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Staff: A. Willis-LB  
Staff Report: 2/15/13  
Hearing Date: 3/07/13

## **STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR CONSENT CEASE AND DESIST AND CONSENT RESTORATION ORDERS**

<b>Cease and Desist Order No:</b>	<b>CCC-13-CD-02</b>
<b>Restoration Order No:</b>	<b>CCC-13-RO-02</b>
<b>Related Violation File:</b>	<b>V-5-07-039</b>
<b>Property Owner:</b>	<b>Caribbean Dana Point Investors LLC</b>
<b>Property Location:</b>	32354 Caribbean Drive, Dana Point (Orange County); Orange County APN 670-101-21.
<b>Violation Description:</b>	Grading of roads, removal of major vegetation, placement of sandbags, and installation of a landslide buttress consisting of fill, earthen berms, retention basins, and drains resulting in damage to environmentally sensitive habitat areas.
<b>Substantive File Documents:</b>	1. Public documents in Cease and Desist and Restoration Order files Nos. CCC-13-CD-02 and CCC-13- RO-02 2. CDP No. A-5-DPT-306 3. Exhibits #1 through 6 and Appendix A of this staff report
<b>CEQA Status:</b>	Exempt (CEQA Guidelines (CG) § 15060(c)(3) and Categorically

## **SUMMARY OF STAFF RECOMMENDATION**

### **Proposed Consent Orders**

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-13-CD-02 and Consent Restoration Order No. CCC-13-RO-02 (“Consent Orders”). These Consent Orders address the unpermitted grading of roads, removal of major vegetation, placement of sandbags, and installation of a landslide buttress consisting of fill, earthen berms, retention basins, and drains (“Exhibit 2”) resulting in damage to Environmentally Sensitive Habitat Areas (“ESHA”), that occurred on the western portion of a vacant property at 32354 Caribbean Drive, Dana Point; Orange County<sup>1</sup> (“subject property”) (Exhibit 1).

The unpermitted development that is the subject of these Consent Orders was originally undertaken by a previous owner of the subject property.<sup>2</sup> The current owner, Caribbean Dana Point Investors LLC (“Respondent”), took title to the subject property in December 2012.

In April 2012, when the property was owned by Mehrdad Safari, the Commission approved Coastal Development Permit No. A-5-DPT-05-306 (“the CDP”) (“Exhibit 3”), which authorized construction of a single-family residence on the subject property. The permit was approved subject to conditions that had to be satisfied before the permit could be issued, some of which have not yet been satisfied, so the permit has not yet been issued. In approving the CDP, the Commission found that unpermitted development had occurred on the subject property, including the grading, vegetation removal and installation of a landslide buttress that is the subject of these Consent Orders. The Commission action also authorized revegetation of some of the areas impacted by the unpermitted development.

In the findings that the Commission adopted in conjunction with that permit approval, the Commission further noted that “Additional steps necessary to fully address the unpermitted development will be considered by the Commission’s enforcement unit, and handled as a separate matter.” These Consent Orders are intended to fully resolve the violations on the subject property identified herein by, amongst other things, providing a requirement that Respondent, independent of whether the CDP is issued, both restore and/or revegetate areas of the property impacted by unpermitted development, as more fully described in this staff report, and restore, maintain, and preserve additional native habitats in coastal Orange County to offset temporal loss of habitat resulting from the

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<sup>1</sup> Orange County APN 670-101-21.

<sup>2</sup> The unpermitted grading and fill occurred in 1981. Unpermitted installation of sandbags and tarps likely occurred in years subsequent, but prior to the current owner’s acquisition of the property. According to staff’s research, the entity that undertook the original unpermitted development is no longer in existence.

subject Coastal Act violations. In addition, the Consent Orders resolve monetary claims under the Coastal Act.

The subject property is a vacant, irregularly shaped, 14.66-acre hillside lot in the Monarch Beach community of Dana Point. The site is inland of Pacific Coast Highway. The property is bordered by single-family residential developments to the east, to the south across Caribbean Drive, and at the southwest corner of the property. Open space areas are located toward the west, north and northwest.

