

**CALIFORNIA COASTAL COMMISSION**

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

**F10b****ADDENDUM**

April 10, 2012

TO: Coastal Commissioners and Interested Parties

Click here to go  
to the original staff report.

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F10b, COASTAL COMMISSION PERMIT  
APPLICATION NO. 5-82-291-A4-(RITZ CARLTON) FOR THE  
COMMISSION MEETING OF FRIDAY, APRIL 13, 2012.**

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**1) Changes to Staff Report**

Commission staff recommends modification and additions to the Description of Amendment, Summary of Staff Recommendation, Section II (Special Conditions) and Section III (Findings and Declarations) of the staff report to modify Special Condition No.3; include Special Condition No. 14 (Deed Restriction) and make corresponding additions and revisions within the body of the staff report. 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 1 – Modify the Description of Amendment, as follows:

**DESCRIPTION OF AMENDMENT:**

Remodel and addition of the existing Ritz-Carlton Hotel consisting of adding approximately 29,796 square feet to be used as meeting space; converting existing meeting space and infill areas into 24 new guestrooms and 2 new casitas, and enhancing the hotel's exterior hardscape, landscape, and pool areas. As a result of the proposed casitas, the project includes relocating a portion of the existing public walkway approximately 18-feet north of its current location. ~~The project affects previously imposed **SPECIAL CONDITIONS NO. 1 AND NO. 2** of Coastal Development Permit 5-82-291 because development is proposed which would modify the deed restricted "common areas of the development" and the public walkway system. The amendment would require the recordation of an updated deed restriction with an exhibit depicting the modified public walkway.~~

Pages 2-3 – Modify the Summary of Staff Recommendation, as follows:

**SUMMARY OF STAFF RECOMMENDATION:**

The project involves new development within and on the seaward side of the Ritz Carlton Hotel in the City of Dana Point. The major issues addressed by the current proposal are public access, affordable overnight accommodations, parking, geology, scenic and visual resources, and water quality. Commission staff recommends that the Commission **APPROVE** the proposed amendment with **FOURTEEN (14) THIRTEEN (13) SPECIAL CONDITIONS** regarding: **1)** retention of the special conditions of the underlying permit (5-82-291, as amended) not affected by the current action; **2)** submittal of revised project plans to remove development no longer proposed; **3)** recordation of an updated deed restriction with Public Access Map to reflect new development; **4)** maintenance of public access during construction; **5)** conformance with the construction staging plan; **6)** payment of an in-lieu fee for the provision of lower-cost overnight accommodations within or in close proximity to the Coastal Zone; **7)** conformance with geotechnical recommendations; **8)** assumption of risk; **9)** no future bluff or shoreline protective devices; **10)** conformance with the submitted landscape plan; **11)** conformance with the submitted Water Quality Management Plan (WQMP); **12)** conformance with the submitted Storm Water Pollution Prevention Plan (SWPPP); **and 13)** liability for costs and attorneys fees; **and 14) recordation of a deed restriction against the property.**

Pages 5-6 – Modify Section II, Special Condition No.3, as follows:

**3. PUBLIC ACCESS DEED RESTRICTION**

This special condition shall supercede **SPECIAL CONDITIONS NO. 1 and NO. 2** of Coastal Development Permit No. 5-82-291:

**A.** ~~The following areas shall be maintained for permanent access and recreational use by the general public in perpetuity: bluff trail and walkway; viewpoints and rest areas; the Vista Point Park; and all common areas of the hotel, including, but not limited to, the lobby, restaurant, coffee shops, grounds, sundeck, spa and fitness center.~~

~~The development shall be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that under no circumstances would the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public.~~

**B.** ~~**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit an updated public access map, for the review and approval of the Executive Director, with a metes and bounds legal description and graphic depiction, depicting all public walkways and publicly available common areas at the subject site. The public walkway system shall~~

include the "~~modified sidewalk~~" shown in the Project Plans submitted by the applicant on December 15, 2011, as generally depicted on page 1 of Exhibit No. 4 of the current staff report.

**C. — ~~PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT~~**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on the development. The deed restriction shall include a legal description and graphic depiction of the applicant's entire parcels which shall incorporate the updated public access map. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens, except tax liens, and any encumbrance that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.

**A. The following areas shall be maintained for permanent access and recreational use by the general public in perpetuity: bluff trail and walkway; viewpoints and rest areas; the Vista Point Park; and all common areas of the hotel, including, but not limited to, the lobby, restaurant, coffee shops, grounds, sundeck, spa and fitness center.**

The development shall be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that under no circumstances would the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit an updated public access map, for the review and approval of the Executive Director, depicting all public walkways and publicly available common areas at the subject site. The public walkway system shall include the "modified sidewalk" shown in the Project Plans submitted by the applicant on December 15, 2011, as generally depicted on page 1 of Exhibit No. 4 of the current staff report.**

**C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall amend and re-record the "Amended and Restated Deed Restriction", as recorded on May 21, 2004 in Official Records of Orange County (Recorded Document number- 2004000455843), in a form and content acceptable to the Executive Director, which reflects the above restrictions on the development. This amended deed restriction shall include a legal description and graphic depiction of the applicant's entire parcels and include the updated public access map as an exhibit to the deed restriction. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens, except tax liens, and any encumbrance that**

*the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.*

Page 10 – Modify Section II, by adding Special Condition No. 14, as follows:

**14. DEED RESTRICTION**

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

Page 20 – Modify Section III.B.1.b, as follows:

b) Recordation of Public Access Deed Restriction

The proposed amendment would allow development modification of the existing public walkway. To assure that the applicant constructs and maintains the new public access improvements in perpetuity, the applicant must record the deed restriction with an updated Public Access Plan. Consequently, the Commission imposes **SPECIAL CONDITION NO. 3**. **SPECIAL CONDITION NO. 3** requires the applicant to record a public access deed restriction that ensures that the modified public walkway would be maintained open to the public in perpetuity. An updated public access map depicting all public trails and access areas at the subject site would accompany the deed restriction document. Consequently, access would be maintained throughout the Ritz Carlton site, including the bluff trail, the View Point park, and all common hotel areas (i.e. restaurant, lobby, spa, etc. ~~*SPECIAL CONDITIONS NO. 1 and NO. 2*~~ of the original permit (5-82-291) are superceded by this condition.

Page 30 – Modify Section III.E., by adding language regarding Special Condition No. 14, as follows:

The applicant has submitted a landscape plan and the plan does consist of drought tolerant, non-invasive plants. To make sure that vegetated landscaped areas consist only of drought tolerant plants native to coastal Orange County and appropriate to the habitat type, the Commission imposes **SPECIAL CONDITION NO. 10**, which requires the applicant to comply with the submitted landscape plan, which would minimize the potential for the introduction of non-native invasive species and would also minimize the potential for future bluff failure.

**To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes SPECIAL CONDITION NO. 14 requiring that the property owners record a deed restriction against the property, referencing all of the Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.**

## **CONCLUSION**

As conditioned for submittal of final project plans, which have been reviewed, signed and stamped by an appropriately licensed geotechnical professional, an assumption of risk, no future shoreline or bluff top protective devices, ~~and~~ conformance with the submitted landscape plans, **and recordation of a deed restriction against the property**, the Commission finds the project consistent with the geologic hazard policies of the certified LCP.

Pages 32-33 – Modify Section III.H., by adding language regarding Special Condition No. 14, as follows:

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located within an existing resort facility. Development already exists on the subject site. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with policies of the certified LCP and the Coastal Act: : **1)** retention of the special conditions of the underlying permit (5-82-291, as amended) not affected by the current action; **2)** submittal of revised project plans to remove development no longer proposed; **3)** recordation of an updated deed restriction with Public Access Map to reflect new development; **4)** maintenance of public access during construction; **5)** conformance with the construction staging plan; **6)** payment of an in-lieu fee to provide for lower-cost overnight

accommodations within or in close proximity to the Coastal Zone; **7)** conformance with geotechnical recommendations; **8)** assumption of risk; **9)** no future bluff or shoreline protective devices; **10)** conformance with the submitted landscape plan; **11)** conformance with the submitted Water Quality Management Plan (WQMP); **12)** conformance with the submitted Storm Water Pollution Prevention Plan (SWPPP); ~~and~~ **13)** liability for costs and attorneys fees; **and 14) recordation of a deed restriction against the property.** As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.

**2) Letters received September 24, 2009 and April 10, 2012 from Judith Hummer (Attached as Exhibit A and B)**

Commission staff received letters from Judith Hummer on September 24, 2009 and April 10, 2012 discussing her concerns regarding the proposed project. In her letters, she states her concerns with the local approval process and noise that will be generated by the hotel post project. The City issued a Site Development Permit, Minor Conditional Use Permit and a Variance for the project. Thus, despite her concerns with the local process, the project did go through the required City approval process. Additionally, pursuant to the California Environmental Quality Act (CEQA), an environmental review was conducted and a Negative Declaration was processed for the project. Within this document, noise was analyzed and determined that it would be a less than significant impact or no impact at all.

Therefore, Commission staff continues to recommend approval of the proposed project with the Special Conditions recommended in the staff report. Staff is not recommending any changes to the findings to address the concerns raised by Judith Hummer.

**RECEIVED**  
South Coast Region

SEP 24 2009

Judith Hummer  
P.O. Box 577  
Dana Point, CA 92629  
(949)443-1248

CALIFORNIA  
COASTAL COMMISSION

September 22, 2009

Mr. Karl Schwing  
Orange County Area Supervisor  
California Coastal Commission  
200 Oceangate  
10th Floor, Suite 1000  
Long Beach, CA 90802

**COASTAL COMMISSION**

EXHIBIT # A  
PAGE 1 OF 2

Dear Mr. Schwing,

I am writing to ask you to please inform me if any business regarding the Ritz Carlton Hotel of Laguna Niguel, located in Dana Point, should come before your commission. I would like the opportunity to speak to any matter regarding it's plans for expansion.

I am a homeowner at 33641 Magellan Isle in Dana Point. I am directly impacted by this planned expansion. I have spoken before the Dana Point Planning Commission regarding my concerns but the Planning Commission approved the expansion without any further study. I wrote a letter of appeal to the Dana Point City Council well within the legal two week appeal window, requesting further study of the matter, but my letter was "lost" although the secretary at the desk clearly remembers receiving it and putting it into the appropriate file. My other letter of complaint to the Planning Commission, submitted simultaneously, questioning their limiting me to only 3 minutes to speak to the matter was not lost, and it was pointed out to me that that letter does not use the word "appeal" as the City Council letter does.

When it was realized that the letter was missing the city staff made a day-long search for the original letter, and made copies of my copy of the letter, but I have received no further notice. Each time staff says they will call me with further information, they don't. Time is passing and I am growing concerned.

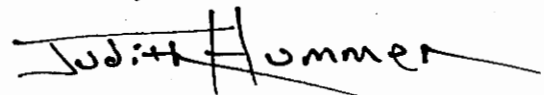
Neighbors have informed me that they have written letters and emails regarding similar concerns, but city staff has told me they do not know of such letters or emails. The neighbor directly behind me on Verrazanno Bay said they they did not receive notice of the Planning Commission meeting and the city staff told me that they were outside of the area requiring notification. That neighbor had seen the orange story poles and were wondering when they were going to be notified about what was happening. They told me this weeks after the meeting had taken place. Soon after, the orange story poles were taken down.

Noise from the hotel had been a growing concern by 2007, and although it has decreased with the current economy I am concerned for further increases in the future. The planned switch of all meeting operations from the ocean side of the hotel to the Niguel Shores Community side of the hotel is of great concern to me both for noise and privacy issues. Our experience in this neighborhood of the previous closing of the quiet restaurant that overlooked the pool and the replacement of it with a noisy party room has not been good.

Sir, I am a big fan of the hotel. I appreciate it in many, many ways. But the threat to the privacy and quiet of my home, into which I have sunk my life savings, cannot be ignored.

Thank you very much for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Judith Hummer". The signature is stylized with a large, bold "H" and a long horizontal line extending to the right.

Judith Hummer

**COASTAL COMMISSION**

EXHIBIT # A  
PAGE 2 OF 2



Judith Hummer  
P.O. Box 577  
Dana Point, CA 92629  
949-443-1248

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APR 10 2012

CALIFORNIA  
COASTAL COMMISSION

Mr. Karl Schwing  
Orange County Area Supervisor  
California Coastal Commission  
200 Oceangate  
10th Floor, Suite 1000  
Long Beach, CA 90802

April 9, 2012

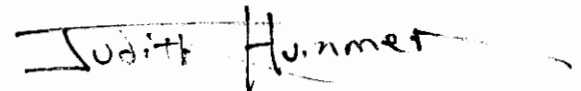
Dear Mr. Schwing,

I received on Saturday, April 7, a notice in the mail of the public hearing to be held this Friday, April 13th in Ventura. This notice was dated March 26, 2012 and mailed on April 4, 2012 according to the postmark. It was received only 6 days before the meeting and says that a response must be made in writing either a week prior if mailed to each commissioner individually or 3 working days prior if sent to the commission offices. That means a response by tomorrow.

I am unable to provide such a response on such short notice. Saturday was the first day of my daughter's Spring Break and we had family visiting from San Francisco and Seattle. It seems these important meetings always occur over the holidays.

This particular issue, of the expansion of the hotel toward my neighborhood, and the resulting privacy and noise concerns, is really very important to me. Since many of my neighbors are out of town for the holidays of Passover and Easter and Spring Break it seems the timing of this notice and meeting is quite unfortunate.

Sincerely,



Judith Hummer

**COASTAL COMMISSION**

EXHIBIT # B  
PAGE 1 OF 3

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South Coast Region  
APR 10 2012  
CALIFORNIA  
COASTAL COMMISSION

IMPORTANT  
PUBLIC HEARING NOTICE

5-82-291-A4

**Figure 6**

[illegible]

EXHIBIT # B  
PAGE 2 OF 3

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT

200 Oceangate, 10th Floor  
LONG BEACH, CA 90802-4416

www.coastal.ca.gov

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South Coast Region

APR 10 2012

CALIFORNIA  
COASTAL COMMISSION

Page: 1

Date: March 26, 2012

**IMPORTANT PUBLIC HEARING NOTICE****PERMIT AMENDMENT****PERMIT NUMBER:** 5-82-291-A4**APPLICANT(S):** S.H.C. Laguna Niguel, L.L.C., Attn: Michael Dickens**PROJECT DESCRIPTION:**

Remodel and addition of the existing Ritz-Carlton Hotel consisting of adding approximately 29,796 square feet to be used as meeting space; converting existing meeting space and infill areas into 24 new guest rooms and 2 new casitas, and enhancing the hotel's exterior hardscape, landscape, pool, and guestroom patio areas.

