

EXHIBIT # 3
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2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. The amendments to the Zoning Code and Zoning Map are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources.
 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a Zone Text Amendment and Zone Change, no specific development is proposed. Any development will be reviewed for compliance with the Coastal Act provisions and other applicable state law.
 4. That the level and pattern of development proposed is reflected in the Zoning Code and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.
 5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's Zoning Code and Zoning Map are being amended concurrently with the LCP amendment.
- J. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 2. The City include the General Plan Amendment, Zone Text Amendment, and Zone Change in its submittal to the Coastal Commission and state that the amendment to the Local Coastal Plan is to both the land use plan and implementing actions.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 3 OF 14

3. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 4. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Ordinance of the City Council include the Zone Text Amendment, Zone Change and Local Coastal Program Amendment numbers ZTA07-02, ZC07-01 and LCPA07-01 when submitted to the Coastal Commission.
 6. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- K. That the City Council adopts the amendments to the City Zoning Code and Zoning Map as follows:
1. "Residential/Commercial-18" shall be added in Chapter 9.13 of the Zoning Ordinance, as shown in the attached "Exhibit B".
 2. The Zoning map shall be amended to designate the subject site as "R/C-18".
- L. That the City Council adopts Zone Text Amendment ZTA07-02 and Zone Change ZC07-01, which would amend the Dana Point Local Coastal Program pursuant to LCPA07-01. The City Council approves the amendment for the reasons outlined herein, including but not limited to: provision of higher density residential uses; provision of affordable housing in the Coastal Overlay District; increasing pedestrian-oriented retail and commercial uses with residential uses to create a more dynamic, interesting and attractive place for both residents and visitors; creating a continuity of activities along Pacific Coast Highway from the Town Center area by allowing for a more accessible and walkable project for the subject site.
- M. The City Council approves that the General Plan designation of "Residential/Commercial" and Zoning designation of "R/C-18" replace in its entirety the Dana Point Specific Plan for the subject site.
- N. GPA07-01, ZC07-01, and ZTA07-02, shall constitute the LCP for the subject site.

COASTAL COMMISSION

EXHIBIT # 3
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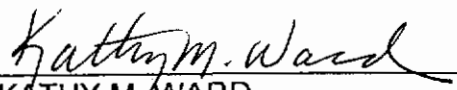
If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 27th day of July, 2009



LISA A. BARTLETT, MAYOR

ATTEST:



KATHY M. WARD
City Clerk

COASTAL COMMISSION

EXHIBIT # 3
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STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

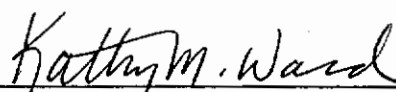
I, KATHY M. WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 09-06 was duly introduced at a regular meeting of the City Council on the 8th day of June, 2009, and was duly adopted and passed at a regular meeting of the City Council on the 27th day of July, 2009, by the following vote, to wit:

AYES: Council Member Lara Anderson, Council Member Joel Bishop,
 Council Member Scott Schoeffel, Mayor Pro Tem Steven
 Weinberg, and Mayor Lisa Bartlett

NOES: None

ABSTAIN: None

ABSENT: None



KATHY M. WARD, CITY CLERK

COASTAL COMMISSION

EXHIBIT # 3
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ORDINANCE NO. 09-06

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

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

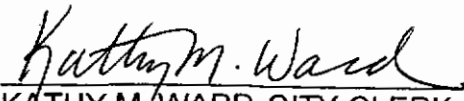
That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 09-06, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA07-02 AND ZONE CHANGE ZC07-01 TO ESTABLISH A NEW ZONING CATEGORY OF "RESIDENTIAL/COMMERCIAL-18" (R/C-18) IN CHAPTER 9.13 OF THE ZONING ORDINANCE AND TO CHANGE THE DESIGNATION OF THE SUBJECT SITE, 34202 DEL OBISPO STREET, FROM "DANA POINT SPECIFIC PLAN - COASTAL RECREATION SPACE" TO "R/C-18", AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

was published in summary in the Dana Point News newspaper on the 18th day of June, 2009, and the 6th day of August, 2009, and, in further compliance with City Resolution No. 91-10-08-1, on the 11th day of June, 2009, and the 30th day of July, 2009, was caused to be posted in four (4) public places in the city of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library


KATHY M. WARD, CITY CLERK
Dana Point, California

COASTAL COMMISSION

EXHIBIT # 3
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EXHIBIT "B"

Modification of Development Standards: Chapter 9.13 shall be amended as follows (deletions are shown as strikeout and inserts are underlined):

9.13.010 Intent and Purpose.

The mixed use districts provide for the compatible and beneficial mixture of commercial, office and residential uses in a single structure or on a single site. These districts are designed to achieve a convenient business and residential environment in areas where multiple activities and an increased degree of pedestrian orientation are considered to be desirable. The districts also provide a transitional or buffering zone between exclusive non-residential and residential districts. Residences in the Mixed Use District provide housing near sources of employment or commercial and professional services-- an alternative to exclusively residential districts. This alternative housing is intended to add to the City's supply of affordable housing, reduce commutes between home and work, and promote a strong, stable, and desirable pedestrian-oriented business environment.

(a) Commercial/Residential (C/R). The Commercial/Residential (C/R) district provides for compatible mixtures of commercial and office uses, and residential units in the same building or on the same parcel. Allowable commercial and office uses include those that are typically permitted in the Community Commercial (CC) districts. These uses provide for a commercially-oriented environment that also offers compatibility for residential uses. The only projects allowed in this district are commercial or mixed use (commercial/residential) projects. Residential development is only permitted in conjunction with commercial development as part of a mixed use project.

(b) Residential/Commercial-18 (R/C-18). The Residential/Commercial-18 (R/C-18) district provides for a mixture of residential uses with commercial and office uses in the same building or on the same parcel. Allowable commercial and office uses include those which are visitor serving in nature and at the same time are compatible with residential uses such as bed and breakfast inns, restaurants, specialty and convenience shops and recreation/open space uses. This district provides for a residential density of eighteen units per acre. It implements the State's Mello Act and the City's goals, objectives and policies for production of affordable housing by requiring that any project of new construction with more than ten residential units, which is located within the Coastal Overlay District, shall be required to provide a minimum ten percent (10%) of the total housing units as "affordable units", as defined in the Housing Element of the City's General Plan and pursuant to the provisions of the aforementioned State's Mello Act. The only projects allowed in this district are mixed use (residential/commercial) projects. The gross floor area for commercial uses is limited to a maximum of ten (10) percent of the total site area. Properties fronting Pacific Coast Highway are required, at a minimum, to provide commercial uses on the ground floor of all the buildings fronting Pacific Coast Highway, for a minimum depth of forty (40) feet.

~~(b)~~-(c) Professional/Residential (P/R). The Professional/Residential (P/R) district includes a mixture of professional offices and residential use in the same building or on the same parcel. Allowable professional uses typically include those that are permitted in the Professional/Administrative (P/A) district. These uses provide for a professional office-oriented environment that also offers compatibility for residential uses. The only projects allowed in this district are professional or mixed use (professional/ residential) projects. Residential development is only permitted in conjunction with professional development as part of a mixed use project.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 8 OF 14

9.13.020 Permitted Uses, Accessory Uses, Temporary Uses and Conditional Uses.

(a) Several classes of use are allowed in Mixed Use Districts. Each of these classes must promote the mixed use character of the districts. These classes of uses are:

(1) Permitted Use — allowed by right if no discretionary review is required. Certain permitted uses, indicated by a P*, are also regulated by provisions contained in Chapter 9.07.

(2) Accessory Use — allowed by right if accessory to a permitted or conditional use.

(3) Temporary Use — allowed on a temporary basis in accordance with the provisions of Chapter 9.39.

(4) Conditional Use — allowed subject to the approval of a Conditional Use Permit in accordance with the provisions of Chapter 9.65. Certain conditional uses, indicated by a C*, are also regulated by provisions contained in Chapter 9.07.

(5) Prohibited Use — not allowed in the subject mixed use district.

(b) Certain uses other than permitted uses may not be suitable or desirable in every location within Mixed Use Districts and, therefore require a Temporary Use Permit as described in Chapter 9.39, or discretionary review through the Conditional Use Permit process described in Chapter 9.65.