Native plant communities, including coastal sage scrub (“CSS”) and southern maritime chaparral (“SMC”), constitute the predominant coastal resource affected by the unpermitted development that is the subject of these proceedings. Except for some previously disturbed areas,<sup>3</sup> the site is largely vegetated with CSS and SMC. The Commission’s staff ecologist has concluded that the areas on the property vegetated with SMC, including transitional SMC, are ESHA, due, in part, to its rarity and ecological significance (see “Exhibit 6” for staff ESHA memorandum). Maritime chaparral is limited to coastal areas influenced by a maritime climatic regime; it occurs in the zone of summer fog and coastal cloud incursion. While maritime chaparral in general is considered rare, this habitat in the southern region of California, as well as northern Baja California, has been the hardest hit, having lost 82-93% of its original range due to intense development pressures. SMC is restricted in the southern region to a few locations ranging from Orange County to Baja California. About 4.9 acres of the central and western portions of the subject property are vegetated with this rare native plant community. This ESHA is contiguous with the .95-acre area of SMC that was impacted by the subject unpermitted development and will be revegetated pursuant to these Consent Orders.

Through the Consent Orders, Respondent has agreed to, independent of the requirements of the CDP, resolve the issue of unpermitted development by, restoring, maintaining, and preserving, pursuant to the terms and conditions of an expanded habitat management and restoration program, as fully described in the Consent Orders, the areas of CSS and SMC that were impacted by the unpermitted development at issue (see “Exhibit 5” for map of impacted areas), as well as all other currently disturbed habitat areas on the property that are outside the footprint of the development approved pursuant to the CDP (see “Exhibit 6” for map of restoration areas). Under the proposed orders, Respondent will also remove all unpermitted objects, as that phrase is defined in the proposed Consent Orders, from the site. Furthermore, under the proposed Consent Orders, Respondent will pay an in lieu fee to cover further restoration, combined with resolution of monetary claims under the Coastal Act through payment of \$320,000 to the Violation Remediation Account administered by the Coastal Conservancy pursuant to Coastal Act Section 30823, to be designated in consultation with the Executive Director of the Commission for funding of

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<sup>3</sup> As noted in the staff report for the CDP, at least one road on the site and perhaps other areas had been disturbed by 1979, and aerial photographs indicate that this disturbance occurred prior to the Coastal Act. But regardless of the timing of disturbance, all previously disturbed areas that are on the subject property and outside the footprint of the development approved pursuant to the CDP will be restored pursuant to the CDP and these Consent Orders.

natural habitat restoration and/or acquisition and permanent protection in coastal Orange County (See proposed Consent Orders attached as Appendix A).

These Consent Orders are a result of a collaborative effort by Respondent and Commission staff to reach a consensual resolution, focused on the restoration and protection of ESHA as well as fully resolving the claims so as to avoid any litigation whatsoever. Respondent has agreed to these Consent Orders and, accordingly, that it will not contest the issuance of these Consent Orders or their enforcement.

### **Coastal Development Permit**

The City of Dana Point (“City”) has a certified Local Coastal Program (“LCP”) for this area. At the April 2012 California Coastal Commission meeting, the Commission approved, on appeal, the CDP, which authorizes development on the subject property, including grading; construction of a 14,017 square foot, two-story, single-family residence; and a new driveway (supported by caissons).

Additionally, the CDP authorizes remediation of landslide areas along Caribbean Drive through excavation and installation of a seismically stable keyway, compacted soil, geogrid and plantable crib retaining wall system with native vegetation (up to 20-feet in height).

A geotechnical investigation prepared by a previous property owner’s geotechnical consultant indicates that there are four landslides on the site. The CDP authorizes remediation of landslide areas along Caribbean Drive by excavating and installing a seismically stable keyway, compacted soil, geogrid and plantable crib retaining wall system with native vegetation (up to 20-feet in height).

The residence and landslide remediation structures are approved for construction on the eastern portion of the subject property, generally separate from the areas impacted by the unpermitted development at issue, which are located on the western portion of the site. The landslide supported by the unpermitted buttress at issue is located at the upper northwest portion of the site. Since this area is covered with ESHA and no new development was proposed in this location, remediation of this landslide was not reviewed or addressed as part of the CDP application, other than to find that unpermitted development, including installation of the landslide buttress, had occurred on the subject property and to note that the unpermitted development would be addressed by the enforcement staff. However, the Commission staff geologist does note that the landslide buttress is currently functioning to stabilize the site and its removal or modification could result in geological instability and consequent impacts to ESHA resulting from potential slope failure, as well as disturbance from installation of any necessary remedial measures. Moreover, given the specifics of this site, the nature of the physical unpermitted buttress and the fact that the impacts were to a native plant community, SMC, it is possible to restore the functioning of the ESHA habitat here without requiring the removal of the landslide buttress; the presence, albeit sparse presence, of SMC indicator species within the impacted areas, suggests that growing conditions are adequate for potential full reestablishment of the biodiversity and robustness of the ESHA, which was present on



the site prior to the subject unpermitted development, through undertaking the restoration activities required by these Consent Orders.