**PROJECT LOCATION:**

1 Ritz Carlton Drive, Dana Point (Orange County)

**HEARING DATE AND LOCATION:****DATE:** Friday, April 13, 2012**TIME:** Meeting begins at 8:00 AM **ITEM NO:** F10b**PLACE:** Ventura City Hall Council Chambers  
501 Poli Street, Ventura, CA*Spring Break***HEARING PROCEDURES:**

This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. The Coastal Commission is not equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

**AVAILABILITY OF STAFF REPORT**

A copy of the staff report on this matter will be available no later than 10 days before the hearing on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from Fernie Sy, Coastal Program Analyst, at the South Coast District office.

**SUBMISSION OF WRITTEN MATERIALS:**

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

**COASTAL COMMISSION**EXHIBIT # BPAGE 3 OF 3

CALIFORNIA COASTAL COMMISSION

**CALIFORNIA COASTAL COMMISSION**

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

**F 10b**

Filed: December 15, 2011  
49th Day: February 2, 2012  
180th Day: June 12, 2012  
Staff: Fernie Sy-LB  
Staff Report: March 29, 2012  
Hearing Date: April 11-13, 2012  
Commission Action:

**STAFF REPORT: MATERIAL AMENDMENT**

**APPLICATION NO.:** 5-82-291-A4

**APPLICANT:** SHC Laguna Niguel, LLC

**AGENT:** Michael Kollin, Kollin Design Group

**PROJECT LOCATION:** 1 Ritz Carlton Drive, City of Dana Point (Orange County)

**DESCRIPTION OF PROJECT ORIGINALLY APPROVED:**

On June 16, 1982, the Coastal Commission approved CDP No. 5-82-291-(AVCO), which allowed construction of a 397 room resort hotel with two restaurants, meeting rooms, ballroom, pool and deck, public access trail, 672 off-street parking spaces, landscaping and other improvements on a vacant 18.55 acre blufftop lot.

**DESCRIPTION OF AMENDMENT:**

Remodel and addition of the existing Ritz-Carlton Hotel consisting of adding approximately 29,796 square feet to be used as meeting space; converting existing meeting space and infill areas into 24 new guestrooms and 2 new casitas, and enhancing the hotel's exterior hardscape, landscape, and pool areas. As a result of the proposed casitas, the project includes relocating a portion of the existing public walkway approximately 18-feet north of its current location. The project affects previously imposed ***SPECIAL CONDITIONS NO. 1 AND NO. 2*** of Coastal Development Permit 5-82-291 because development is proposed which would modify the deed restricted "*common areas of the development*" and the public walkway system. The amendment would require the recordation of an updated deed restriction with an exhibit depicting the modified public walkway.

**SUMMARY OF STAFF RECOMMENDATION:**

The project involves new development within and on the seaward side of the Ritz Carlton Hotel in the City of Dana Point. The major issues addressed by the current proposal are public access, affordable overnight accommodations, parking, geology, scenic and visual resources, and water quality. Commission staff recommends that the Commission **APPROVE** the proposed amendment with **THIRTEEN (13) SPECIAL CONDITIONS** regarding: **1)** retention of the special conditions of the underlying permit (5-82-291, as amended) not affected by the current action; **2)** submittal of revised project plans to remove development no longer proposed; **3)** recordation of an updated deed restriction with Public Access Map to reflect new development; **4)** maintenance of public access

during construction; **5)** conformance with the construction staging plan; **6)** payment of an in-lieu fee for the provision of lower-cost overnight accommodations within or in close proximity to the Coastal Zone; **7)** conformance with geotechnical recommendations; **8)** assumption of risk; **9)** no future bluff or shoreline protective devices; **10)** conformance with the submitted landscape plan; **11)** conformance with the submitted Water Quality Management Plan (WQMP); **12)** conformance with the submitted Storm Water Pollution Prevention Plan (SWPPP); and **13)** liability for costs and attorneys fees.

One of the special conditions above requires that the applicant shall pay an in-lieu fee to provide lower-cost overnight accommodations within or in close proximity to the Coastal Zone. The applicant does not object to the in-lieu fee requirement. Although the proposed hotel would increase the supply of overnight accommodations in the Coastal Zone area, it does not include any lower-cost overnight accommodations as required by Section 30213 of the Coastal Act. The existing hotel's room rates are "*higher cost*" and the proposed room additions would be of a similar rate. Therefore, to promote and encourage provision of lower cost visitor overnight accommodations in the Coastal Zone, in association with new development of high-end facilities, the Commission has imposed **SPECIAL CONDITON NO. 6**, which requires the applicant to provide lower cost units and/or payment of a fee to be used for lower cost visitor accommodations, such as hostels, cabins and campgrounds, in-lieu of actual provision of lower cost units.

#### **LOCAL APPROVALS RECEIVED:**

Approval-in-Concept from the City of Dana Point dated September 1, 2009.

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3. Site Plan
4. Site Plans for the Modified Area of the Existing Public Walkway
5. Site Plans Indicating Bluff Edge and 25-foot Bluff Edge Setback
6. Commission's Staff Geologist Memo Dated March 29 2012

**PROCEDURAL NOTE:**

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

The amendment request involves changes to a previously approved resort hotel. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-82-291 envisioned in the Commission's June 1982 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

**STANDARD OF REVIEW:**

The City of Dana Point Local Coastal Program (LCP), commonly referred to as the "1996" LCP, was effectively certified for the subject area by the Commission under City of Dana Point LCP Amendment 1-96 on November 5, 1997. The LCP amendment certified most of the existing uncertified Monarch Beach LCP segment. The portions of the Land Use, Urban Design, and Conservation/Open Space Elements of the General Plan applicable to Monarch Beach now serve as the Land Use Plan (LUP) for Monarch Beach. The portions of the City's Zoning Code applicable to Monarch Beach now serve as the Monarch Beach Implementation Plan (IP). As such, the City now has authority to issue Coastal Development Permits for new projects in the Monarch Beach area. LCP policy 9.69.030 (c)(3)(B) and (D) specify that the Commission retains jurisdiction over permits originally issued by the Commission, including CDP No. 5-82-291 at the subject site.

The proposed project affects special conditions of a Commission-issued permit (5-82-291), thereby requiring an amendment to the original permit. Pursuant to Section 30604 (b), the City's certified LCP, commonly referred to as the "1996" LCP, is the standard of review in the current analysis.

Additionally, Section 30604 (c) of the Coastal Act requires that every Coastal Development Permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission **APPROVE** the permit amendment application with special conditions.

**MOTION:**

*I move that the Commission approve permit amendment CDP #5-82-291-A4 pursuant to the staff recommendation.*

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

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby approves a Coastal Development Permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. SPECIAL CONDTIONS**

**1. PRIOR CONDITIONS**

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-82-291, as amended, remain in effect, with the following exception: To the extent development specifications in any plans approved by the Executive Director pursuant to this amendment are inconsistent with specifications listed in any plans approved prior to this

amendment, compliance with which was required by the existing permit conditions, those requirements for compliance with those prior plans are hereby modified as necessary, but only as necessary, to require compliance with the new plans. In addition, all standard and special conditions imposed under Coastal Development Permit No. 5-082-29, as amended, that could apply equally to this amendment, are so applied.

## **ADD THE FOLLOWING CONDITIONS**

### **2. REVISED PROJECT PLANS**

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of revised project plans. The revised plans shall be in substantial conformance with the plans received by South Coast District staff on December 15, 2011, except they shall be modified to demonstrate that the proposed development no longer includes the following originally proposed project elements: 1) the at grade detached casita that was the most oceanward of the three (3) originally proposed casitas; 2) ocean lighting; and 3) the improvement and expansion of the existing, ground floor patios of the ground-floor oceanfront rooms.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

### **3. PUBLIC ACCESS DEED RESTRICTION**

This special condition shall supercede ***SPECIAL CONDITIONS NO. 1 and NO. 2*** of Coastal Development Permit No. 5-82-291:

- A.** The following areas shall be maintained for permanent access and recreational use by the general public in perpetuity: bluff trail and walkway; viewpoints and rest areas; the Vista Point Park; and all common areas of the hotel, including, but not limited to, the lobby, restaurant, coffee shops, grounds, sundeck, spa and fitness center.

The development shall be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that under no circumstances would the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT,** the applicant shall submit an updated public access map, for the



review and approval of the Executive Director, with a metes and bounds legal description and graphic depiction, depicting all public walkways and publicly available common areas at the subject site. The public walkway system shall include the “*modified sidewalk*” shown in the Project Plans submitted by the applicant on December 15, 2011, as generally depicted on page 1 of Exhibit No. 4 of the current staff report.

- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on the development. The deed restriction shall include a legal description and graphic depiction of the applicant’s entire parcels which shall incorporate the updated public access map. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens, except tax liens, and any encumbrance that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this Coastal Development Permit.

**4. MAINTENANCE OF PUBLIC ACCESS DURING CONSTRUCTION**

The construction activities authorized pursuant to Coastal Development Permit No. 5-82-291-A4 shall not obstruct public access at the subject site during the peak use season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. In addition, the applicant shall comply with the following:

- A.** At no time shall construction activities associated with the proposed remodel and addition of the hotel obstruct the public’s ability to utilize the bluff trail, including view points and rest areas, the Vista Point Park and/or the hotel parking garage. The relocated portion of the existing pathway shall be fully constructed and open to the public prior to closure of the existing portion of the pathway that is subject to the realignment proposed.
- B.** The staging area for construction of the proposed remodel and addition shall not obstruct public access along the adjacent public access trail.

**5. CONFORMANCE WITH THE CONSTRUCTION STAGING PLAN**

The applicant shall conform to the construction staging received on December 15, 2011. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**6. AFFORDABLE OVERNIGHT ACCOMMODATIONS—MITIGATION**

- A. A \$30,000 mitigation fee per room shall apply to 25% of the total number of approved hotel rooms ( $0.25 \times 26$ ). Prior to the occupancy of the approved development, the total in-lieu fee of \$195,000 ( $\$30,000 \times 6.5 = \$195,000$ ) shall be deposited into an interest-bearing account, to be established and managed by the State Coastal Conservancy pursuant to a memorandum of understanding entered into between the Conservancy and the Executive Director. The purpose of this account shall be to provide funding grants to public agencies or non-profit organizations for the provision of lower cost overnight visitor accommodations within or in close proximity to the Coastal Zone, including but not limited to hostel accommodations, campground accommodations, cabins, or low cost hotel or motel accommodations.
- B. The entire fee deposited into the special account identified in subparagraph (A) together with any accrued interest shall be used for the purpose set forth in subparagraph (A), and the expenditure of any funds from this account shall be subject to review and approval by the Executive Director of the Coastal Commission. This fee shall be expended within five (5) years of the date the fee is deposited into the account, unless this time limit is extended for good cause for a period not to exceed an additional five (5) years. If the funds are not expended within this time period, the Commission and the State Conservancy shall agree on an alternative expenditure of the funds for low cost visitor and recreational facilities in the Coastal Zone.

## 7. **CONFORMANCE WITH GEOLOGIC RECOMMENDATIONS**

- A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the following geotechnical investigations: *Geotechnical Evaluation* prepared by Ninyo & Moore dated August 29, 2011 (Project No. 207118001); and *Revised Geotechnical Evaluation* prepared by Ninyo & Moore dated December 1, 2011 (Project No. 207118001).
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a

Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**8. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY**

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

**9. NO BLUFF OR SHORELINE PROTECTIVE DEVICES**

- A.** By acceptance of this Permit, the applicant agrees, on behalf of himself/herself and all other successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-82-291-A4 including, but not limited to, the room additions, foundations, hardscape, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself/herself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B.** By acceptance of this Permit, the applicant further agrees, on behalf of himself/herself and all successors and assigns that the landowners shall remove the development authorized by this permit, including the room additions, foundations, hardscape, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a Coastal Development Permit.

**10. CONFORMANCE WITH THE LANDSCAPE PLAN**

The applicants shall conform to the landscape plan received on December 15, 2011. Vegetated landscaped areas shall consist only of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**11. CONFORMANCE WITH THE WATER QUALITY MANAGEMENT PLAN (WQMP)**

The applicant shall conform to the *Water Quality Management Plan (WQMP)* prepared by Psomas dated December 13, 2011. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**12. CONFORMANCE WITH THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP)**

The applicant shall conform to the *Storm Water Pollution Prevention Plan (SWPPP)* prepared by Psomas dated December 13, 2011. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**13. LIABILITY FOR COSTS AND ATTORNEYS FEES**

**THE PERMITTEE SHALL** reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission

retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

### **III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

#### **A. PROJECT LOCATION, PROJECT AMENDMENT DESCRIPTION, LOCAL APPROVAL AND PAST COMMISSION ACTIONS AT SUBJECT SITE**

##### **1. Project Location**

The subject site is located at 1 Ritz Carlton Drive seaward of Pacific Coast Highway in the northern portion of the City of Dana Point, County of Orange (Exhibit No. 1). The site is located within the Monarch Beach area of the City, which has a certified Local Coastal Program (LCP). The project site is designated as Visitor/Recreation Commercial (V/RC) in the General Plan Land Use Element (Land Use Plan (LUP) of the LCP) and is zoned as Visitor/Recreation Commercial or V/RC in the Zoning Code (Implementation Plan (IP) of the LCP). The site is bordered to the north by the Salt Creek Beach Park and a portion of the public parking lot area, to the south and west by Salt Creek Beach, and to the east by the residential community of Niguel Shores. The approximately 17.6 acre hotel property is developed and landscaped, with various meeting/banquet facilities and guest amenities. Existing structures on the project site include 393 hotel rooms and suites; a core area consisting of administrative offices, gift and jewelry shops, salon, meeting rooms, and executive offices; recreation facilities consisting of four (4) tennis courts, two (2) pool areas, and landscaped areas, and a split level parking garage. A public walkway traverses the hotel property, leading to a blufftop walkway, view points and the Vista Point Park on the seaward portion of the site. (The hotel was previously approved under Coastal Commission CDP 5-82-291, as will be discussed on the following page). The proposed amendment involves new development within and along the seaward side of the subject property, as shown below.