(c) The following Table lists the classification of allowable uses in Mixed Use Districts. Any use not expressly allowed is prohibited.

SECTION 9.13.020(c) MIXED USE DISTRICTS

LAND USES	C/R	<u>R/C-18</u>	P/R
Administrative Office Uses	P	<u>P</u>	P
Adult Day Care Facility	C	<u>X</u>	C
Alcoholic Beverage Outlet	P*/C*	<u>P*/C*</u>	P*/C*
Automotive Sales and Rental Uses	C* (1)	<u>C*(1)</u>	X
Bed and Breakfast Inn		<u>C</u>	
Business Service Uses	P	<u>X</u>	P
Caretaker's Residence	C	<u>C</u>	C
Civic Uses	C	<u>C</u>	P
Clinical Service Uses	P	<u>C</u>	P
Commercial Antenna	C	<u>C</u>	C
Community Care Facility	C	<u>X</u>	C
Congregate Care Facility	C	<u>X</u>	C
Congregate Living Health Facility	C	<u>X</u>	C
Convalescent Facility	C	<u>X</u>	C
Cultural Uses	P	<u>P</u>	P
Day Care Centers	P	<u>X</u>	C
Day Treatment Facility	C	<u>X</u>	C
Drinking Establishments	P*/C*	<u>P*/C*</u>	X
Drive Through Uses	C(4)-(5)	<u>X</u>	X

COASTAL COMMISSION

EXHIBIT # 3
PAGE 9 OF 14

Drug Abuse Recovery or Treatment Facility	C	<u>X</u>	C
Dwelling Unit, Multiple Family	A (2)	<u>P (3)</u>	C (2)
Dwelling Unit, Single Family	<u>P (3) (4)</u>	<u>P(4)</u>	C (2)
Educational Uses	X	<u>X</u>	C
Family Day Care Home, Large	C	<u>C</u>	C
Family Day Care Home, Small	C	<u>C</u>	C
Food Service Uses, Specialty	P	<u>P</u>	C
Group Dwelling/Group Home	C	<u>X</u>	C
Hospital, Acute Psychiatric	C	<u>X</u>	C
Hospital, Chemical Dependency Recovery	C	<u>X</u>	C
Hospital, General Acute Care	C	<u>X</u>	X
Hospital, Special	C	<u>X</u>	C
Intermediate Care Facility	C	<u>X</u>	C
Live Entertainment Uses	C*	<u>C*</u>	X
Medical Office Uses	P	<u>P</u>	P
Membership Organizations	P	<u>P</u>	C
Minor Repair Service Uses	P	<u>C</u>	P
Mixed Use Center	P	<u>P</u>	P
Mobilehome Park	<u>P (5) (6)</u>	<u>X</u>	X
Open Space	P	<u>P</u>	P
Park, Public	P	<u>P</u>	P
Personal Service Uses	P	<u>P</u>	P
Photographic, Reproduction and Graphic Service Uses	P	<u>P</u>	P
Professional Office Uses	P	<u>P</u>	P
Public Utility Uses	C	<u>X</u>	X
Recreational Uses	C	<u>C</u>	C
Religious Uses	C*	<u>C*</u>	C*
Research and Development Uses	P	<u>X</u>	P
Residential Care Facilities for the Elderly	C	<u>X</u>	C
Residential Facility	C	<u>X</u>	C
Restaurant	P	<u>P</u>	C
Restaurant, Take-Out	P	<u>P</u>	C

COASTAL COMMISSION

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Restaurant, Walkup	P	<u>P</u>	C
Retail Sales Uses	P	<u>P</u>	C
Sanitarium, Health	X	<u>X</u>	C
Sanitarium, Mental	X	<u>X</u>	C
Senior Citizen Housing	C	<u>C</u>	C
Single Room Occupancy	C	<u>C</u>	C
Skilled Nursing Facility	C	<u>X</u>	C
Small Family Home	C	<u>X</u>	C
Social Day Care Facility	C	<u>X</u>	C
Social Rehabilitation Facility	C	<u>X</u>	C
Temporary Uses	T*	<u>T*</u>	T*

LEGEND:

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

Footnotes for Section 9.13.020(c):

- (1) Accessory repair or service of motor vehicles is prohibited, but the incidental installation of parts or accessories, excluding mechanical components, is permitted.
- (2) Permitted only as an accessory use to commercial or professional uses in a mixed use project and located on the second floor only.
- (3) Permitted only as part of a mixed use project. In compliance with the Mello Act, new construction projects of more than ten residential units which are located within the Coastal Overlay District are required to provide a minimum ten percent (10%) of the units as "affordable units".
- ~~(3)~~ (4) A single family detached unit may only be permitted to replace an existing nonconforming single family residence. The replacement residence shall be developed in accordance with the development standards of the RSF 7 district. Single family attached units may be constructed as an accessory use in a mixed use project.
- (4) (5) Permitted with a Conditional Use Permit which shall be reviewed and approved by the Planning Commission and precludes restaurant/food uses, and liquor establishments, and permits such uses, but not limited to, dry cleaners, banks and pharmacies. (See Section 9.07.240)
- ~~(5)~~ (6) Only those mobilehome parks in existence as of November 23, 1993 shall be permitted.

9.13.030 Development Standards.

The following general development standards Table provides the minimum acceptable standards for development within the mixed use districts necessary to assure quality development and attractive local mixed use areas. The development standards are supplemented, and where applicable, superseded by the special development standards described in Chapter 9.05, Chapter 9.07, and Section 9.13.040. Parking standards are provided in Chapter 9.35.

COASTAL COMMISSION

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**SECTION 9.13.030
MIXED USE DEVELOPMENT STANDARDS**

Development Standards (1)		Mixed Use Zoning Districts		
		C/R	R/C-18	P/R
(a) Minimum Lot Size (2)		5,000 sf	<u>5,000 sf</u>	5,000 sf
(b) Minimum Lot Width (2)		50 ft	<u>50 ft</u>	50 ft
(c) Minimum Lot Depth (2)		100 ft	<u>100 ft</u>	100 ft
(d) Maximum Lot Coverage		40%	<u>40%</u>	35% (3)
(e) Maximum Residential Density		10 du/net ac	<u>18 du/net ac</u>	10 du/net ac
(f) Maximum Height		31-35 ft (4) 3 stories (5)	<u>31-35 ft (4)</u> <u>3 stories (5)</u>	31 ft 2 stories
(g) Standard Floor Area Ratio (non-residential) (6)		.5:1	<u>N/A</u>	.5:1
(h) Standard Floor Area Ratio for Mixed Use Projects (6)		.7:1	<u>N/A</u>	.5:1
(i) Minimum Front Yard Setback				
From Ultimate Public Street R/W Line		5 ft	<u>5 ft</u>	0 ft
(j) Minimum Side Yard Setback				
Interior Side		0 ft	<u>5 ft</u>	0 ft
Street Side		5 ft	<u>5 ft</u>	5 ft
(k) Minimum Rear Yard Setback				
Standard Lot		15 ft	<u>15 ft</u>	15 ft
Adjacent to Alley or Street		10 ft	<u>10 ft</u>	10 ft
(l) Minimum Open Space (Required for residential portion of development only)	Private:	100 sf per du	<u>100 sf per du</u>	100 sf per du
	Common:	100 sf per du	<u>100 sf per du</u>	100 sf per du
(m) Minimum Landscape Coverage (7)		10%	<u>15% (8)</u>	15% (8)
(n) Minimum Building Separation		10 ft	<u>10 ft</u>	10 ft
(o) Minimum lockable, enclosed storage per residential unit provided in garage or carport area		250 cubic feet	<u>250 cubic feet</u>	250 cubic feet
(p) Separate trash and recycling facilities areas shall be provided for the residential component and the non-residential component of C/R and P/R developments		Yes	<u>Yes</u>	Yes

Footnotes for Section 9.13.030:

- (1) See Chapter 9.75 for definitions and illustrations of development standards.
(2) Development standard applies to proposed subdivisions of land. The standards may be waived by the Planning Commission when necessary to accommodate the parcel configuration for an integrated commercial development subject to approval of a Conditional Use Permit pursuant to Chapter 9.65.