In approving the CDP, the Commission found that unpermitted development had occurred on the subject property, including the grading, vegetation removal and installation of a landslide buttress that is the subject of these Consent Orders. The CDP authorizes restoration of the native plant communities that were impacted by the subject unpermitted development through implementation of a Habitat Management and Restoration Program.

The requirements of these Consent Orders, including some elements which were also contemplated in the CDP, are designed to be independent of the requirements of the CDP; if the CDP is not issued or exercised, the habitat restoration requirements of the CDP that are incorporated into these Consent Orders, and the habitat restoration requirements of these orders, as well as all other requirements of the Consent Orders, remain Respondent's freestanding obligations pursuant to the terms of these Consent Orders.

#### **Staff Recommendation**

Commission staff has worked closely with Respondent to reach an agreement on these Consent Orders to resolve the alleged Coastal Act violations, and staff recommends that the Commission approve the proposed settlement of these matters. Respondent, through these Consent Orders, has agreed to resolve all Coastal Act violation matters addressed herein, including resolving monetary claims under Coastal Act Sections 30820 and 30822, and will provide habitat restoration work and funding that will directly benefit native habitats both on and in the vicinity of the site. Staff recommends that the Commission **approve** Consent Cease and Desist Order CCC-13-CD-02 and Consent Restoration Order CCC-13-RO-02 (attached as Appendix A) to address the unpermitted development, and the results thereof, as described below.

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## APPENDICES

Appendix A - Proposed Consent Cease and Desist and Restoration Orders

## EXHIBITS

Exhibit 1	Site map and location
Exhibit 2	Photographs showing areas of unpermitted development
Exhibit 3	CDP No. A-5-DPT-306
Exhibit 4	Map of areas impacted by unpermitted development
Exhibit 5	Map of areas to be restored pursuant an expanded habitat management and restoration program
Exhibit 6	May 26, 2007 memorandum from Staff Ecologist Dr. John Dixon to staff regarding ESHA on the subject property

## **I. MOTION AND RESOLUTION**

### **Motion 1:**

*I move that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-02 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **Resolution to Issue Consent Cease and Desist Order**

*The Commission hereby issues Consent Cease and Desist Order No. CCC-13-CD-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, in violation of the Coastal Act.*

### **Motion 2:**

*I move that the Commission issue Consent Restoration Order No. CCC-13-RO-02 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **Resolution to Issue Consent Restoration Order**

*The Commission hereby issues Consent Restoration Order No. CCC-13-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.*

## **II. JURISDICTION**

The City has a certified LCP for this area. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing CDPs under the Coastal Act, and it has inherent (police power), to take enforcement actions for violations of its LCP. The Commission also retains enforcement authority to address violations under the conditions set forth in and as specified in Coastal Act Sections 30810(a) and 30811. However, the Commission has unconditional jurisdiction over this enforcement matter because, at the time the unpermitted development originally occurred, the subject property where the unpermitted development occurred was an area of deferred certification, and therefore,

that area was not subject to local regulation under the City LCP. Thus, the activity at issue did require a permit from the commission, as section 30810(a) states.<sup>4</sup>

### **III. HEARING PROCEDURES**

The procedures for a hearing on a cease and desist order and restoration order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195, respectively.

For a cease and desist order and restoration order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair shall then recognize other interested persons, after which time staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Consent Cease and Desist Order and Restoration Order. Passage of the motions below will result in issuance of the Consent Cease and Desist Order and Consent Restoration Order.

### **IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-13-CD-2 AND RESTORATION ORDER NO. CCC-13-RO-2<sup>5</sup>**

#### **A. DESCRIPTION OF UNPERMITTED DEVELOPMENT**

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<sup>4</sup>Although the Commission has direct enforcement authority in this matter, in the spirit of cooperation, Commission staff coordinated with the City, and City staff supported resolution of this matter through issuance of these Consent Orders, thus also satisfying the condition of Section 30810(a)(1) for Commission action in an area covered by a certified LCP.

<sup>5</sup> These findings also hereby incorporate by reference the preface of the February 15, 2013 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders”) in which these findings appear, which section is entitled “Summary of Staff Recommendation.”

The violations of the Coastal Act that formed the basis for these Consent Orders consist of development, as that term is defined in the Coastal Act section 30106, on the subject property that required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, including grading of roads, removal of major vegetation, placement of sandbags, and installation of a landslide buttress consisting of fill, earthen berms, retention basins, and drains on the western portion of the site resulting in damage to ESHA.