## 2. Project Amendment Description

The proposed project consists of upgrades to the existing Ritz-Carlton Hotel to better utilize existing space, adding approximately 29,796 square feet to be used as meeting space; converting existing meeting space and proposed infill areas into 26 new guestrooms, and enhancing the hotel's exterior hardscape, landscape, and pool areas (Exhibits No. 2-3). More specifically, the project consists of the following:

- a) **NEW MEETING SPACE:** An addition to the existing structure above the loading dock containing an estimated 15,200 square feet of meeting rooms, pre-function space, valet storage, office, restrooms, and outside balconies. The new meeting room space would be constructed with a finish floor equal to that of the hotel's main floor and at a height concurrent with that of the existing hotel structure. In order to accommodate this new meeting room space, demolition of an existing planter and removal of an existing trellis and one (1) of the existing four (4) tennis courts is proposed.
- b) **NEW GUESTROOMS:** The proposed project would add 26 guestrooms to the existing 393 guestrooms. Removal of existing planting and concrete is proposed in order to construct the new guestrooms. These new guestrooms include the following:

- 1) Two (2) at grade detached casitas. The foundation system would be a shallow spread footing system approximately 18 inches deep;
  - 2) Four (4) new infill oceanfront guestrooms (2-story guestroom building with 2 rooms per floor) accessed through the existing three-story breezeway connecting the central core of the hotel and Monarch Wing 1. The foundation system would be a shallow spread footing system approximately 24 inches deep;
  - 3) Three (3) new infill oceanfront guestrooms (3-story guestroom building with 1 room per floor) accessed through the existing four-story breezeway connecting Dana Wings 1 and 2. The foundation system would be a shallow spread footing system approximately 24 inches deep;
  - 4) Three (3) new infill oceanfront guestrooms (3-story guestroom building with 1 room per floor) accessed through the existing four-story breezeway connecting Monarch Wings 1 and 2. The foundation system would be a ; shallow spread footing or deepened footing system approximately 18 to 24 inches deep, deepened up to approximately 15 feet below the finished grade near the top of the manufactured slope; and
  - 5) Fourteen (14) new infill oceanfront guestrooms on two levels through the conversion of the existing plaza and pavilion conference banquet areas. The foundation system would be a shallow spread footing system.
- c) **PUBLIC WALKWAY REALIGNMENT AND ENHANCEMENT OF EXISTING PUBLIC AREA:** An existing public walkway would be moved approximately 18-foot north of its current location prior to construction of the casitas. All the other existing public walkways and trails would remain in their current state.
- In addition, the existing public area adjacent to the walkway would be enhanced by new landscaping, new seating areas, new binocular area, new interpretive signage, new beach lookout area, and a new drinking fountain and dog fountain.
- d) **PORTE COCHERE:** Addition of a porte cochere near the loading dock area attached to the existing parking structure and covering a new egress point between the parking structure and drop-off loop at the hotel's main entry.
- e) **CLUB GRILL CONVERSION:** Conversion of the existing club grill into a service corridor, linking the kitchen, food and beverage areas, group registration, and board room.

- f) **MEETING ROOM ALTERNATIVES:** Conversion of the existing Terrace and Colonnade meeting rooms and adjacent vestibule into one large break-out space for pool related events, estimated at 3,000 square feet.
- g) **GRADING:** Grading for the project is proposed to address the over-excavation required for the new building foundation footings. The project would require approximately 100 cubic yards of fill and approximately 3,600 cubic yards of cut. As a result a total of approximately 3,500 cubic yards of soil would be exported from the site and hauled to a local disposal site or a local grading project needing import material.
- h) **CONSTRUCTION ACTIVITIES AND HOURS:** Construction would include the removal of existing concrete along with some minor grading. Construction equipment would be used intermittently depending on the construction phase. All grading would occur between the hours of 7am and 5pm, Mon thru Fri in accordance with City regulations. All other construction activities would occur between the hours of 7am and 8pm, Mon thru Sat. Construction is prohibited on Sun and federal holidays. Construction equipment may include dozers, scrapers, front-end loaders, dump truck, blades, and rollers. Delivery trucks would also be used.

As submitted, the project originally included following project elements:

- a) A 3<sup>rd</sup> at grade detached casita that was the most oceanward of the three (3) casitas originally proposed;
- b) Ocean lighting; and
- c) The improvement and expansion of the existing, ground floor patios of the ground-floor oceanfront rooms. The seaward patio walls would have been demolished and relocated farther seaward (3-10 feet depending upon size and location of existing patio) and equipped with new fire pits and new patio divider walls ranging from 36-inch to 5-feet.

However due to concerns of these elements raised by Commission staff regarding geologic hazards and impacts to sensitive species, they have been removed from the proposed project and the applicant has agreed to their removal. However, some of these elements remain on the submitted project plans. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit revised project plans that have been modified to no longer incorporate any of the above previous project elements.

The project affects previously imposed **SPECIAL CONDITIONS NO. 1 and NO. 2** of Coastal Development Permit No. 5-82-291 because development is proposed which would modify the deed restricted "*common areas of the development*" and the public walkway system. The amendment would require the recordation of an updated deed restriction with exhibits depicting all areas open to the public, including the modified public walkway.



At the time of Commission approval of CDP No. 5-82-291, the project was conditioned to require the provision of permanent public access and recreation use throughout the subject site, including the bluff trail, parks, and hotel commons areas. The current project requires an amendment to the underlying permit because the applicant wishes to update and revise the recorded Public Access Plan. The revised plan would illustrate an adjustment to the boundaries of the public trail.

### 3. Local Approval

The City has a certified Local Coastal Program (LCP); however, the original Coastal Development Permit (CDP No. 5-82-291) for the Ritz-Carlton Hotel was issued by the California Coastal Commission (CCC) prior to certification of the LCP. As a result, the CCC retains jurisdiction for the original CDP and any amendments thereto.

In addition, the Ritz-Carlton Hotel processed a Site Development Permit (SDP07-15), Minor Conditions Use Permit (CUP98-14(M)(I)) and Variance (V07-07) from the City prior to processing the CDP amendment with the California Coastal Commission.

Since the proposed project is a non-residential development exceeding 2,000 square feet in area a Site Development Permit (SDP07-15) to allow the site expansion was required.

A Minor Conditional Use Permit (CUP98-14(M)(I)) to amend the original shared parking program to account for the addition and reappointment of the uses associated with the hotel was required. The proposed project would result in 26 new guestrooms and a new conference/banquet facilities to the hotel. The amendment to the shared parking program, for which an addendum was completed in 2007, was processed based on the updated parking analysis (Kimley-Horn and Associates, 2008) for the new additions. The hotel currently has a total of 853 parking spaces onsite. While the hotel provides valet parking at all times, the parking structure would be re-striped to accommodate current requirements for handicap accessible parking, which would reduce the total parking supply to 847 parking spaces. The updated parking analysis takes into account the loss of the parking due to re-striping, the parking demand created by the proposed project, the parking demand of the existing hotel and its various uses, and the re-establishment of the 54 parking spaces currently used for hotel storage and determined that the hotel would have a maximum parking demand of 837 parking spaces. The proposed parking supply is 847, thus there would be a surplus of no less than 10 parking spaces.

A Variance (V07-07) from the maximum building height regulations was required to allow the new additions to be built to the same height as the now nonconforming height of the hotel. The existing hotel was developed under permits from the County of Orange and the CCC. Since the City's incorporation however, the height regulations have changed thus rendering the existing structure nonconforming to building height. The lowest point of the existing structure is 46-feet above sea level at the loading dock area and the highest peak is 185-feet, which occurs in several areas of the existing structure including the entry porte cochere, the central core, and all four wings of the hotel's main structure. The current height limit is 33-feet and because the proposed additions to the

structure would either be equal or below the height of the structure, a variance to the City's current height regulations is required.

4. Past Commission Actions at Subject Site

a) P-79-5539-(AVCO)

On July 23, 1979, the concept of the Ritz Carlton Hotel was initially approved under Coastal Development Permit (CDP) No. P-79-5539 with specific approval of the hotel being granted under CDP No. 5-82-291, discussed below. A special condition of this permit required the applicant to "*submit a deed restriction indicating that this facility [the hotel] and all its associated facilities (including lobby, outdoor areas, trail connecting hotel and beach, bluff-top plaza, etc.) shall be operated as a public hotel facility and not converted to a private resort facility.*"

b) CDP No. 5-82-291-(AVCO)

On June 16, 1982, the Commission approved CDP No. 5-82-291-(AVCO), which allowed the construction of a 397 room resort hotel with two restaurants, meeting rooms, ballroom, pool and deck, public beach access trail, 672 off-street parking spaces, landscaping and other improvements on a vacant 18.55 acre blufftop parcel. One condition of project approval required the recordation of a deed restriction which insures that the bluff trail, including view points and rest areas, and the Vista Point Park are opened and maintained for permanent access and recreational use by the general public. The deed restriction was also intended to insure that the development would be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that "*under no circumstances will the development be used for private resort or time-share use which could inhibit or exclude casual use by the general public.*" In addition, the permit was conditioned to require the recordation of a deed restriction which insures that public access is maintained to all common areas of the development. These areas were to include, but not be limited to, "*the lobby, restaurants, coffeeshops, grounds and sundeck.*" Also, another condition was imposed that required that prior to issuance of the permit that a binding agreement be executed that required the applicant to construct a 132 unit lower cost visitor accommodations consisting of at a minimum 66-bed youth hostel with the balance in moderate priced motel units. The agreement was to be recorded free of prior liens and as a covenant running with all parcels of issue in this permit. Furthermore, the applicant was required to execute an irrevocable letter of credit in the amount of \$500,000.

c) CDP No. 5-82-291-A-(AVCO)

On October 29, 1982, the Commission granted Coastal Development Permit Amendment No. 5-82-291-A to allow a change to the wording of **SPECIAL CONDITION NO. 5** (Lower Cost Visitor Accommodations) so that "*the covenant can be only on the commercial site and not the on the hotel site; and that the letter of credit be increased to \$548,000.*"

d) CDP No. 5-87-220-(Prutel Joint Venture)

On May 12, 1987, the Commission approved CDP No. 5-87-220-(Prutel Joint Venture), which allowed the construction of a 5,400 square foot storage and engineering building as an addition to the existing parking structure serving the hotel. The approval was conditioned to require the applicant to submit, for the review and approval of the Executive Director, a plan for the continued implementation of the public access requirements established in CDP No. 5-82-291. As such, the trail and grounds of the resort were to remain open to use by the general public.

e) CDP No. 5-82-291-A2 and A-5-DPT-00-467-(SHC Laguna Niguel)

On March 13, 2003, the Commission approved Coastal Development Permit Amendment No. 5-82-291-A2 and De Novo Coastal Development Permit No. A-5-DPT-00-467, which allowed demolition of two tennis courts and construction of a three-story 32,276 square foot addition to the Ritz Carlton Hotel for use as a spa facility and the revision of ***SPECIAL CONDITIONS NO. 1 and NO. 2*** of Coastal Development Permit No. 5-82-291 to allow 1) realignment of the public access trail and 2) inclusion of a spa facility into what is considered “*common areas of the development*.”

f) CDP No. 5-82-291-A3-(SHC Laguna Niguel)

On October 7, 2003, the Commission approved Coastal Development Permit Amendment No. 5-82-291-A3, which allowed construction of a new 2,651 square foot fitness center and approx. 2,000 square foot roof terrace within the footprint of an outdoor terrace on the seaward side of the existing hotel. The project also involved the construction of a new paved public walkway seaward of the proposed fitness center. The project affected previously imposed ***SPECIAL CONDITIONS NO. 1 and NO. 2*** of CDP No. 5-82-291 because development was proposed which would modify the deed restricted “*common areas of the development*” and the public walkway system. The amendment required the recordation of an updated deed restriction with exhibit depicting the new fitness center, relocated roof terrace and new public walkway.