COASTAL COMMISSION

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- (3) An increase in lot coverage may be permitted with a Site Development Permit (pursuant to Chapter 9.71) provided that the development demonstrated exceptional design quality and improvements.
- (4) Subject to the criteria in Section 9.05.110(b)(4).
- (5) A maximum of 3 stories may be permitted in accordance with Section 9.05.200.
- (6) A maximum FAR of 1.5:1 may be permitted in accordance with Section 9.05.210.
- (7) All residential units shall be provided with twenty (20) square feet of private landscaped area which shall not be calculated in the minimum landscape coverage.
- (8) A decrease in landscape coverage may be permitted with a Site Development Permit with an approved landscape plan.

9.13.040 Special Development Standards.

(a) Maximum Density. The maximum residential density in the mixed use districts is subject to the following requirements:

When residential dwelling units are combined with office, or retail commercial uses in a single building or on the same parcel, the maximum density shall be 10 dwelling units per net acre. The Floor Area Ratio requirements do not apply to the residential portion(s) of the structure.

The maximum residential density in the R/C-18 district shall be eighteen dwelling units per acre. Projects of new construction with more than ten residential units, which are located within the Coastal Overlay District and in the R/C-18 district, are also required to provide a minimum ten percent (10%) of the total housing units as "affordable units" in compliance with the Mello Act. Any affordable housing units provided pursuant to Government Code Section 65590(d) shall be counted toward compliance with affordable housing requirements of this Zoning district and the City's General Plan. The affordable housing units are not counted in the density calculations of a project.

(b) Accessory Uses and Structures. Accessory buildings or structures are subject to the same height and setback requirements described for primary buildings and structures in Section 9.13.030 except as modified by Section 9.05.080, Maximum Projections into Required Yard Areas.

(c) Design Compatibility. New improvements or uses to the site or structure shall be sensitive to the fact that the new improvement or use will be within a district that may act as a transition or buffer between intensive non-residential districts and residential neighborhoods. The new structure or use shall be designed so that it does not impact the adjacent uses, yet enhances the site's use as a buffer or transition.

The new improvement or use shall recognize internal compatibility and create mutual enhancement with adjacent uses on site. In order to properly mix residential and non-residential uses on the same site, potential noise, odors, glare, excessive pedestrian traffic, or other significant impacts shall be reduced to a level of insignificance. New improvements shall be subject to the following additional standards:

(1) Sound Mitigation. All residential dwellings shall be designed to be sound attenuated against present and future project noise. New projects, additions to existing projects, or new non-residential uses in existing projects shall, under the discretion of the Director of Community Development, prepare an acoustical analysis report (by a City-certified acoustical engineer) describing the acoustical design features of the structure required to satisfy the exterior and interior noise standards (65db CNEL in outdoor living areas and an interior standard of 45db CNEL). The report shall include satisfactory evidence that the measures specified in the report(s) have been, or will be, incorporated into the design of the project.

(2) Lighting Compatibility. All new projects, additions to existing projects, and new non-residential uses, shall mitigate any light and glare impacts that may be directed towards on-site residential units. This may require, at the discretion of the Director of Community Development, the preparation of a photometric study which addresses the potential lighting impacts upon the

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residential units, any proposed mitigation measures, and evidence that the measures will be incorporated into the design of the project.

(3) Design Standards. The design of the structure and site shall encourage integration of the street pedestrian environment with the non-residential uses through the use of plazas and street furniture, yet use its design to hinder the street pedestrian from direct access to the on-site residential units.

The design of a mixed-use project shall ensure that the residential units are of residential character, creating a home and not simply a place to live. The design of the project shall ensure that privacy between other residential units and between other uses on site shall be maintained.

For projects in the R/C-18 zone, the ground floor area of any building fronting Pacific Coast Highway, for a minimum depth of forty (40) feet, is restricted to visitor serving commercial uses. Projects are also encouraged to coordinate visual and circulation linkages between adjacent developments to create design continuity. Emphasis should be on pedestrian orientation and pedestrian opportunities through widened sidewalks and street facing plazas, courtyards and richly planted landscape focus points oriented to the street. Appropriate landscape buffers should be provided between street and pedestrians and building sites.

(4) Parking Standards. Parking areas for mixed use projects shall incorporate the following provisions:

(A) Reserved parking stalls and appropriate signage indicating so, shall be required for each residential unit. This provision shall be included within the association bylaws.

(B) Each residential unit shall be assigned a minimum 45 cubic foot exterior storage space and bicycle locker capable of securing two bicycles.

(C) All parking areas shall be well lighted at all times.

(D) The design of the structure will incorporate safe passages from the parking areas to the units. Enclosed corridors for pedestrian access between parking areas and residential units, in excess of ten (10) feet long, shall be prohibited.

(E) Surface parking shall not be located to front Pacific Coast Highway.

(5) Hours of Operation/Performance. In mixed use projects, non-residential uses shall be restricted from operation between the hours of 10:00 p.m. to 7:00 a.m.

(6) Joint Owners' Association. A joint resident/commercial/office owner's association shall be formed in all mixed use projects to ensure the well-being of each tenant on site. The association shall be formed of equal voting rights according to type of use (i.e. residential, commercial, office). The association's bylaws shall at a minimum shall include the following: determination of the maintenance and landscaping responsibilities, trash facility responsibilities, parking facility maintenance responsibility, assignment of parking spaces per each use, relationship between uses regarding association representation, voting procedures, and ways that problems are solved between the different on-site uses. The association bylaws shall be subject to review and approval by the Director of Community Development and City Attorney.

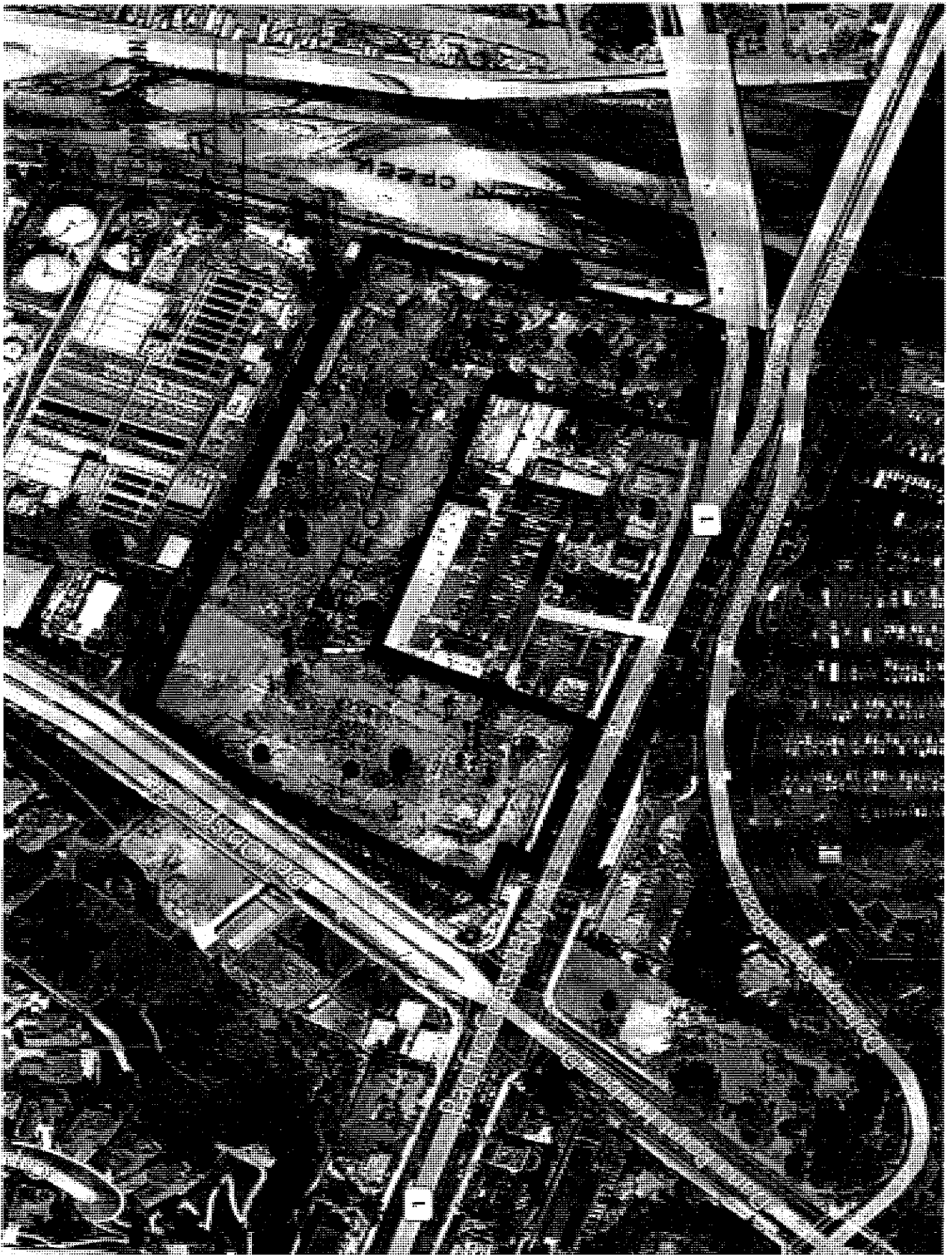
(7) Signage Standards. All site signage shall minimize potential impacts of light, glare and noise, upon the on-site residential units. Signage for all uses shall be compatible with each other, and appropriately integrated into the structure/site design. All proposed signage shall conform to Chapter 9.37, Sign Regulations.