## **B. BACKGROUND**

### **The Site**

The site is a vacant 14.66-acre lot located in the City of Dana Point above the Monarch Beach community, near the intersection of Pacific Coast Highway and Crown Valley Road. The property is comprised of a large hillside lot located in a Biological Sensitive Area as shown on Figure COS-1 in the Conservation and Open Space Element of the City LCP. Except for some areas that have experienced past disturbance, the site is largely covered in native vegetation, including southern maritime chaparral (“SMC”) and coastal sage scrub (“CSS”). In memoranda to Commission staff (e.g. “Exhibit 6”), the Commission’s ecologist, Dr. John Dixon, has concluded that the areas vegetated with SMC, including transitional SMC, are ESHA, and that certain areas would be SMC if not for the unpermitted development at issue. The ESHA occupies about 4.9 acres of the central and westerly portions of the property. This ESHA is contiguous with the .95-acre area of SMC that was impacted by the subject unpermitted development and will be revegetated pursuant to these Consent Orders. The unpermitted development impacted an additional .20-acre area of CSS, as determined by the Commission’s ecologist, that will also be revegetated pursuant to these Consent Orders where located outside the footprint of the development approved pursuant to the CDP.

The property is bordered by single-family residential developments to the east, to the south, across Caribbean Drive, and at the southwest corner of the property. The remainder of the property is bordered on the west and northwest by the Aliso and Wood Canyons Wilderness Park and on the north by a lettered open space lot (owned by the neighboring Monarch Point Homeowners Association) located in the City of Laguna Niguel.

The subject property has experienced several slope failures that continue to be an ongoing source of concern for both the surrounding neighborhood and the City. For over 20 years, slope failures have been an issue along Caribbean Drive.

### **Permit History**

As noted above, the City has a certified LCP for this area. On July 6, 2005, the City Planning Commission approved Resolution No. 5-07-06-29 and Resolution No. 5-07-06-28, allowing development of a large single-family residence on the property. Concerns raised in the City’s approvals centered on the biological resources located on the property. The location on the property and potential impacts to two sensitive vegetation communities, transitional SMC and SMC, influenced the scope of the proposed grading,

fuel modification, and the size of the project, including by requiring the elimination of a tennis court and associated structures, and golf cart path originally proposed on the lower western portion of the property with the other proposed development.

On August 18, 2005, Coastal Commissioners appealed the development on the project site approved by the City. On September 16, 2005, the Commission found that the appeal raised substantial issues and overturned the City's approval of the local coastal development permit.

The project design was subsequently reduced and modified since the original appeal. At the April 2012 meeting, when at the time the property owner was Mehrdad Safari, the Commission approved the reduced and modified project. The approved project consists of the following: grading and construction of a 14,017 square foot, two-story, single-family residence and two separate one-story accessory buildings.

A geotechnical investigation prepared by a previous owner's geotechnical consultant (dated November 11, 2003) indicates that there are four areas of landslides on the site. Three of the landslides are located near the front property line contiguous to Caribbean Drive. In addition to the residence on the subject property, development authorized by the CDP includes a new driveway (supported by caissons) leading to the residence from Caribbean Drive and remediation of landslide areas along Caribbean Drive by excavating and installing a seismically stable keyway, compacted soil, geogrid and plantable crib retaining wall system with native vegetation (up to 20-feet in height). The plantable crib retaining walls will visually blend with the landscaped slopes to enhance the appearance of the neighborhood including the rectified landslide areas, as required by the City.

The residence and landslide remediation structures are approved on the eastern portion of the subject property, generally separate from the areas impacted by the unpermitted development at issue, which are located for the most part on the western portion of the site. The landslide supported by the unpermitted buttress at issue is located at the upper northwest corner of the western portion of the site. Since this area is covered with ESHA and no new development is proposed in this location, remediation of this landslide was not reviewed as part of the CDP application. However, the Commission staff geologist does note that the landslide buttress is currently functioning to stabilize the site and its removal or modification could result in geological instability and consequent impacts to ESHA resulting from potential slope failure, as well as disturbance from installation of any necessary remedial measures.

In approving the CDP, the Commission found that development had occurred on the subject property project without required Coastal Act authorizations, including the development described above in Section V.A. The CDP authorizes Respondent to restore native scrub habitat that was impacted by the unpermitted development. Through implementation of the required restoration program, Respondent will restore and enhance a minimum of 1.9 acres of native scrub habitat on-site with CSS and SMC. In addition to the habitat restoration and enhancement, Respondent will preserve an existing 8.6-acre area of habitat on site that includes ESHA.