**B. PUBLIC ACCESS**

**Local Coastal Program (LCP) Policies: Land Use Plan (LUP)**

**LAND USE ELEMENT (LUE)**

***Land Use Element (LUE) Policy 1.8:*** *The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service, providing non-automobile circulation within the development, providing adequate parking facilities or providing substitute means of serving the development with public transportation, and assuring the potential for public transit for high intensity uses. (Coastal Act/30252)*

***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 8.2 (Monarch Beach):*** *Assure that adequate public recreational areas and public open space are provided and maintained by the developer as part of a new development. (Coastal Act/30210, 30213, 30240, 30251)*

***Land Use Element (LUE) Policy 8.6 (Monarch Beach):*** *Maximize the provision of public trail and transit loop systems within the Monarch Beach area. The systems shall include access to and along the shoreline and to the visitor-serving and public places within Monarch Beach. (Coastal Act/30210)*

***Land Use Element (LUE) Policy 8.9 (Monarch Beach):*** *Avoid expansion of the golf course or any other land use that occurs at the expense of environmentally sensitive habitat, public park or public areas. (Coastal Act/30210, 30213, 30240)*

**URBAN DESIGN ELEMENT (UDE)**

***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)**

***Conservation Open Space Element (COSE) Policy 6.8:*** *Preserve public access to the coastal areas through easement dedications thereby providing marine-oriented recreational uses so that transportation corridors may augment the City's open space system. (Coastal Act/30210, 30211, 30212)*

**Local Coastal Program (LCP): Implementation Plan (IP)**

**CHAPTER 9.690—COASTAL DEVELOPMENT PERMIT**

9.69.030 (c)(3)(B) and (D) state, in pertinent part:

*(B) Development authorized by a coastal development permit issued by the Coastal Commission either prior to effective certification of a Local Coastal Program or on appeal after certification remains under the jurisdiction of the Coastal Commission for the purposes of condition compliance, amendment, extension, reconsideration and revocation.*

*(D) Coastal Development Permit P-79-5539*

*Development authorized by Coastal Development Permit P-79-5539, including both development approved on condition that the additional coastal development permit be obtained, and development approved on condition of the submission of additional plans for the review and approval of the Executive Director of the Coastal Commission, remains under the jurisdiction of the Coastal Commission for purposes of condition compliance and amendment. Condition compliance includes both obtaining a coastal development permit from the Coastal Commission for development that was approved on condition that a separate coastal development permit be approved, and obtaining approval from the Executive Director of the Coastal Commission for plans for development that was approved on condition of the submission of final plans. Coastal development permits, or approval of plans by the Executive Director of the Coastal Commission, for development authorized by Coastal Development Permit P-79-5539 shall be obtained from the California Coastal Commission.*

**Coastal Act Public Access Policies**

Section 30210 of the Coastal Act states, in pertinent part:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states, in pertinent part:

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

An element of the proposed project includes the construction of two (2) new detached casitas located on the southern side of the property. Due to these casitas, the proposal would require that an existing public walkway be moved approximately 18-feet north of its current location prior to construction of the casitas (Exhibit No. 4). The revised pathway would be fully constructed prior to any impact that the proposed casitas would have on the existing public walkway. All the other existing public walkways and trails onsite to the hotel, beach, and the ocean would remain in their current state and would be maintained throughout the construction of the project. As stated previously, the proposed development affects two underlying special conditions of Coastal Development Permit No. 5-82-291 approved by the Commission in June 1982. As a condition of CDP NO. 5-82-291, both the public trail and the resort grounds are required to remain open to the public in perpetuity. On September 16, 1982, a deed restriction with a “Public Access Plan” exhibit was recorded against the property specifying this requirement. Additionally, on May 21, 2004 an updated deed restriction was recorded in association with CDP NO. 5-82-291-A3. CDP No. 5-82-291-A3 required the recordation of an updated deed restriction with exhibit depicting the new fitness center, relocated roof terrace and new public walkway. The proposed amendment would require the recordation of an updated deed restriction concerning the Public Access Plan illustrating the modified alignment of the public walkway.

As discussed previously, the Commission’s approval of Coastal Development Permit No. 5-82-291 in 1982 allowed construction of the existing Ritz Carlton Hotel and associated improvements subject to special conditions that required a public walkway from Shoreline Drive (now Ritz Carlton Drive) to a public vista park located on the south side of the hotel, and required that public areas not be converted to private use. The proposed amendment would allow the existing public walkway and common area to be modified from its current form. The applicant understands that it would be necessary to “re-record” the Public Access Plan to include the modified public walkway.

Besides modifying the existing public walkway, the project also would install native, drought-tolerant vegetation along the modified public walkway to improve the public experience and to blend with the existing native vegetation along the nearby bluff slopes. In addition, the existing public area adjacent to the walkway would be enhanced by new seating areas, new binocular area, new interpretive signage, new beach lookout area, and a new drinking fountain and dog fountain.

As provided earlier, the City of Dana Point certified LCP contains policies which protect existing public access and recreation opportunities and encourage improvement of such access and recreation opportunities in the Coastal Zone. The LCP also provides policies regarding the processing of Coastal Development Permits. Additionally, Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access and Section 30210 of the Coastal Act requires that access opportunities be maximized. The Commission imposes the following special conditions to provide for continued public access at the subject site.

1. Special Conditions

a) Prior Conditions

The Commission imposes **SPECIAL CONDITION NO. 1**, which states that unless specifically altered by the Commission's approval of the current amendment; the special conditions of the underlying permit (5-82-291, as amended) shall remain in effect.

b) Recordation of Public Access Deed Restriction

The proposed amendment would allow development modification of the existing public walkway. To assure that the applicant constructs and maintains the new public access improvements in perpetuity, the applicant must record the deed restriction with an updated Public Access Plan. Consequently, the Commission imposes **SPECIAL CONDITION NO. 3**. **SPECIAL CONDITION NO. 3** requires the applicant to record a public access deed restriction that ensures that the modified public walkway would be maintained open to the public in perpetuity. An updated public access map depicting all public trails and access areas at the subject site would accompany the deed restriction document. Consequently, access would be maintained throughout the Ritz Carlton site, including the bluff trail, the View Point park, and all common hotel areas (i.e. restaurant, lobby, spa, etc. **SPECIAL CONDITIONS NO. 1 and NO. 2** of the original permit (5-82-291) are superceded by this condition.

c) Construction Impacts on Public Access

The proposed project may result in temporary construction phase impacts upon public access. Although the applicant intends to minimize impacts to coastal access during construction, construction may occur during the peak beach use season, typically defined as Memorial Day weekend to Labor Day weekend. Timing of construction of the realigned

trail must be managed to assure that access is not compromised, particularly during the peak beach use season.

To ensure that public access would not be adversely affected during construction of the proposed additional hotel areas, the Commission imposes **SPECIAL CONDITION NO. 4**. **SPECIAL CONDITION NO. 4** requires the applicant to minimize impacts to public access by agreeing not to obstruct public use of the bluff trail during construction and the relocated portion of the existing pathway shall be fully constructed and open to the public prior to closure of the existing portion of the pathway that is subject to the realignment proposed.

Potential impacts to public access may also occur due to impacts associated construction staging areas. The applicants has submitted a construction staging plan that shows a portion of the outer east bound lane (closer to the hotel) of Ritz Carlton Drive would be used as the staging area. The remaining inner east bound lane of Ritz Carlton Drive would remain open to traffic and thus allow continued public access to the hotel site. This construction staging area would not impede use of the existing public walkways on site. To ensure that the construction staging plan is adhered to, the Commission is imposing **SPECIAL CONDITION NO. 5**, which requires the applicant to conform to the submitted construction staging plan.

## CONCLUSION

As conditioned for recordation of an updated public access map, maintenance of public access during construction, and conformance with the construction staging plan, the Commission finds the project consistent with the public access policies of the City of Dana Point certified LCP and the public access and recreation policies of the Coastal Act.

## **C. AFFORDABLE OVERNIGHT ACCOMODATIONS**

### **Local Coastal Program (LCP) Policies: Land Use Plan (LUP)**

#### **CONSERVATION OPEN'SPACE ELEMENT (COSE)**

*Conservation Open Space Element (COSE) Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. (Coastal Act/30213, 30222, 30223)*

### **Coastal Act Policies**

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. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Visitor-serving commercial development is considered a priority use under the certified LCP and the Coastal Act. The public access policies of the certified LCP and Coastal Act require that a range of affordable facilities, including overnight accommodations, be provided in new development along the coast.

1. Defining Lower Cost

In a constantly changing market, it can be difficult to define what price point constitutes low cost and high cost accommodations for a given area. In its previous actions, the Commission has addressed what are appropriate terms for defining low cost and high cost hotels [Coastal Development Permit Nos. 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, 5 A-253-80, and A-69-76, A-6-IMB-07-131, 3-07-002, 3-07-003]. More recent Commission actions have utilized a formula that can be used to determine low and high cost overnight accommodations for a specific part of the coast [SBV-MAJ-2-08 & 5-98-156-A17]. The formula is based on California hotel and motel accommodations (single room, up to double occupancy), and does not incorporate hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not provide the same level of accommodation as hotels and motels. Hostels, RV parks and campgrounds are inherently lower cost, and are the type of facilities that a mitigation charge for the loss of affordable over-night accommodations would support.

The formula compares the average daily rate of lower cost hotels in a specific coastal zone area (e.g., city or bay) with the average daily rates of hotels and motels across the entire State of California. Under this formula, low-cost is defined as the average room rate for all hotels within a specific area that have a room rate less than the statewide average room rate.

In its action approving a Long Beach LCP amendment (LOB-MAJ-1-10), the Commission surveyed average daily room rates for all hotels in California to determine the statewide average daily room rate. Statewide average daily room rates are collected monthly by Smith Travel Research, and are available on the California Travel and Tourism Commission's website: <http://www.visitcalifornia.com>, under the heading "California Lodging Reports." Smith Travel Research data is widely used by public and private organizations. To be most meaningful, peak season (summer) rates were utilized for the formula. To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA Auto Club rated properties were included in the survey. According to the AAA website, "to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member

expectations – cleanliness, comfort, security and safety.” AAA assigns hotels ratings of one through five diamonds.

From this survey, the statewide average daily room rate in California in 2008 for the months of July and August was \$133.00.

Using the formula, a recent study for the City of Ventura defined low cost accommodations as those charging less than \$104.50 per night, or approximately 25% below the statewide average daily room rate of \$133.00 [SBV-MAJ-2-08]. In Ventura, high cost accommodations are defined as those hotels with daily room rates 25% higher than the statewide average which equates to \$166.00. Rates then between \$104.50 and \$166.00 would be considered moderately priced for the City of Ventura.

The project is adding twenty-six (26) guestrooms to the existing 393-room hotel. The applicant states that the average room rate for the new guest rooms would be \$339 and that it would be consistent with the rates for the existing ocean view hotel rooms at the hotel. The existing use at the project site is the Ritz Carlton Laguna Niguel, a luxury hotel with traditional “*market rate*” accommodations. Given the analysis of what qualifies as low cost visitor accommodations in parts of southern California, noted above, it is apparent that these room additions are considered “higher cost” accommodations. Lower cost accommodation would be more affordable to a larger segment of the general population; however, this is not the case with the proposed room additions with the proposed project.

## 2. Mitigation Requirement

The Commission has found in past actions that the loss of existing, lower cost hotel units should, under most circumstances, be mitigated at a 1:1 ratio lost to new units provided. However, even when there has been no loss of existing low cost units in association with proposed new overnight accommodation developments, if no low cost units are proposed, the Commission has typically required mitigation to ensure a range of accommodations are made available to visitors. When high cost overnight visitor accommodations are located on the coast, they occupy area that would otherwise be available for lower cost visitor and recreational facilities. Thus, the expectation of the Commission is that developers of sites suitable for overnight accommodations would provide facilities which serve people with a range of incomes.

Although the actual provision of lower-cost accommodations in conjunction with a specific project is preferable, in past action, the Commission has also found that when this approach is not feasible, then the requirement of in-lieu fees to provide new lower-cost opportunities constitutes adequate mitigation for the loss of existing or failure to provide new affordable overnight accommodations. Recent Commission decisions for individual development projects (6-92-203-A4/KSL, A-6-ENC-07-51, Oceanside LCPA 1-07, Redondo Beach LCPA 2-08, Long Beach LCPA 1-10 and 5-98-156-A17) have required the payment of an in-lieu fee of \$30,000 paid for each required replacement room as a part of the mitigation package. For high cost overnight visitor accommodations where low cost alternatives are not included onsite, a mitigation fee of \$30,000 per room is being required

for 25% of the high cost rooms constructed. The \$30,000 per room in-lieu fee amount was established based on figures provided by Hostelling International on the cost to construct an affordable overnight room, in a letter dated October 26, 2007.

Therefore, consistent with recent past commission actions, an in-lieu fee requirement of \$30,000 per room shall apply to 25% of the total number of approved hotel rooms ( $0.25 \times 26$ ). The total in-lieu fee of \$195,000 ( $\$30,000 \times 6.5 = \$195,000$ ) shall be deposited into an interest-bearing account prior to the occupancy of the approved development. The in-lieu fee fund, to be managed by the State Coastal Conservancy, shall be used to provide funding grants to public agencies or non-profit organizations for the provision of lower cost overnight visitor accommodations within or in close proximity to the Coastal Zone, including but not limited to hostel accommodations, campground accommodations, cabins, or low cost hotel or motel accommodations. To ensure provision of lower-cost overnight accommodations within or in close proximity to the Coastal Zone, the Commission is imposing **SPECIAL CONDITION NO. 5**, which requires payment of an in-lieu fee for lower-cost overnight accommodations within or in close proximity to the Coastal Zone

## CONCLUSION

As conditioned for payment of an in-lieu fee to provide for lower-cost overnight accommodations within or in close proximity to the Coastal Zone, the Commission finds the project consistent with the lower cost visitor and recreational facilities policies of the City of Dana Point certified LCP and the public access and recreation policies of the Coastal Act.

## **D. PARKING**

### **Local Coastal Program (LCP) Policies: Land Use Plan (LUP)**

#### **LAND USE ELEMENT (LUE)**

***Land Use Element (LUE) Policy 2.5:** Encourage the use of shared parking facilities, such as through parking districts or other mechanisms, in a manner that maintains and, where feasible, improves public access to the coast. (Coastal Act/30212.5, 30252)*

The City of Dana Point certified LCP contains policies requiring adequate parking to be provided to serve new development. An existing shared parking program exists, but it was necessary to amend this program in order to account for the proposed additions. In order to accomplish this, the applicant submitted an updated parking analysis by Kimley-Horn and Associates dated November 5, 2008. This report stated that there are currently 853 parking spaces available at the existing parking structure onsite, which are valet parked at all times. The proposed project includes re-striping to accommodate current requirements for handicap accessible parking, which would reduce the total parking supply to 847 parking spaces. The updated parking analysis takes into account the parking being loss to re-striping, the parking demand created by the proposed project, the parking demand of the existing hotel and its various uses, and the re-establishment of the 54 parking spaces currently used for hotel storage and determined that the hotel would have a maximum parking

demand of 837 parking spaces. The proposed parking supply is 847, thus there would be a surplus of no less than 10 parking spaces. Thus, adequate parking to serve the proposed project is being provided.

## **CONCLUSION**

As proposed by the applicant, the proposed parking would meet the public access protection policies of the City's LCP. Therefore, the Commission finds the proposed project consistent with the certified LCP. The proposed project is also consistent with the public access and recreation policies of the Coastal Act.