(d) Sign Programs. Multi-tenant mixed use developments shall be required to obtain approval for a project sign program pursuant to Chapter 9.37.

(e) "Art-in-Public-Places" Program. All new development projects located in the zoning districts described in this Chapter are subject to the provisions of the "Art-in-Public-Places" Program as described in Section 9.05.240.

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November 1, 2011

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VIA First Class Mail and Personal Delivery

California Coastal Commission
South Coast District
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

EXHIBIT # S
PAGE 1 OF S

Re: City of Dana Point LCP Amendment Request No. DPT-MAJ-2-10
34202 Del Obispo Street
Agenda Item No. 15a for Commission Meeting of November 2, 2011 M

Dear Commissioners:

This office represents the City of Dana Point, serving as its City Attorney. I am writing this letter on behalf of the City in response to the correspondence from the South Orange County Wastewater Authority ("SOCWA") dated October 26, 2011, with regard to the captioned Project. SOCWA has urged in its correspondence that the Commission either (i) deny the requested amendment, (ii) require the landowner to grant SOCWA noise and odor easements, or (iii) require additional setbacks or architectural modifications to the proposed use. The City of Dana Point respectfully submits that the Commission should reject all of SOCWA's requests.

What SOCWA has failed to tell the Commission is that SOCWA previously sued the City, alleging violations of the California Environmental Quality Act ("CEQA"), as well as arguing the new zone was incompatible with its treatment plant, **and lost**. The trial court's denial of SOCWA's petition for writ of mandate was upheld in a published Court of Appeal decision (*South Orange County Wastewater Authority v. City of Dana Point* (2011)196 Cal.App.4th 1604).¹

¹ The original mitigated negative declaration ("MND") for the Project was based on a comprehensive set of technical studies totaling over 1,100 pages, consisting of (i) Phase I and Phase II Environmental Assessments, (ii) an Air Quality Analysis, (iii) a Noise Impact Analysis, and (iv) a Traffic Impact Analysis. Following public comments, the City revised the traffic and air quality studies, and recirculated a second version of the MND. The revised MND analyzed a "worst case" development scenario of 214 residential dwelling units (22 units per acre) and approximately 39,000 square feet of retail. Ultimately, the City approved zoning that permitted significantly less intense development: 176 units (18 units per acre) and 20,000 square feet of retail. Because of the Project's proximity to the coast, the Planning Commission ordered that the original traffic analysis be supplemented with two additional modeling analyses to ensure the MND fully analyzed all potential summer traffic patterns and properly accounted for seasonal

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Not only did the Appellate Court find that the Project was not incompatible with its surrounding uses, but the Court expressly found that (i) the amendment did **not** make the City's general plan internally inconsistent, and (ii) the new zoning ordinance was **not inconsistent** with the general plan. The Court stated:

"Nothing in the record supports the idea that amending the City's general plan by adding another mixed-use land designation made the plan internally inconsistent.

"....

"The new designation helps to fulfill the City's first land use goal, 'Achieving a balanced mixture of residential, commercial, industrial, and other land uses,' and [several] policies developed to realize this goal. . . . 'With the addition of the new zone,' explained a Commission staff member, 'the City will have a full range of mixed use Zoning districts.'

"....

"SOCWA points to nothing that would make the [R/C-18 zoning] ordinance inconsistent with the City's general plan."

(196 Cal.App.4th at 1619-1621.)

SOCWA's letter to the Commission simply re-argues positions that were soundly rejected by two courts. Those positions should be rejected by the Commission, as well.

Further, SOCWA's requests to the Commission are nothing if not startling in their audacity. In effect, SOCWA argues that its sewage treatment plant is a nuisance to an adjacent site due to the odors from the plant. SOCWA admitted as much in its original petition for writ of mandate against the City, where it alleged that odors from its existing sewage treatment plant "may be perceived as nuisances for nearby residents." (*See Varjabedian v. City of Madera* (1977) 20 Cal.3d 285 [a city can be liable to property owners living next to a municipal sewage treatment plant on nuisance and inverse condemnation theories due to odors]; Civ. Code § 3479.)

SOCWA now asserts that (i) the Commission should deny the amendment altogether because odors from SOCWA's plant impact the adjacent site to such an extent that residential

fluctuations in coastal traffic patterns between winter and summer months. After over two years of study and many public hearings, the City Council approved the MND and the Project by a unanimous vote. The Court held that the City fully complied with CEQA.

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uses on the adjacent site should not be allowed as long as SOCWA operates its plant as it currently does; or, in the alternative, (ii) the Commission can force the adjacent landowner to grant, free of charge, easements to SOCWA to address the purportedly malodorous impacts of SOCWA's operations. In short, SOCWA has taken no responsibility for cleaning up its own mess.

Even were there evidence (and there is none) that SOCWA's plant operations have significant odor impacts on the subject site, it is respectfully submitted that the actions requested by SOCWA are not authorized by statute and are actually forbidden by the United States and California Constitutions. Specifically, SOCWA's requests have nothing to do with the protection of coastal resources. Thus, SOCWA's request that the Project be disapproved is not supported by the Coastal Act.

As for SOCWA's request that the Commission force SOCWA's adjacent landowner to hand over to SOCWA, free of charge, important property rights, such a request is unconstitutional.² Pursuant to *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, there must be an "essential nexus" between the burden **created by the project** and the exaction imposed to address it. Here, there is no nexus between the proposed Project and the exaction of easements from the adjacent landowner – indeed, any "burden" (i.e., the odor/noise impacts) is created by SOCWA, not the adjacent landowner. Any attempt to condition the Project on such a measure would be nothing more than an impermissible "means of shifting the burden of providing the cost of a public benefit to another not responsible for or only remotely or speculatively benefitting from it." (*Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, 1476.) (See also *Dolan v. City of Tigard* (1996) 512 U.S. 374 [there must be a rough proportionality between project impacts and mitigation]; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 361-362 [in reviewing fees to be paid by University Trustees in connection with the expansion of their campus on a former Army base, the Supreme Court stated: "Certainly the Trustees **need not pay to mitigate effects caused by other users of the base.**"] (citations and quotation marks omitted, emphasis added).)

Thus, nothing in the law authorizes the Commission to impose on SOCWA's adjacent landowner a requirement that it mitigate impacts caused by SOCWA's plant. Indeed, case law illustrates how a sanitation district such as SOCWA typically deals with its potential odor issues – rather than trying to use the Coastal Act to leverage odor and noise easements from an adjacent landowner seeking to develop its land, as SOCWA does here, the district either purchases an

² An easement is an incorporeal interest in the land of another. Thus, SOCWA is urging the Commission to force the adjacent landowner to grant SOCWA valuable property rights at no expense to SOCWA. Ironically, as the owner of noise and odor easements, SOCWA could enjoin any interference with those easements **as a nuisance**. (Miller & Starr, *California Real Estate* (3rd ed. 2000) § 15:5, pp. 15-19, 15-20, 15-21, 15-22.)

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odor easement or condemns the adjacent property. (*Silveira v. Las Gallinas Valley Sanitary District* (1997) 54 Cal.App.4th 980, 984-985.) Significantly, the potential odor impacts from the existing treatment plant in *Silveira* had not prevented the county from earlier designating the landowner's property as residential in its general plan. (54 Cal.App.4th at 993.) The county's designation of the adjacent land as residential illustrates that there is nothing inherently incompatible with permitting residential use adjacent to a treatment plant, as SOCWA argues here.