## **E. GEOLOGIC STABILITY**

### **Local Coastal Program (LCP) Policies: Land Use Plan (LUP)**

#### **CONSERVATION OPEN SPACE ELEMENT (COSE)**

***Conservation Open Space Element (COSE) Policy 2.9:** Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)*

***Conservation Open Space Element (COSE) COSE Policy 2.12:** New bluff top development shall minimize risks to life and property in geologically sensitive areas and be designed and located so as to ensure geological stability and structural integrity. Such development shall have no detrimental affect, either on-site or off-site, on erosion or geologic stability, and shall be designed so as not to require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs. (Coastal Act/30253)*

***Conservation Open Space Element (COSE) Policy 2.13:** Bluff repair and erosion control measures such as retaining walls and other similar devices shall be limited to those necessary to protect existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs. (Coast Act/30251, 30253)*

### **Local Coastal Program (LCP): Implementation Plan (IP)**

#### **CHAPTER 9.27—COASTAL OVERLAY DISTRICT**

- (c) **Development Adjacent to Coastal Bluffs.** Development adjacent to coastal bluffs shall minimize hazards to owners, occupants, property, and the general public; be environmentally sensitive to the natural coastal bluffs; and protect the bluffs as a scenic visual resource. The minimum setback from the bluff edge of a coastal bluff*

*shall be established by the underlying zoning district. However, in no case shall the minimum setback be less than 25 feet or one which provides for 50 years of erosion, whichever is most restrictive [Emphasis added].*

*In addition, should the geotechnical report indicate bluff stabilization is required to ensure proposed development is safe from a threat of erosion and bluff failure for fifty years, additional setbacks will be required. Any approved slope stabilization measures shall be the least environmentally damaging feasible alternative and shall be designed to minimize alteration of the bluffs and be subordinate to the natural character of the bluffs.*

*Development setbacks from coastal bluff edges may not be the same due to varying geologic conditions and environmental conditions. The following provisions detail the items required for filing, the means by which coastal bluff edges are measured, criteria for review, development standards, and the potential development that may be permitted within the coastal bluff setback area.*

The City of Dana Point certified LCP requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The Ritz Carlton Laguna Niguel is situated on a coastal promontory in the City of Dana Point and the hotel site is comprised of a graded bluff top with coastal bluffs descending approximately 120 feet from the bluff top area. The upper bluff faces on the west and northwest sides of the site were graded during the development in the 1970's to create manufactured slopes at gradients of approximately 2:1 (horizontal to vertical). Natural bluff areas exist on the southwest-facing bluff at the site, and on the lower bluff faces below the manufactured slopes. The site geology generally consists of marine terrace deposits overlying sedimentary formations comprised of siltstone and shale, and a relatively erosion-resistant sedimentary breccia which forms the promontory at the site (Ninyo & Moore, August 2011/December 2011). The proposed project involves new development within and along the seaward side of the existing hotel. Although the room additions to the existing hotel structure, which mainly encompass infill development, would result in seaward encroachment of portions of the hotel, the resultant hotel additions would not be the seawardmost point of the hotel. The proposed project also includes two (2) new at grade detached casitas.

The applicant submitted a number of geotechnical reports in order to analyze the geology of the project site in relation to the proposed project: *Response to Notice of Incomplete Application* prepared by Ninyo & Moore dated June 1, 2010 (Project No. 207118001); *Geotechnical Evaluation* prepared by Ninyo & Moore dated August 29, 2011 (Project No. 207118001); and *Revised Geotechnical Evaluation* prepared by Ninyo & Moore dated December 1, 2011 (Project No. 207118001). Within the August 2011 and December 2011 reports a slope stability and bluff retreat

analysis was performed for the proposed project and it determined that there has been no detectable bluff retreat at the site except for one small slump on the westernmost bluff. The slopes that are located below the proposed infill development at the top of the western and northern bluffs were shown to be stable (factors of safety of greater than 1.5), but that on the southern slope, at the location of the proposed casitas, was not shown to be stable. The point on the bluff top in this location, on the southern slope, where a 1.5 factor of safety is achieved is shown to be 60-feet from the bluff edge. As such, the proposed casitas are now landward of this line (as stated earlier, the original project included a 3<sup>rd</sup> casita even more seaward, but has since been removed from the project).

The August 2011 and December 2011 reports also analyzed sea level rise and determined that a sea level rise scenario of 16-inches by 2050 and 55-inches by 2100 is projected during the 75-year economic lifespan of the proposed expansion. Furthermore, the bluff areas have remained relatively stable over the past 82 years or more and thus a very low rate of retreat at this site is expected and is anticipated to continue in the future until sea level rise begins to have more of an effect on the beach below the site. An elevated roadway (at approximately 15-feet MLS) exists above the beach and below the toe of the bluffs at the site. The County of Orange Parks Department and the public utilize the road for access to the beach and public facilities along the roadway. The roadway is protected from wave erosion by a rip-rap revetment that exists on the slope below the roadway and it is anticipated that the road-way and rip-rap revetment would continue to be maintained and would function as a protective measure for the toe of the bluffs at the site during the predicted sea level rise of 55 inches by 2100. These reports conclude that while erosion from sea level rise is anticipated, that due to the composition of the geology onsite, deep seated failures are not anticipated: *“As sea level rises and periodic storm surge and wave activity impact the toe at the bluffs, it is our opinion that the dense shale, siltstone and breccia formations would continue to provide resistance to erosion. We anticipate that erosion along the toe of the bluffs would be relatively slow and would result in some undercutting of the bluffs. However, due to the competent characteristics of these formational materials and the favorable geologic structure, deep seated bluff failures are not anticipated.”*

There have been conflicting determinations in regards to establishing the location of the bluff edge onsite. Prior to the construction of the hotel, there was a public access path that was cut down the face of the mostly western bluff. This path required cutting back the coastal bluff face above the path and to assure stability of this cut; the bluff was benched and covered with compacted artificial fill. The Commission geologist, Dr. Mark Johnsson, concluded that in earlier City and Commission approvals on the subject site, the Commission and City accepted the bluff edge determination as the contact between the unaltered natural bluff seaward of the public path and the public path cut into the bluff; the “*manufactured slope*” above the public access trail was no longer considered a coastal bluff. Previous Commission actions (i.e., CDP NO. 5-82-291 & CDP No. 5-82-291-A3) have identified this as the bluff edge using the same criteria for each instance—the language of section 13577(h) of the Commission’s regulations, which the City incorporated into its certified LCP. Therefore, the existing 393 room hotel was approved and built using this bluff edge determination. Further, the staff report for CDP NO. 5-82-291-A3 for the construction of a new fitness center along the seaward side of the hotel indicated the existing hotel was setback 60-feet from the bluff edge

and that the new fitness center would be setback 70-feet from the previous bluff edge location--the point of contact between the unaltered natural bluff below the public path and the edge of the public path cut into the bluff. The Commission's Staff Geologist, Dr. Mark Johnsson notes that this is not the current Commission interpretation of the definition of "*coastal bluff*" or "bluff edge". Rather, he notes, as the case is here, when the top of the coastal bluff was graded (cut), the bluff edge moved landward corresponding to the cut. Thus, the bluff edge is the landward edge of the cut and, thus, the "*manufactured slope*" still constitutes a coastal bluff.

As stated in the certified LCP, a minimum setback of 25-feet from the bluff edge is required. However, the proposed infill room additions along the northern and western parts of the hotel would be within the 25-foot setback (Exhibit No. 5), if one uses the Commission's current interpretation of the location of the bluff edge on this site. Additionally, much of the existing buildings also are already within the 25-foot setback (Exhibit No. 5). However, the geotechnical report states that these infill additions would be stable for their economic life (typically 75 years) based on the historic stability of the site, composition of the geology onsite, and the existing rip-rap revetment located on the slope below the existing public roadway.

Thus, while the current bluff edge and the historic bluff edge interpretations for this project site are inconsistent, the site is shown to be stable relative to the proposed development. The LCP states that the minimum bluff edge setback shall be no less than 25-feet OR one which provides for 50 years of erosion, which ever is most restrictive. As stated previously, the geotechnical reports have determined that the infill additions will be stable for their economic life, which is typically 75 years. Additionally, the Commission's Staff Geologist has reviewed these materials and stated in a memorandum (Exhibit No. 6) that he agrees that notwithstanding the conflicting determinations of the location of the bluff edge between the Commission's historical and current bluff edge determinations on this site, the proposed additions will be stable for their economic life which is typically 75 years on the coast. Therefore, the proposed development is consistent with the geologic hazard policies of the certified LCP.

These reports conclude that the project is feasible from a geotechnical perspective and can be constructed without adverse geologic impacts on bluff retreat, bluff stability or adjacent properties, provided that the recommendations presented in their report are implemented in design and construction. The reports include recommendations for site preparation and foundation design. To ensure that the project is carried out in conformance with the geotechnical recommendations, the Commission imposes **SPECIAL CONDITION NO. 7** that requires the applicant to submit final project plans, which have been reviewed, signed and stamped by an appropriately licensed geotechnical professional.

Although adherence to the geotechnical consultants' recommendations would minimize the risk of damage from bluff and slope instability, erosion, landslides and wave uprush the risk is not entirely eliminated. It is noted that there has been some bluff retreat onsite. Therefore, the standard waiver of liability condition has been attached via **SPECIAL CONDITION NO. 8**.

No shoreline or bluff protection device is proposed for the proposed project. However, because the proposed project includes new development, it can only be found consistent with LCP Policy COSE 2.12 of the Coastal Act if a bluff or shoreline protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the property is not presently subject to flooding or erosion forces caused by wave action, tidal changes or a rise in sea level as currently existing and that the site is stable and that no bluff or shoreline protection devices would be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development would not in any way "*require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*" However, as stated previously, the record of Coastal Development Permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information, which states that the site is safe for development without the need for protective devices. Therefore, the Commission imposes **SPECIAL CONDITION NO. 9** which states that no shoreline or bluff protective devices shall be permitted to protect the proposed development and that the applicant waives, on behalf of himself/herself and all successors and assigns on behalf of himself/herself and all successors and assigns, any rights to construct such devices.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the possibility of failure, landslides, and sloughing. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation.

Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society ([www.CNPS.org/](http://www.CNPS.org/)) in their publications. In the areas on the rear of the lot, landscaping should consist of plant species native to coastal Orange County only.

The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. Water onsite can be reduced by limiting permanent irrigation systems. Consequently, irrigation must be limited to temporary irrigation only as needed to establish plants.



The applicant has submitted a landscape plan and the plan does consist of drought tolerant, non-invasive plants. To make sure that vegetated landscaped areas consist only of drought tolerant plants native to coastal Orange County and appropriate to the habitat type, the Commission imposes **SPECIAL CONDITION NO. 10**, which requires the applicant to comply with the submitted landscape plan, which would minimize the potential for the introduction of non-native invasive species and would also minimize the potential for future bluff failure.

## CONCLUSION

As conditioned for submittal of final project plans, which have been reviewed, signed and stamped by an appropriately licensed geotechnical professional, an assumption of risk, no future shoreline or bluff top protective devices, and conformance with the submitted landscape plans, the Commission finds the project consistent with the geologic hazard policies of the certified LCP.

## **F. SCENIC AND VISUAL RESOURCES**

### **CONSERVATION OPEN SPACE ELEMENT (COSE)**

*Conservation Open Space Element (COSE) Policy 6.4: Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)*

The City's certified LCP requires new development to be designed to protect scenic ocean views and to be consistent with the character of the surrounding area. The proposed project involves construction of new enclosed building area within and on the seaward side of the existing hotel. Neither the proposed meeting room expansion over the existing loading dock nor the other expansions creating the new guestrooms would exceed the existing height of the hotel. The meeting room and guestroom additions would not result in an adverse visual impact from the ocean or park, nor would the project obstruct existing public views of the ocean. As such, the proposed project would not adversely affect existing public coastal views. Additionally, the new development is designed to continue the architectural theme of the Ritz Carlton hotel and would not adversely affect the surrounding environment.

## CONCLUSION

As proposed by the applicant, the proposed project would meet the scenic and visual resource protection policies of the City's LCP. Therefore, the Commission finds the proposed project consistent with the certified LCP with regard to protection of scenic and visual resources.

## **G. WATER QUALITY**

**CONSERVATION OPEN/SPACE ELEMENT (COSE)**

***Conservation Open Space Element (COSE) Policy 1.3:*** *Conserve imported water by providing water conservation techniques, and using reclaimed water, water conserving appliances, and drought-resistant landscaping when feasible.*

***Conservation Open Space Element (COSE) Policy 1.7:*** *Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)*

The City of Dana Point LCP requires new development to meet specific water quality standards. As new development may potentially impact water quality through construction activities and post-construction stormwater runoff, the Commission must ensure that appropriate measures are taken to maintain and enhance water quality to the maximum extent feasible, consistent with the certified LCP. The proposed project involves new construction on a blufftop property between the first public road and the sea. The proposed project involves new development within and along the seaward side of the existing hotel.

In order to address the post construction water quality impacts, the applicant has submitted a *Water Quality Management Plan (WQMP)* prepared by Psomas dated December 13, 2011 that describes site design and treatment BMP's to reduce potential water quality impacts. The *WQMP* states that source control BMP's would include measures such as: providing education materials to residents, occupants, or tenants to increase the public's understanding of stormwater quality, sources of pollutants, and what they can do to reduce pollutants in stormwater; the hotel's maintenance staff would sweep and maintain the private driveways and public walkways on the hotel site on a daily basis; and the project would incorporate pervious surfaces, including grass and gravel, along the public pedestrian pathway near the proposed casitas to allow infiltration. The *WQMP* states that treatment control BMP's would include measures such as: vegetated swales, vegetated buffer strips and bioretention.

In order to address water quality impacts during construction, the applicant has submitted a *Storm Water Pollution Prevention Plan (SWPPP)* prepared by Psomas dated December 13, 2011 that describes how water quality would be protected during construction. The *SWPPP* states that some measures to protect water quality during construction would include: equipment washing/cleaning in designated areas and that pollutants discharged from this operation would be discharged into a sump within the washing area; washing of exposed aggregate concrete is not expected to be used on this project; and that all streets and all operational storm drain inlets must be adequately swept, and

all operational storm drain inlets be adequately protected by inlet protectors before street washing operation.

To ensure that the *WQMP* and *SWPPP* are adhered to, the Commission is imposing **SPECIAL CONDITION NO. 11 and NO. 12**, which requires the applicant to conform to the submitted *WQMP* and *SWPPP*, both prepared by Psomas dated December 13, 2011.

## CONCLUSION

Therefore, as conditioned, the Commission finds that the proposed project is consistent with the water quality policies of the certified LCP.

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located within an existing resort facility. Development already exists on the subject site. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with policies of the certified LCP and the Coastal Act: : **1)** retention of the special conditions of the underlying permit (5-82-291, as amended) not affected by the current action; **2)** submittal of revised project plans to remove development no longer proposed; **3)** recordation of an updated deed restriction with Public Access Map to reflect new development; **4)** maintenance of public access during construction; **5)** conformance with the construction staging plan; **6)** payment of an in-lieu fee to provide for lower-cost overnight accommodations within or in close proximity to the Coastal Zone; **7)** conformance with geotechnical recommendations; **8)** assumption of risk; **9)** no future bluff or shoreline protective devices; **10)** conformance with the submitted landscape plan; **11)** conformance with the submitted Water Quality Management Plan (WQMP); **12)** conformance with the submitted Storm Water Pollution Prevention Plan (SWPPP); and **13)** liability for costs and attorneys fees.. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.

## **APPENDIX 1**

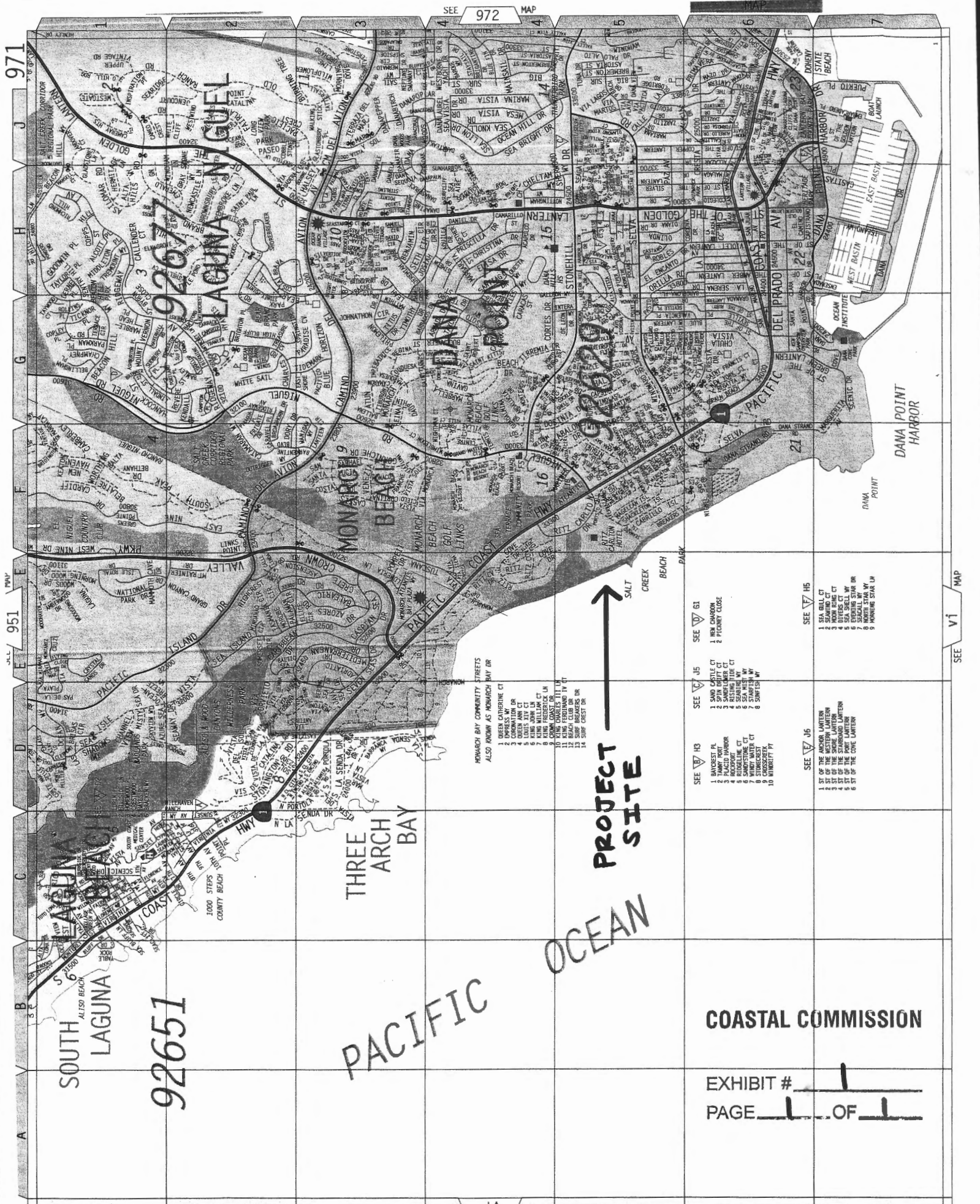
### **SUBSTANTIVE FILE DOCUMENTS:**

City of Dana Point Local Coastal Program (LCP);  
City of Dana Point Variance: V07-07;  
City of Dana Point Site Development Permit: SDP07-15;  
City of Dana Point Minor Conditional Use Permit: CUP98-14(M)(I);  
Negative Declaration;  
Coastal Development Permit No. P-79-5539-(AVCO);  
Coastal Development Permit No. 5-82-291-(AVCO);  
Coastal Development Permit No. 5-82-291-A-(AVCO);  
Coastal Development Permit No. 5-82-291-A2-(SHC Laguna Niguel);  
Coastal Development Permit No. 5-82-291-A3-SHC Laguna Niguel;  
Coastal Development Permit No. 5-87-220-(Prutel Joint Venture);  
Letter from Commissions staff to Kollin Altomare Architects dated October 15, 2009;  
Letter from Kollin Altomare Architects to Commission staff dated June 21, 2010;  
*Response to Notice of Incomplete Application* prepared by Ninyo & Moore dated June 1, 2010  
(Project No. 207118001);  
Letter from Commissions staff to Kollin Altomare Architects dated July 21, 2010;  
*Geotechnical Evaluation* prepared by Ninyo & Moore dated August 29, 2011 (Project No.  
207118001);  
Letter from Commissions staff to Kollin Altomare Architects dated October 30, 2011;  
Letter from Kollin Altomare Architects to Commission staff dated December 15, 2011;  
*Revised Geotechnical Evaluation* prepared by Ninyo & Moore dated December 1, 2011 (Project  
No. 207118001);  
*Water Quality Management Plan (WQMP)* prepared by Psomas dated December 13, 2011; and  
*Storm Water Pollution Prevention Plan (SWPPP)* prepared by Psomas dated December 13, 2011.

## APPENDIX 2

### **STANDARD CONDITIONS**

1. **NOTICE OF RECEIPT AND ACKNOWLEDGEMENT:** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **EXPIRATION:** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **INTERPRETATION:** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **ASSIGNMENT:** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **TERMS AND CONDITIONS RUN WITH THE LAND:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



971  
951  
92677  
92651

SEE 972 MAP

SEE V1 MAP

PROJECT SITE

COASTAL COMMISSION  
EXHIBIT # 1  
PAGE 1 OF 1

MONARCH BAY COMMUNITY STREETS  
ALSO KNOWN AS MONARCH BAY DR

- 1 QUEEN CATHERINE CT
- 2 EMPRESS WY
- 3 CORONATION DR
- 4 LUIS XIV CT
- 5 KING JAMES LA CT
- 6 KING FREDERICK LA
- 7 CHURCH ST
- 8 KING FERNANDO IV CT
- 9 KING ALFONSO DR
- 10 KING ALFONSO DR
- 11 KING ALFONSO DR
- 12 KING ALFONSO DR
- 13 KING ALFONSO DR
- 14 KING ALFONSO DR

SEE 61

- 1 NEW CHANDLER
- 2 TIGER CLOSE

SEE J5

- 1 SAND CASTLE CT
- 2 SPAN DRIFT CT
- 3 RACING RIDGE CT
- 4 RACING RIDGE CT
- 5 RACING RIDGE CT
- 6 RACING RIDGE CT
- 7 RACING RIDGE CT
- 8 RACING RIDGE CT

SEE H3

- 1 BANCROFT PL
- 2 TAMI PORT
- 3 TAMI PORT
- 4 TAMI PORT
- 5 TAMI PORT
- 6 TAMI PORT
- 7 TAMI PORT
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- 9 TAMI PORT
- 10 TAMI PORT

SEE H5

- 1 SEA GULL CT
- 2 SEA GULL CT
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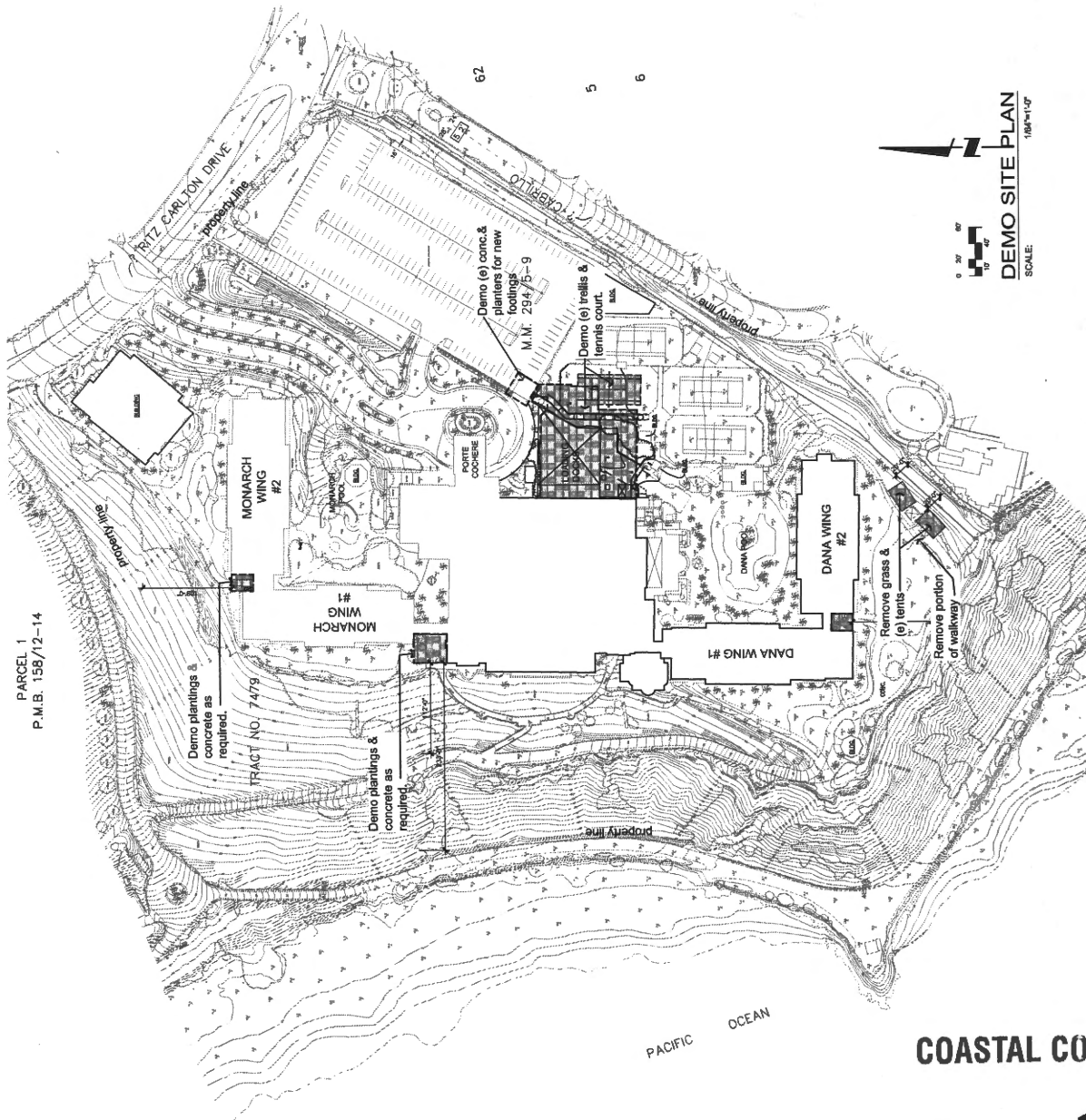
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# THE RITZ-CARLTON

1

REVISÉD 11/4/11



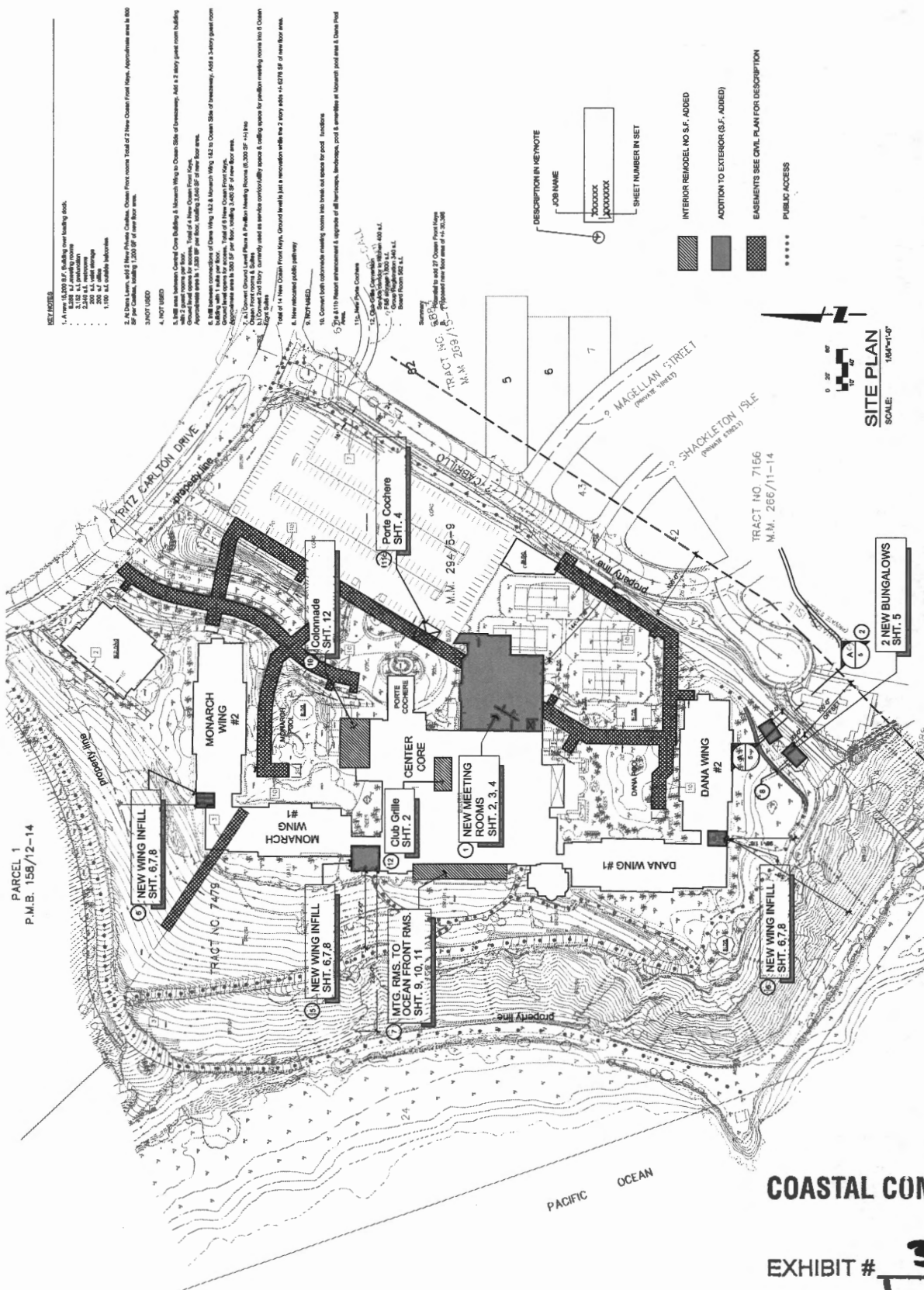
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COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1