Finally, SOCWA misrepresents certain facts in its letter. First, its plant is not surrounded by coastal recreational uses. Rather, there is a single-family residential development (The Village) directly across Del Obispo Street from the plant. Moreover, since 1965, and for nearly 40 years thereafter, the site that is the subject of this application was occupied by a mobilehome park consisting of 90 separate coaches. Although the property has historically been zoned coastal recreational, that was an oddity because the historic use of the property has been residential, and the property has never actually been used for recreational purposes. Tellingly, at no time during those 40 years did SOCWA believe that it had to protect those 90 families from its plant's odors through easements or the other restrictions it now seeks. SOCWA attempts to distinguish that residential use by labeling it as consisting of "single-story mobile homes." However, a two-story meeting and recreation hall existed directly adjacent to the SOCWA site, and there are no recorded noise or odor complaints from the residents who used those facilities for 40 years.³

Based on all of the above, the City of Dana Point respectfully requests that the Commission reject SOCWA's requests and approve the Project as recommended by your staff in the staff report and addendum.

RUTAN & TUCKER, LLP



Robert S. Bower

RSB:rsb

³ This is no doubt due to the fact that the prevailing winds are from the south, which would blow any purported odors from the SOCWA plant, which is north of the subject site, away from the subject site.

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cc: Douglas Chotkevys, City Manager
Kyle Butterwick, Director of Community Development



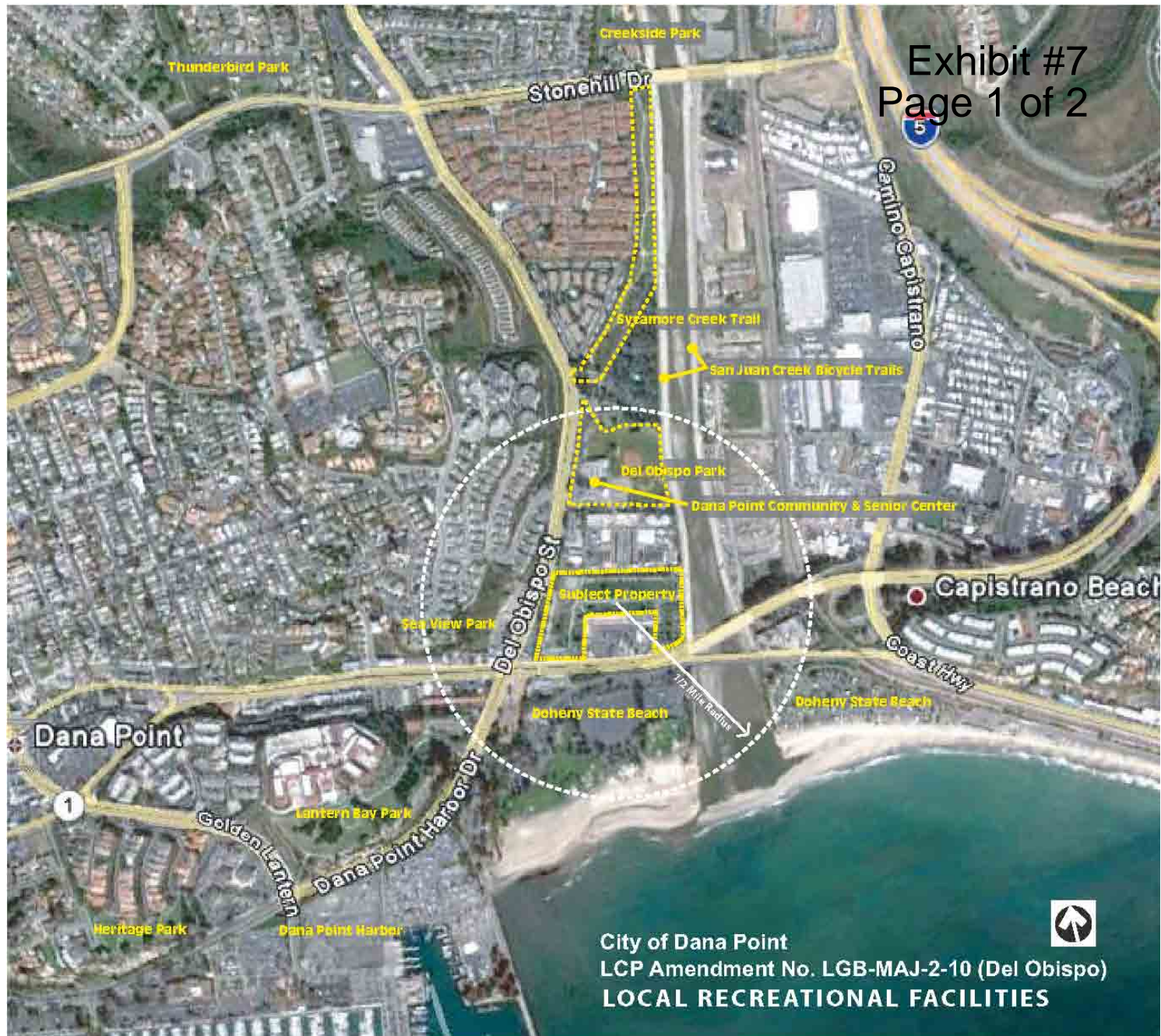
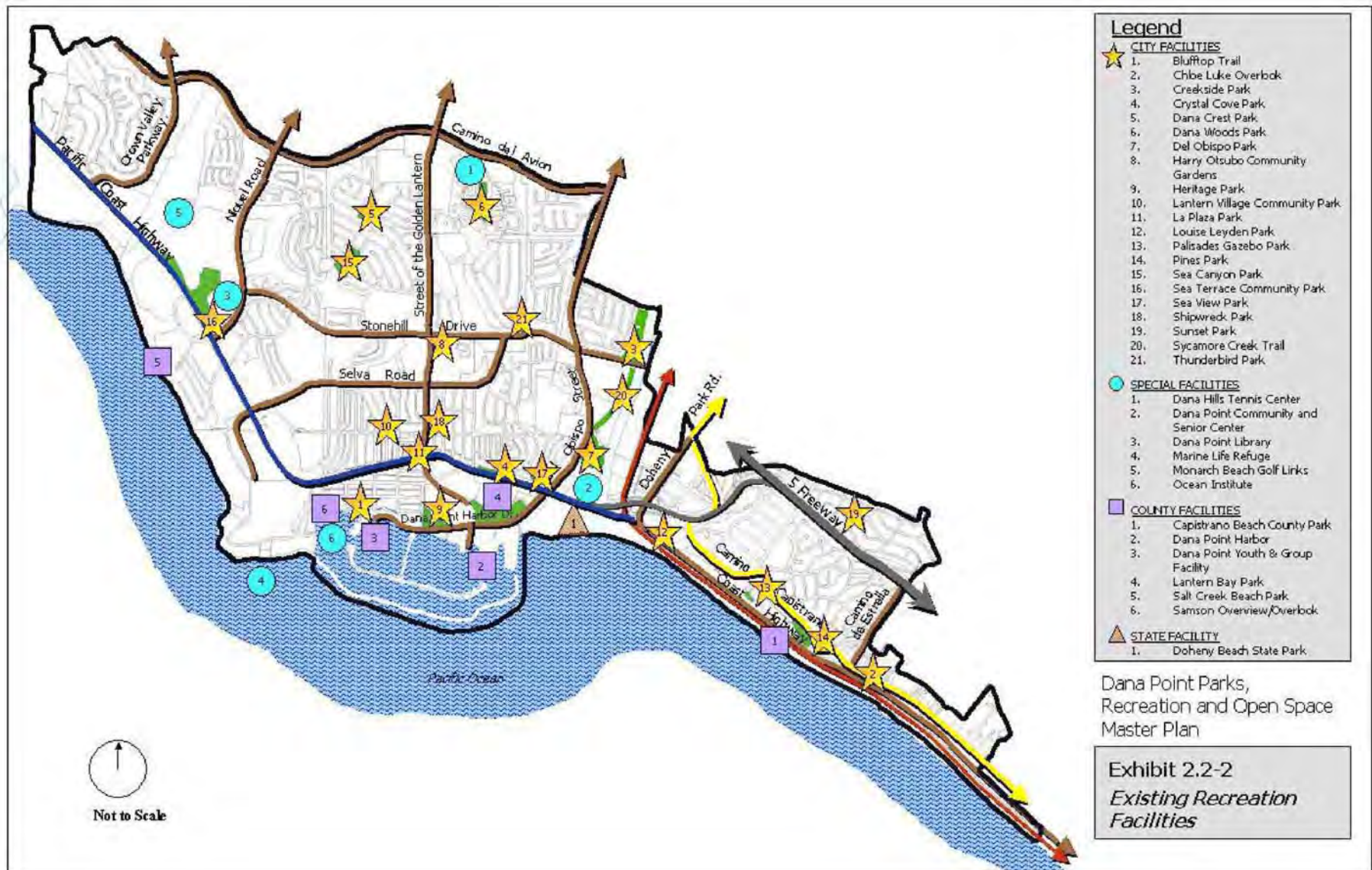