# THE RITZ-GAVLTON

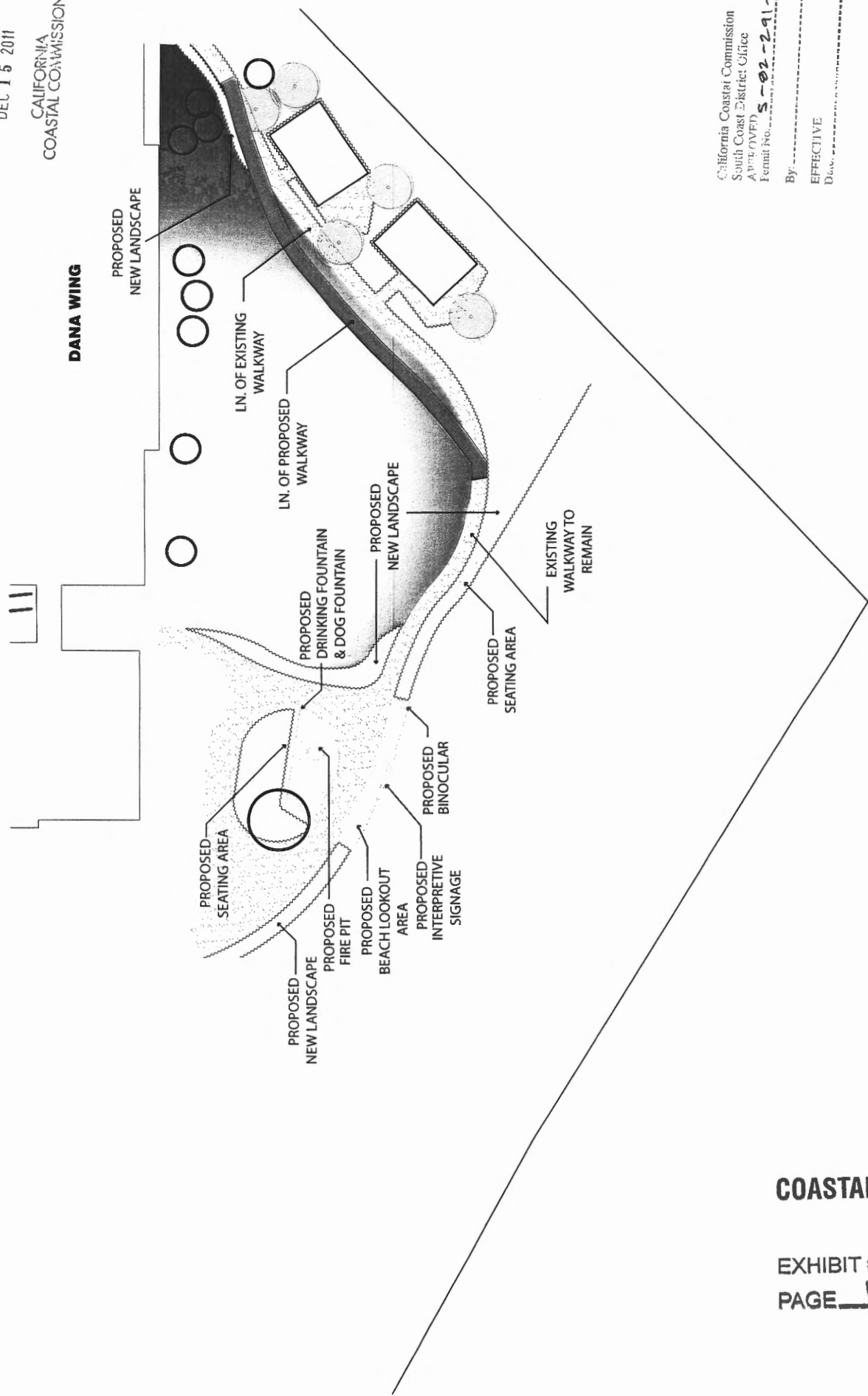


## COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 1



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South Coast Region  
DEC 15 2011  
CALIFORNIA  
COASTAL COMMISSION



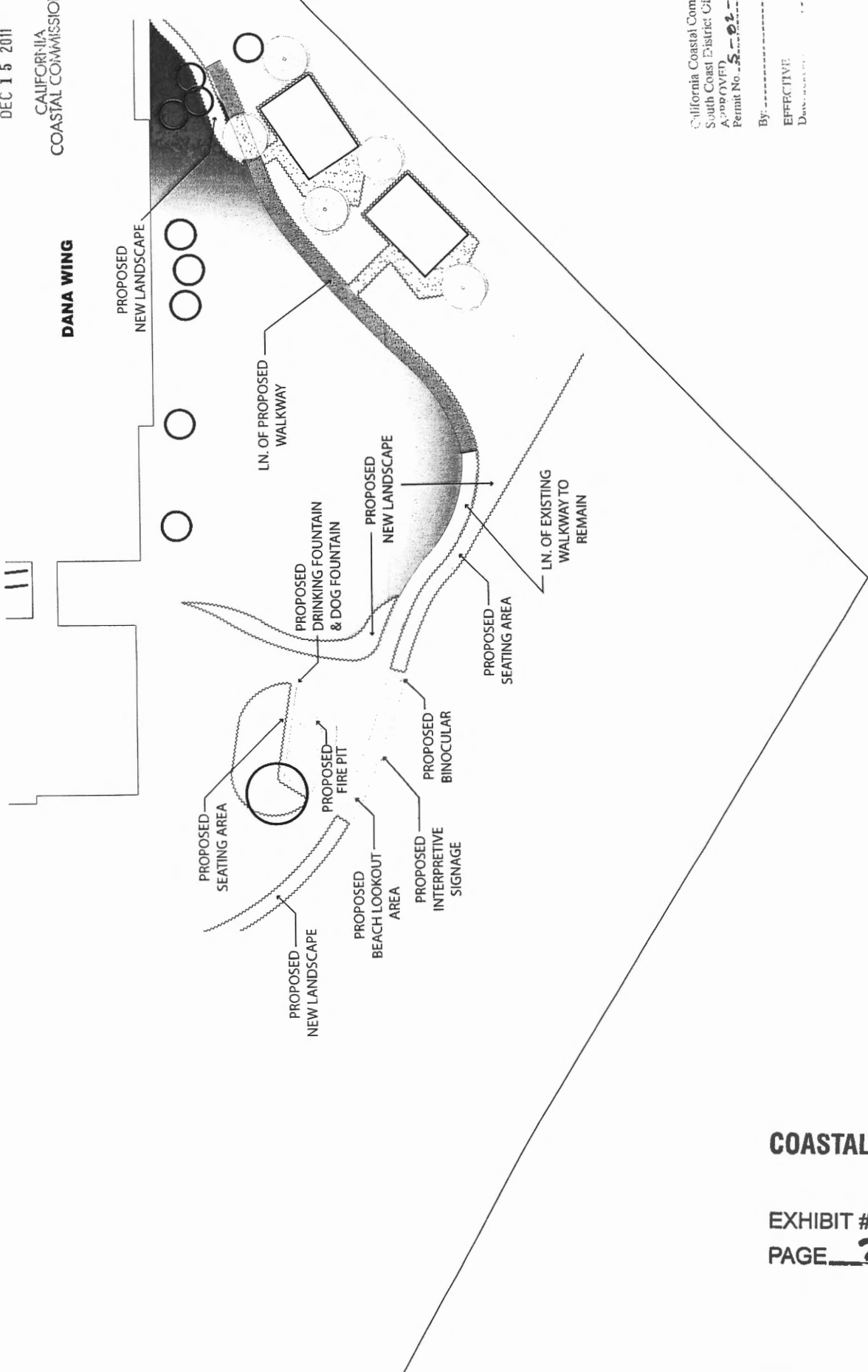
California Coastal Commission  
South Coast District Office  
APPLICANT: S-02-291-A4  
Permit No.:  
By: \_\_\_\_\_  
EFFECTIVE: \_\_\_\_\_  
Date: \_\_\_\_\_

RECEIVED  
South Coast Region

DEC 15 2011

CALIFORNIA  
COASTAL COMMISSION

**DANA WING**



California Coastal Commission  
South Coast District Office  
APPROVED  
Permit No. S-02-291-04  
By: \_\_\_\_\_  
EFFECTIVE \_\_\_\_\_  
Date: \_\_\_\_\_

**COASTAL COMMISSION**

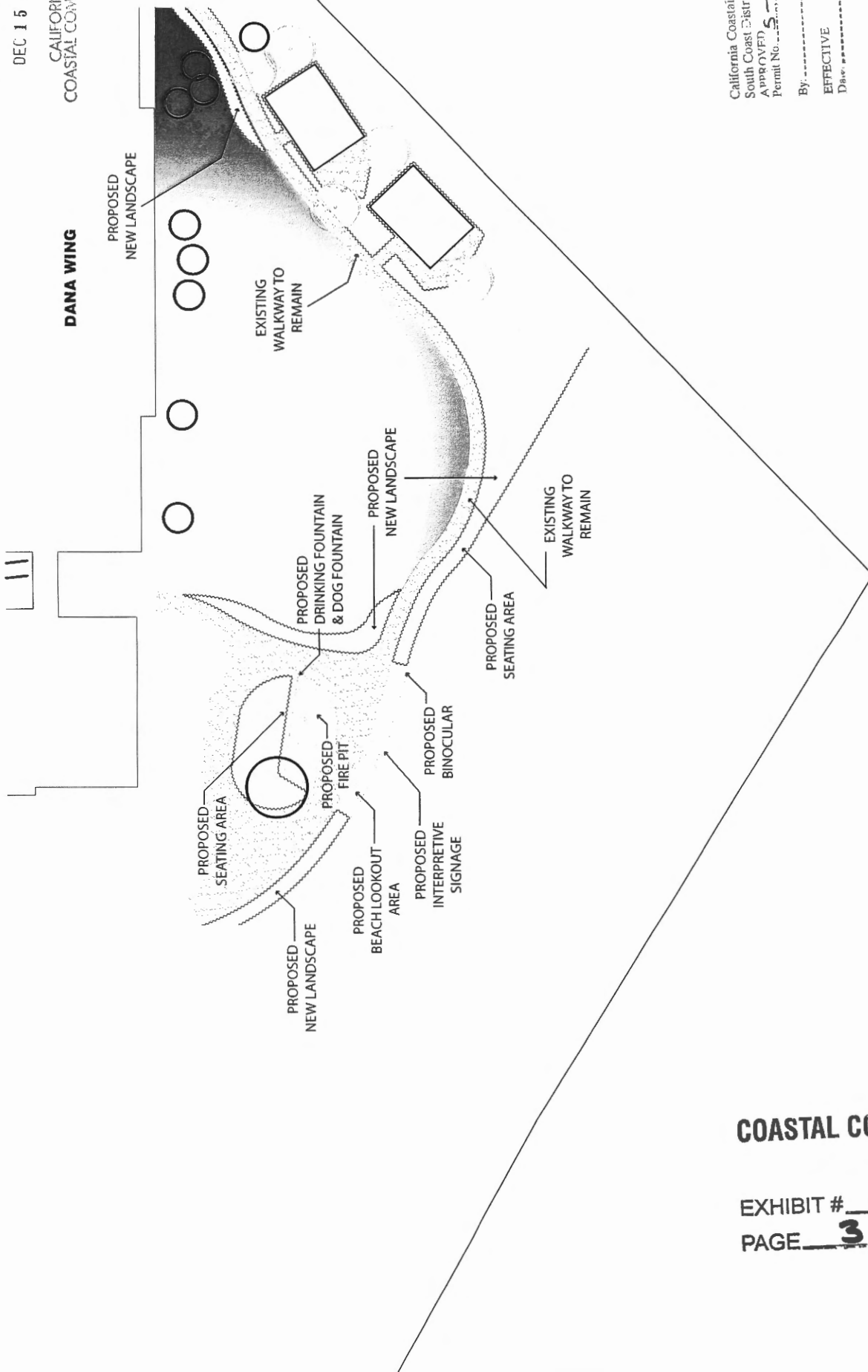
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PAGE 2 OF 3