Exhibit #7

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South Orange County Wastewater Authority

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South Coast Region

OCT 27 2011

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October 26, 2011

EXHIBIT # 8
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W-15a

Mr. Fernie Sy
South Coast District
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: City of Dana Point LCP Amendment Request No. DPT-MAJ-2-10
34202 Del Obispo Street
Agenda Item No. 15(a) – November 2, 2011 Meeting of the Coastal Commission

Dear Mr. Sy:

We appreciate the opportunity to comment on the Coastal Commission's consideration of the City of Dana Point LCP Amendment Request No. DPT-MAJ-2-10 ("subject property") at its meeting on November 2, 2011. The South Orange County Wastewater Authority ("SOCWA") opposes the approval of the LCPA as proposed, on the grounds that the conversion of the subject property from coastal recreational use to mixed-used residential use is inconsistent with existing surrounding land uses. SOCWA, or its members or predecessors, have operated the J.B. Latham Treatment Plant for nearly 50 years. The J.B. Latham Treatment Plant is situated immediately to the north and adjacent to the subject property, and would be located within feet of any residential development placed at or near the northern boundaries of the subject property, as proposed. Today, the treatment plant serves the communities of San Juan Capistrano, Laguna Niguel, Aliso Viejo, Rancho Santa Margarita, and Dana Point, treating approximately 13,000,000 gallons of wastewater per day—the treatment of which is critical to the protection of not only human health, but also the neighboring marine environment.

Within its current environment, the J.B. Latham Treatment Plant has a long-history operational success, with minimal complaints arising from its operations. This success, however, has been realized within the context of compatible neighboring conditions, including the surrounding coastal recreational uses: the parks to the north of the plant and the currently vacant property to the south. The treatment plant even had minimal conflict with the single-story mobile homes previously on the subject property, though such use was never authorized by existing zoning, but rather was a grandfathered use pre-dating the existing zoning restrictions.

The LCPA proposes to allow high density, multi-story residential development within feet of the J.B. Latham Treatment Plant. Such a change is incompatible with existing conditions, and will result in land-use conflicts that do not exist under the current zoning. The treatment

plant is an industrial type operation that is required by its nature to operate 24 hours a day, 7 days a week, in order to protect the health and safety of local communities and the environment, which includes the ocean and Coastal Zone. It would be inconsistent to place a dense, multi-story residential development immediately adjacent to an operation like the treatment plant, as it would subject future residents to all of the impacts that are typically associated with such a plant, including noise, light and occasional intermittent odors. While SOCWA has invested millions of dollars to improve its plant and operate a facility that does not conflict with other, broader community uses, these investments require reasonable and normalized buffering from surrounding development. The proposed zoning change will invite development in such close proximity to the treatment plant that it will inevitably lead to serious conflict with SOCWA's operations.

As such, SOCWA urges the Commission to deny the City of Dana Point's requested amendment of its Local Coastal Program. Such an amendment would be granted only to the detriment of the public because it would place essential public operations needlessly in jeopardy. Certainly other viable options, including even potential commercial opportunities to serve the public visiting the coast, would be more conducive to meeting the demands of the coastal zone and providing a use consistent with existing surrounding land uses. Such commercial uses would typically involve day-time indoor operations that would have less of an opportunity to conflict with SOCWA's operations at the treatment plant.

Furthermore, if the Commission is unwilling to consider a denial of the proposal, then SOCWA would request in the alternative that the Commission impose modifications to the LCPA to protect the public's interest in the treatment plant. These modifications could require recorded noise and odor easements that would document and acknowledge in perpetuity the potential negative impacts of residing so close to an operational treatment plant, or require additional setbacks or architectural modifications to the proposed use. SOCWA would be willing to meet with the Commission to discuss options of this nature in more detail.

We have enclosed a sample odor easement for your review.

Sincerely,

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY



Tom Rosales
General Manager

Enclosure

cc: Jeffrey Hoskinson, Bowie, Arneson, Wiles & Giannone

COASTAL COMMISSION

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PAGE 2 OF 15

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, CA 92629
Attn: General Manager

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

**TO BE RECORDED WITHOUT FEE
UNDER GOVERNMENT CODE §§6103 AND 27383**

ODOR EASEMENT, COVENANTS AND AGREEMENT

This Easement and agreement including covenants and restrictions ("Easement") is executed this ____ day of _____, 2011, by **MAKAR PROPERTIES, LLC**, a California limited liability company ("Grantor") in favor of **SOUTH ORANGE COUNTY WASTEWATER AUTHORITY**, a joint powers authority formed under California Government Code Section 6500 *et seq.* (**SOCWA**) ("Grantee").

ARTICLE 1 RECITALS AND DEFINITIONS

1.1 Servient Tenement

Grantor is the owner of that certain real property consisting of approximately 8.86 acres located at 34202 Del Obispo Street, in the City of Dana Point, as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("Servient Tenement").

1.2 Dominant Tenement

Grantee is the owner of certain real property located at 34156 Del Obispo Street in the City of Dana Point, which constitutes the Jay B. Latham Wastewater Plant ("Plant") being approximately 6.1 acres, and more particularly described on **Exhibit B** attached hereto and incorporated herein by reference ("Dominant Tenement"). The Easement herein granted shall be deemed both appurtenant to and for the direct benefit of the Dominant Tenement and shall further be deemed in gross, being conveyed to the Grantee for the benefit of Grantee and any and all members of the general public and other entities who may use the services of the Plant. The Dominant Tenement is so located with respect to the Servient Tenement that from time to time

COASTAL COMMISSION

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PAGE 3 OF 15

odors, fumes, and/or air emissions may come onto the Servient Tenement from the Dominant Tenement.

1.3 Definitions

The following terms shall be defined as set forth below for the purpose of this Easement agreement.

1.3.1 Force Majeure

Force Majeure means any cause beyond the reasonable control of, and not due to the fault or negligence of, the affected Party, including without limitation, drought, flood, earthquake, storm, acts of God, fire, lightning, epidemic, war, riot, civil disturbance, or acts of public enemy or sabotage.

1.3.2 Hazardous Substance

Hazardous Substance means a substance regulated under Title III of the Superfund Amendment and Reauthorization Act ("SARA"), 42 U.S.C. §§11001-11050, Chapter 6.95 of the California Health and Safety Code, or equivalent successor legislation.

1.3.3 Occupants

Occupants shall mean all persons who enter the Servient Tenement with the permission, express or implied, of any (1) Owner (as defined below), or (2) Tenant or other person entitled to occupy any portion of the Servient Tenement by virtue of any leasehold or other legal relationship with any Owner.

1.3.4 Owner

Owner shall mean Grantor and its successors-in-interest, including heirs and assigns who hold title to all or any portion of the Servient Tenement.

1.3.5 Parcels

Parcel and Parcels shall mean those parcels and portions of parcels within the Servient Tenement and Dominant Tenement, as described in Exhibits A and B, including all parcels resulting from any subdivision thereof.

1.3.6 Permitted Emissions

Permitted Emissions shall mean all odors, fumes, or air emission (collectively "Emissions"), except Toxic Release Emissions (as defined below), which may result from operation of the Plant or emanate from other activities conducted on the Dominant Tenement as of the date of this Easement and CC&Rs, including but not limited to, nuisance type Emissions, and Emissions caused by a Force Majeure.

COASTAL COMMISSION

1.3.7 Tenant

Tenant shall mean all persons who are entitled by leasehold interest to occupy or use any portion of the Servient Tenement, including subtenants.

1.3.8 Toxic Release Emissions

Toxic Release Emissions shall mean Emission caused by a reportable release of a Hazardous Substance from the Dominant Tenement that occurs as the result of the violation of an applicable federal, state or local law, regulation or written policy relating to the handling of such Hazardous Substance and which results in bodily injury to Occupant(s) of the Servient Tenement.

ARTICLE 3 GENERAL PROVISIONS

3.1 Grant of Easement

- (a) Grantor does hereby grant to Grantee, its successors and assigns, a perpetual and assignable easement in and over the Servient Tenement, and a right-of-way for the free and unrestricted passage of Permitted Emissions onto, through, across and/or about the Servient Tenement.
- (b) The rights granted by this Easement generally include the right to operate the Plant, for the use and benefit of the public, and specifically include the right to cause or allow Permitted Emissions to migrate from the Dominant Tenement, onto, through, across and/or about the Servient Tenement.
- (c) This Easement sets forth protective provisions, covenants, restrictions, and conditions upon and subject to which the Servient Tenement and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Easement terms shall run with the land, and pass with each and every portion of the Servient Tenement, and shall apply to and bind the respective successors in interest thereof. Each and all of the Easement terms are imposed on the entire Servient Tenement. Each and all of the Easement terms are enforceable by the Grantee, and its successors and assigns.

3.2 Successors and Assigns; Covenants Running with the Land

The parties intend that these Easement terms inure to the benefit of and be binding upon the Owners, as applicable, and their respective heirs, personal representatives, successors-in-interests and assigns, and upon any person or entity acquiring title to a Parcel, or any portion thereof or interest therein, whether by operation of law or otherwise pursuant to California Civil Code Section 1468. Each term, covenant, agreement, and obligation which burdens a Parcel

shall burden that Parcel and each part thereof for the benefit of the other Parcels, and each term, covenant, agreement, right, and benefit which benefits a Parcel shall benefit that Parcel and each part thereof, and all of the terms, covenants, agreements, obligation, rights, and benefits created by this Easement shall run with the land.

3.3 Concurrence Presumed

All Owners and Tenants of any portion of the Servient Tenement shall be deemed by their purchase, lease, possession, or occupancy of such Servient Tenement to be in accord with the terms of this Easement and to agree for and among themselves, their agents, attorneys, insurers, lenders, limited and general partners, representatives, beneficiaries, directors, officers, owners, shareholders, subsidiaries, affiliates, heirs, successors, and assigns (collectively "Agents and Assigns"), that the terms of this Easement must be adhered to and that their interest in the Servient Tenement shall be subject to the Easement terms contained herein.

3.4 Joint and Several

If any Owner hereto is composed of more than one person, then the obligations of such Owner shall be joint and several.

3.5 Notice and Agreements

Grantor for itself, its agents and assigns, including all Owners, Tenants and their agents and assigns, agrees that all written purchase agreements, leases or sub-leases, or other written instruments conveying any right to possession or use of the Servient Tenement shall contain the following statement:

"Certain odors, fumes and emissions (collectively "Emission") may exist or migrate onto the land described herein. The potential existence or migration of the Emissions renders the land and all Owners and Tenants, subject to requirements, restrictions, provisions, and liabilities contained in that certain Easement dated _____, 2011, and recorded on [recording date of this Easement Agreement] in the Office of the County Recorder of the County of Orange, California."

COASTAL COMMISSION

ARTICLE 4
INDEMNITY, RELEASE, AND COVENANTS NOT TO SUE

4.1 Release

Grantor for itself, its agents and assigns, including all Owners, Tenants and their agents and assigns (hereinafter "Releasees") does hereby mutually and fully release and forever discharge Grantee from any and all rights, actions, causes of action, claims, demands, damages, costs, expenses, losses, liabilities, attorney's fees, and debts whatsoever, of every kind and nature, whether known or unknown, past, present or future, fixed or contingent, pending or threatened, directly or indirectly arising out of, based upon, or related to, or connected with the actual or potential presence of Permitted Emissions on the Servient Tenement or the Dominant Tenement resulting from Grantee's operations on the Dominant Tenement, including, without limitation, any claim for damage for diminution in value of the Servient Tenement, or any claim based, in whole or in part, on the alleged exposure to Permitted Emissions.

4.2 Covenant Not to Sue

Each and every Releasee covenants and agrees to never commence or prosecute any complaint, action or suit against Grantee on account of any claim, whether past, present or future, directly or indirectly arising out of, based upon, related to, or connected with, the actual or potential presence of Permitted Emissions on the Servient Tenement or the Dominant Tenement resulting from Grantee's operations on the Dominant Tenement, including, without limitation, any claim for damage for diminution in value of the Servient Tenement, or any claim based, in whole or in part, on the alleged exposure to Permitted Emissions.

4.3 Waiver of Rights

The failure of an Owner to insist upon strict performance of any of the terms, covenants, conditions, or agreement contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants, conditions, and restrictions contained herein by the same or by any other person or entity.

Each and every Releasee certifies that it/he/she has read, been advised about, and are familiar with the following provisions of California Civil Code Section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Each Releasee waives its/his/her respective rights conferred by California Civil Code Section 1542, and acknowledges that it/he/she may have sustained damages, losses, costs, or expenses which are presently unknown and unsuspected, and that such damages, losses, costs, or

COASTAL COMMISSION

expenses may give rise to additional damages, losses, costs, or expenses in the future. Each Releasee further understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if it/he/she should eventually suffer such additional damages arising out of, based upon, or related to the matters covered by this Easement, they will not be able to make any claims for those damages.

4.4 Indemnity

- (a) Each and every Owner of the Servient Tenement agrees, at no cost or expense to Grantee, and with counsel acceptable to Grantee, to defend, indemnify, protect, and hold harmless Grantee, its agents, successors, and assigns, from and against any and all rights, actions, causes of action, claims, demands, damages, costs, expenses, losses, liabilities, and debts, (collectively, "Claims") which now exist, or which may accrue in the future based in whole or in part upon the actual or alleged presence of Permitted Emissions on the Servient Tenement or Dominant Tenement, including without limitation, any claim for damage for diminution in value of the Servient Tenement by Permitted Emissions or any claim based on the alleged exposure of any Occupant to Permitted Emissions or any action, order, or proceeding initiated by any governmental agency imposing any penalty or other requirement on Grantor based on Permitted Emissions.
- (b) The obligations of each Owner to defend and indemnify Grantee shall survive the conveyance of such Owner's interest in the Servient Tenement, as to any Claims arising prior to the conveyance.
- (c) The obligation of all Owners to defend and indemnify Grantee hereunder shall be joint and several.

ARTICLE 5 MISCELLANEOUS

5.1 Notices

All Notices given pursuant to this Easement shall be in writing and shall be given by personal deliver, or by United States mail (certified, return receipt requested), or by United States Express Mail, or other established express delivery services (such as Federal Express, United Parcel Service, and DHL), postage or delivery charge prepaid, addressed as specified below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls in the county in which the Parcels are located. All notices shall be addressed as follows:

To Grantor: Makar Properties, LLC
4100 Mac Arthur Boulevard Suite 200
Newport Beach, CA 92660
Telephone: (949) 255-1100

COASTAL COMMISSION

Fax:

To Grantee: South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, CA 92629
Telephone: (949) 234-5400
Fax: (949) 489-0130

5.2 Partial Invalidity

If any term or provision of this Easement, or the application of this Easement to any person or circumstance shall to any extent be determined invalid or unenforceable, then the remainder of this Easement and the application of such term or provision to other persons or circumstances shall be unaffected thereby, and each term and provision of this Easement shall be valid and enforceable to the fullest extent permitted by law.

5.3 Captions

The captions and headings in this Easement are for reference only, are not part of the Easement, and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

5.4 Entire Agreement

This Easement contains the entire agreement, and supersedes all prior agreements (either oral or written), with respect to the subject matter hereof.

5.5 Interpretation

Whenever in construing the provisions of this Easement, the context requires the use of a gender, shall include both genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar import) are used in conjunction therewith. The provisions of this Easement shall be construed as a whole and not strictly for or against any Owner. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Easement; references to Exhibits refer to the Exhibits attached to this Easement, each of which is hereby incorporated into this Easement.