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DEC 15 2011

CALIFORNIA  
COASTAL COMMISSION

DANA WING

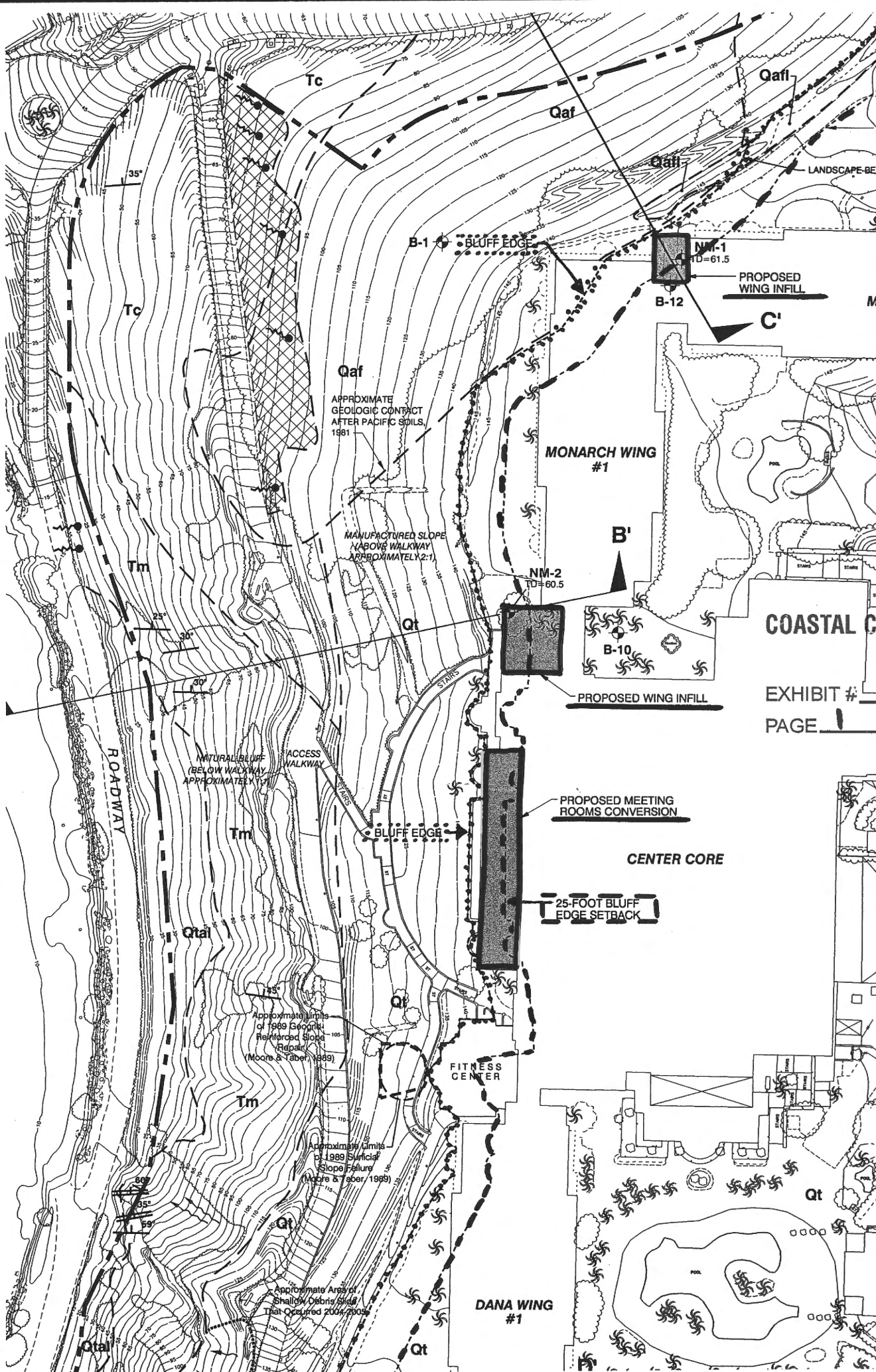


California Coastal Commission  
South Coast District Office  
APPROVED  
Permit No. 5-02-29174

By: \_\_\_\_\_  
EFFECTIVE  
Date: \_\_\_\_\_

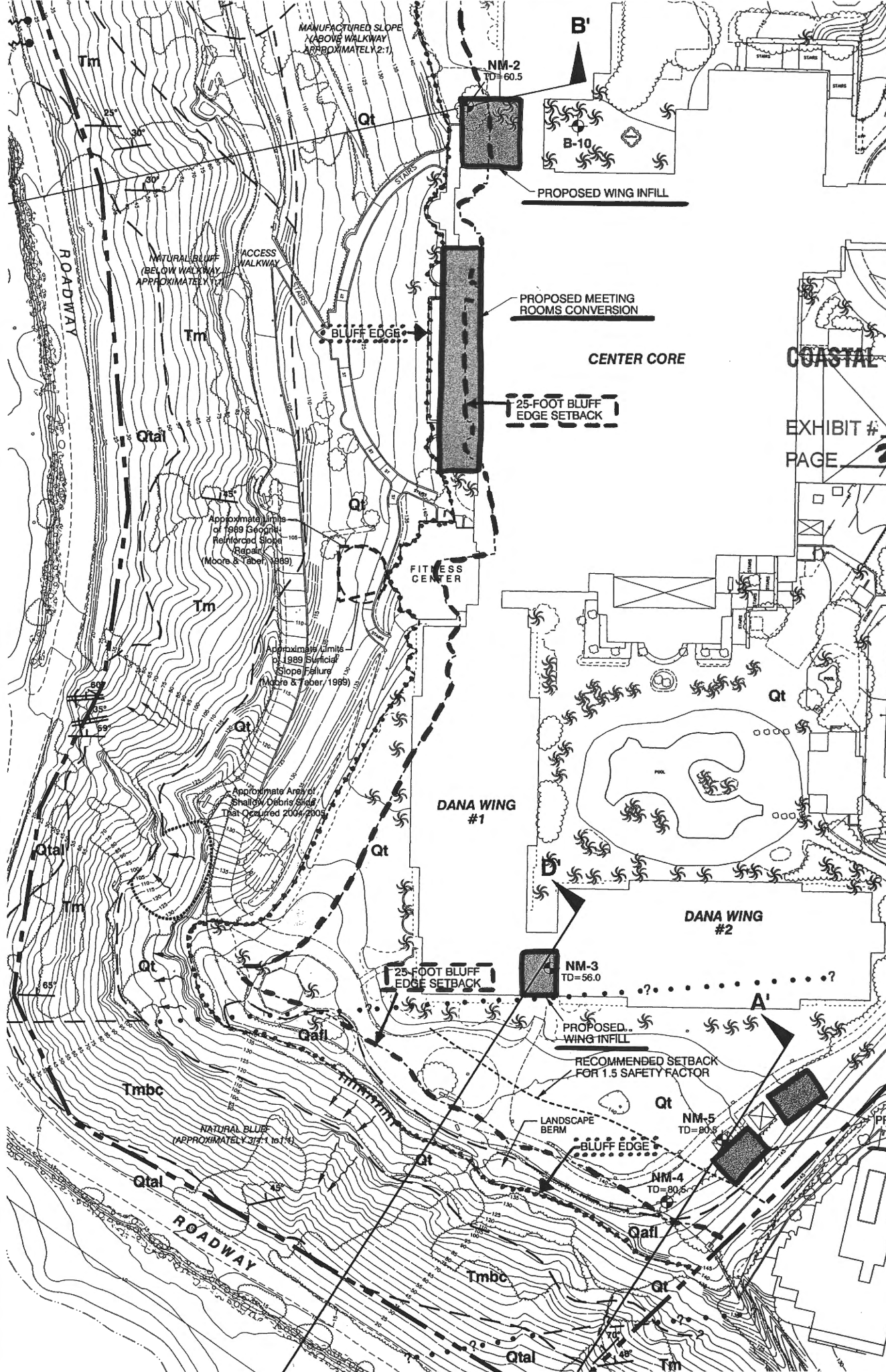
COASTAL COMMISSION

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COASTAL COMMISSION

EXHIBIT # S  
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COASTAL COMMISSION

EXHIBIT # S  
PAGE 2 OF 2

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



29 March 2012

**GEOTECHNICAL REVIEW MEMORANDUM**

To: Fernie Sy, Coastal Program Manager  
From: Mark Johnsson, Staff Geologist  
Re: Ritz-Carlton Hotel Expansion CDP (5-82-294-A4)

In connection with the above-referenced permit amendment application, I have reviewed the following documents:

- 1) Ninyo and Moore, 2007, "Preliminary geotechnical evaluation, proposed hotel expansion, the Ritz-Carlton Laguna Niguel, 1 Ritz Carlton Drive, Dana Point, California", 37 p. geotechnical report dated 9 August 2007 and signed by M. E. Rogers (CEG 2364), L. Jansen (CEG 1198) and J. Vakili (PE).
- 2) Ninyo and Moore, 2008, "Response to City review comments, proposed hotel expansion, the Ritz-Carlton Laguna Niguel, 1 Ritz Carlton Drive, Dana Point, California", 11 p. response dated 11 March 2008 and signed by M. E. Rogers (CEG 2364) and S. Guha (RCE 58967).
- 3) Ninyo and Moore, 2010, "Response to Notice of Incomplete Application from Coastal Commission, proposed hotel expansion, the Ritz-Carlton Laguna Niguel, 1 Ritz Carlton Drive, Dana Point, California", 6 p. response dated 1 June 2010 and signed by M. E. Rogers (CEG 2364) and L. Jansen (CEG 1198).
- 4) Ninyo and Moore, 2011, "Geotechnical evaluation, proposed hotel expansion, the Ritz-Carlton Laguna Niguel, 1 Ritz Carlton Drive, Dana Point, California", 31 p. geotechnical report dated 29 August 2011 and signed by M. E. Rogers (CEG 2364), S. Guha (RCE 58967) and L. Jansen.
- 5) Ninyo and Moore, 2011, "Revised geotechnical evaluation, proposed hotel expansion, the Ritz-Carlton Laguna Niguel, 1 Ritz Carlton Drive, Dana Point, California", 37 p. geotechnical report dated 1 December 2011 and signed by M. E. Rogers (CEG 2364), S. Guha (RCE 58967) and L. Jansen (CEG 1198).

In addition, I have reviewed the architectural plans prepared by Kollin Altomare Architects, and have had numerous teleconferences with the applicants' agents, geologists, and engineers. I visited the site on 18 November 2010.

A Notice of Incomplete Application was sent to the applicant prior to my review of any of these materials. Geologic issues raised by this Notice include alternative siting of the bungalows so that they would be in a location that assured stability without reliance on engineering. **CALIFORNIA COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 1 OF 3



and the location of the bluff edge. Reference (3) is a response to these questions. Although it contains useful information for my review, it did not fully address the location of the bluff edge pursuant to the Dana Point LCP and Commission practice.

References (1) and (2) contained very preliminary results regarding slope stability and relied on soil strength parameters not derived from materials sampled at the subject site. Accordingly, the slope stability analyses contained therein were not suitable for establishing bluff edge setbacks for the new development. In addition, a quantitative bluff retreat analysis in the light of expected continued sea level rise was not performed. At the time, a caisson-tieback system was proposed to bring the site of the seaward most bungalow (south end of property) up to a static factor of safety of 1.5, but it was unclear what forces were necessary to do so.

Accordingly, after meeting with the applicants and their geological and engineering consultants, reference (4) was prepared. This report showed that there has been no detectable bluff retreat at the site, aside from one small slump on the westernmost bluff. Further, the site is protected by a rip rap revetment and a public road along the base of the bluff, so bluff retreat, even in the face of continued or accelerated sea level rise, should be minimal. The slopes below the infill development proposed at the top of the western and northern bluffs were shown to be stable (factors of safety of greater than 1.5), but that on the southern slope, at the location of the proposed bungalows, was not. The point on the bluff top where a 1.5 factor of safety is achieved is shown to be 60 feet from the bluff edge, and that distance is the proposed setback for new development on shallow foundations. Reference (5) and the revised architectural plans show the elimination from the project of the bungalow that falls seaward of this line.

I concur with the conclusion reached in reference (5) that as sited, all of the proposed development will be stable for its economic life, even in the face of continued sea level rise.

Finally, some discussion regarding the bluff edge delineation is warranted. Prior to the construction of the hotel, a public access path was cut down the face of the bluff, mostly on the western bluff. This cut required cutting back the coastal bluff face above the path. To assure stability of this cut, it was benched and covered with compacted artificial fill. In earlier City and Commission approvals, the bluff edge was incorrectly identified as the contact between the unaltered natural bluff and the path cut into the bluff; the "manufactured slope" was no longer considered a coastal bluff. This is not the current Commission interpretation of the definition of "coastal bluff" found in the City's LCP, Chapter 9.75.030 "C" Definitions and Illustrations of Terms", which is nearly identical to the definition found in Title 14 CCR section 15577 (h)<sup>1</sup>:

- (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and
- (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified as an Appealable Area.

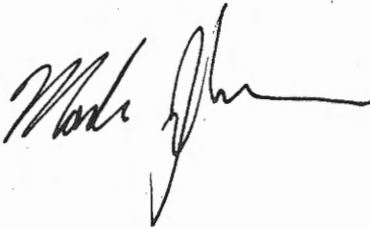
<sup>1</sup> The "as an Appealable Area" language in the LCP is the only difference from the Commission regulations which identifies the Coastal Act provision for appealability of a locally issued GDR and reads as follows, "in Public Resources Code Section 30603(a)(1) or (a)(2)."

**COASTAL COMMISSION**

When the top of a coastal bluff is graded (cut), the bluff edge moves landward corresponding to the cut. If fill is placed over that cut slope, the bluff edge remains, buried beneath the fill. This is the situation for much of the western bluff at the project site. In fact, the building is coincident with this cut slope for much of its western exposure, so it constitutes the bluff edge in these locations, even though there is a flat area of artificial fill seaward of it. The bluff edge is correctly delineated in reference (5). I note that the proposed new additions and much of the existing building are within the 25 foot setback mandated by the LCP when applying the Commission's current interpretation of the definition of coastal bluff. Notwithstanding the conflicting determinations of the location of the bluff edge between the previous and current bluff edge determinations on this site, the proposed additions will be stable for their economic life.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Johnsson", with a long horizontal flourish extending to the right.

Mark Johnsson, Ph.D., CEG, CHG  
Staff Geologist

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 3 OF 3