5.6 Recordation

This Easement shall be recorded in the Office of the County Recorder of the County of Orange, California, within ten (10) days of the date of execution.

5.7 Time of Essence

Time is of the essence with respect to the performance of each obligation of this Easement.

5.8 Counterpart Originals

This document may be executed in counterparts, which counterparts shall together constitute one document.

[Remainder of page Intentionally Blank]

COASTAL COMMISSION

IN WITNESS WHEREOF, the Parties execute this Easement as of the day and year first set forth above.

"Grantee"

South Orange County Wastewater Authority

By: _____

Its: General Manager

Date: _____

"Grantor"

Makar Properties, LLC

By: _____

Title: _____

Date: _____

COASTAL COMMISSION

Signature Page

EXHIBIT # 8
PAGE 11 OF 15

State of California)
) ss.
County of Orange)

On _____, 200__, before me, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf on which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

COASTAL COMMISSION

State of California)
County of Orange) ss.

On _____, 200__, before me, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf on which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

COASTAL COMMISSION

EXHIBIT # 8
PAGE 13 OF 15

EXHIBIT A
LEGAL DESCRIPTION
SERVIENT TENEMENT

A - 1

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EXHIBIT B

**LEGAL DESCRIPTION
DOMINANT TENEMENT**

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EXHIBIT # 8
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Mary Jeffries
WE THE PEOPLE DANA POINT
33521 Atlantic Ave
Dana Point, CA 92629

California Coastal Commission
Ferni Sy
By Fax

Re: GPA 07-01, 2C 0701, ZTA 07-02, LCPA 07-01
Proposed Zone Change at 34202 Del Obispo, Dana Point
Former Mobil Home Park

Dear Ferni:

I would like to know the status of this matter.
I just heard last night that there is litigation between SOCWA (water district)
And Makaar, the property owners at this site regarding responsibility of mitigating the
extreme raw sewage odor from SOCWA that would be seen and smelled from the
proposed hi rise.

ALSO: There was reported to me that there is a 24" gas main running the perimeter of
that property from Del Obispo and along PCH, and there can be no residential
development within 100 yards of such a gas line..

I also would like to know how many opposition flyers the City of Dana Point reported
they received on this project. The flyers were all individually signed by residents in Dana
Point. I delivered to the city 550 original flyers. They made copies, I have the originals.
Would you like me to fax them over to you?

The property is zoned Coastal Recreational and should stay that way. The traffic study
was ridiculous on that corner as well.

Very truly yours,

Mary Jeffries

MARY JEFFRIES
949 463 6020
FAX: 949 493 2425

P.S. 10-27-11
opposition to this not mentioned
in Staff reports. That is obvious!
mary

Jan 8, 2011
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South Coast Region

OCT 27 2011

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CITY OF DANA POINT

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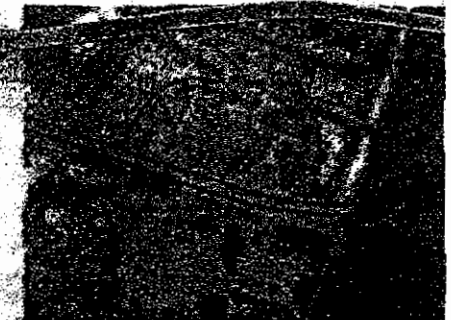
The city of Dana Point is currently planning to change zoning on a very important property zoned "Coastal Recreational Space."

This 8.86 Ac Site has been leased as a mobile home park for all these years. It is now cleared and ready to be developed.

The new owner, Makar Properties, LLC is proposing and the city is prepared to grant a Zone Change from Coastal Recreation to 22 units per acre! Plus a general plan amendment adding mixed commercial use and other changes.

The founding fathers master planned this to be an open recreation space for us and the visitors to the coast.

Please express your opinion and fax to me for forwarding to the city as our opposition to take away open and recreation zoning in our city.



Denny's and A's Burgers at the Bridge
HELP SPREAD THE WORD
Make a copy of this petition
& give to friends & neighbors

To City of Dana Point:

I most strongly oppose the city's proposed zone change of our coastal recreational space at 34202 Del Obispo St., D.P.

**TEAR OUT & MAIL OR FAX
Before December 1st**

We the People D.P.
P.O. Box 93
Dana Point, CA 92629

Fax or Mail
Fax (949) 493-2425
See www.wethepeople.dp.ca
Mary Jeffries
Dana Point Resident

D. Reid Lenz
Signed

DAVID REID LENZ
Name Print

33862 DEL OBISPO ST. 131 D.P.
Address

Phone or Email Contact

COASTAL COMMISSION

00203875V1

EXHIBIT # 10
PAGE 1 OF 1

PAID ADVERTISEMENT

The city of Dana Point is currently planning to change zoning on a very important property zoned "Coastal Recreational Space."

This 8.86 Ac Site has been leased as a mobile home park for all these years. it is now cleared and ready to be developed.

Makar Properties, LLC sold the site to a new investor. This matter came before the Coastal Commission Nov 2, 2011. See Cal-span.org, item #15a, or at 33:34:35, streaming video-meeting.

The City did not represent your interest and opposition to this. I went to the hearing and produced all of your 598 flyers, and the CC continued the matter to Dec 7, 2011 because it was the first they had heard of any opposition to this project!

This property is currently zoned Coastal Recreational! Ask the CC to keep it that way. The Developer's proposal is to grant them a Zone Change that would affect the entire City to a new zone of 18/units per acre plus mixed commercial! That's 18 units (think 8-10 condos each) per acre. If only 7 acres were built out, it would equal ONE THOUSAND EIGHT CONDOS!! And I only gave 8 condos per unit!

The Founding Fathers master planned this area to preserve open recreational space for us and the visitors to the Coast.

We don't have any time to spare. Please express your opinion and fax to me for forwarding to the Coastal Commission directly, showing our opposition to taking away this open and recreation zoning in our City.

There are height and density issues, traffic, traffic, sewer treatment plant issues, and a 24" gas main running the perimeter of the property on two sides. If you want to write your own letter to the editor, I would appreciate it. Please: You decide and make your voice heard!

To the City of Dana Point and the California Coastal Commission:

I Deborah strongly oppose the city's proposed zone change of our coastal recreational space at 34202 Del Obispo St. Dana Point. Please DENY this zone change.

We the People D.P.
P. O. Box 93
Dana Point, Ca 92629

Return ASAP

Fax or Mail
fax: (949) 493 2425
See www.wethepeopledp.com
Mary Jeffries
Dana Point Resident

Signed Deborah Marcus
Name print Deborah Marcus
Address 42 Regina Dana Point
(949) 233-6917
Phone or Email Contact

RECEIVED
South Coast Region

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COASTAL COMMISSION

EXHIBIT # 11
PAGE 1 OF 1



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Denny's and A's Burgers at the Bridge

YOUR ACTION IS REQUIRED

The city of Dana Point is currently planning to change zoning on a very important property zoned "Coastal Recreational Space".

This 8.86 Ac Site has been leased as a mobile home park for all these years. It is now cleared and ready to be developed. The new owner, Makar Properties, LLC is proposing and the city is prepared to grant a Zone Change from

Coastal Recreation to 18 units per acre! Plus a general plan amendment adding mixed commercial use of 20,000 sq. feet & other changes. Approximate traffic count of 4,000 cars per day. 3 stories high; higher than anything else in town! The founding fathers master planned this to preserve open recreation space for us and the visitors to the coast. Please express your opinion and fax to me for forwarding to the city as our opposition to take away open and recreation zoning in our city.



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Denny's and A's Burgers at the Bridge

HELP SPREAD THE WORD!
Make a copy of this petition
& give to friends & neighbors

TEAR OUT & MAIL OR FAX Before June 6th!

We the People D.P.

P.O. Box 93

Dana Point, CA 92629

Fax (949) 493-2425

See www.wethepeopledp.com

Mary Jeffries

Dana Point Resident

To City of Dana Point:

I strongly oppose the city's proposed zone
change of our coastal recreational space at 34202 Del Obispo St., D.P.

Signed

MARY AILEEN MAY

Name Print

25 GUELSEA PLE

Address

DANA PT. COX, NET

Phone or Email Contact

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