### **The Violation and Proposed Resolution**

The unpermitted development at issue altered an area of the site's topography in the western portion of the property. The habitat present prior to the unpermitted development in this portion of the impacted areas, SMC, is highly sensitive to slope angle/aspect. Thus, the changes to topography may affect whether the ESHA can be successfully restored in that location. However, the presence, albeit sparse presence, of SMC indicator species within the impacted areas, suggests that growing conditions are adequate for potential full reestablishment of the biodiversity and robustness of the ESHA, which was present on the site prior to the subject unpermitted development, through undertaking the restoration activities required by these Consent Orders. As required by the CDP, and as incorporated into these Consent Orders, the proposed restoration and enhancement will be monitored. The monitoring will show whether the restoration efforts are successful and whether follow-up measures are necessary. Implementation of such follow-up measures, potentially including modification of the topography of areas impacted by the unpermitted development, is required by the CDP and these Consent Orders.

In December 2012, Respondent took title to the subject property through a foreclosure sale. Over the past few months, staff and Respondent have worked extensively and collaboratively towards an amicable resolution of the unpermitted development. On February 15, 2012 Respondent signed Consent Cease and Desist Order No. CCC-13-CD-02 and Consent Restoration Order No. CCC-13-RO-02. In order to amicably resolve the violations through these Consent Orders, Respondent elected to settle this matter rather than submit a Statement of Defense form and contest issuance of these Consent Orders and thus agrees not to contest the issuance and/or enforcement of these Consent Orders. The proposed Consent Orders would collectively resolve the violation by ordering Respondent to restore, maintain, and preserve areas of CSS and SMC that were impacted by the unpermitted development at issue. Under the proposed orders, Respondent will also remove all unpermitted objects, as that term is defined in the proposed Consent Orders, from the site. Furthermore, under the proposed Consent Orders, Respondent will pay an in lieu fee to cover further restoration, combined with resolution of monetary claims under the Coastal Act through payment of \$320,000 to the Violation Remediation Account administered by the Coastal Conservancy pursuant to Coastal Act Section 30823, to be designated in consultation with the Executive Director of the Commission for funding of natural habitat restoration and/or acquisition and permanent protection in coastal Orange County (See proposed Consent Orders attached as Appendix A).

In order to preserve the Commission's authorization of the CDP, including authorization of a Habitat Restoration and Management Program to restore a minimum of 1.9 acres of natural habitat on the subject property, Respondent has indicated its intention to submit a request for an extension of the CDP for staff's review. Staff will work with the applicant/respondent to process the extension request in order to ensure implementation of the restoration activities outlined in the coastal development permit and consent orders.

## **C. BASIS FOR ISSUANCE OF ORDERS**

The Commission can issue a cease and desist order under Section 30810 where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a restoration order under Section 30811 of the Coastal Act if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly, below, and discussed in more detail on pages 12-20 of this staff report.

The unpermitted activities that have occurred on the subject property meet the definition of “development” set forth in Coastal Act Section 30106. Coastal Act Section 30600 states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any non-exempt development in the Coastal Zone must obtain a CDP. The development was not exempt from permitting requirements and was undertaken without a CDP, in violation of Coastal Act Section 30600.

Not only do the unpermitted activities meet the definition of development as that term is defined in the Coastal Act, and therefore require (but lack) a CDP; but such unpermitted development is also inconsistent with the Chapter 3 policies of the Coastal Act, including, but not necessarily limited to, Sections 30240 (protection of environmentally sensitive habitat areas or “ESHA”, including from adjacent developments), 30231 (protecting the biological productivity of coastal waters), and 30253 (minimization of adverse impacts). The unpermitted development at issue is also inconsistent with similar policies within the City’s LCP, as fully discussed below.<sup>6</sup>

The unpermitted development has adversely impacted the resources associated with ESHA. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (“CCR”), which defines “damage” as, “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” If the unpermitted development, including, but not limited to, vegetation removal, is allowed to remain unmitigated, its effects will lead to further adverse impacts (including the temporal continuation of the existing impacts) to adjacent sensitive habitat.

### **1. Legal Standards**

#### **Cease and Desist Order**

The statutory authority for issuance of Cease and Desist Orders is provided in Section 30810 of the Coastal Act, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity*

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<sup>6</sup> A description of the Chapter 3 policies of the Coastal Act and the City LCP policies that apply to the subject property is provided in Section IV of this staff report.



*that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*

*(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

*(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

### **Restoration Order**

The statutory authority for issuance of Restoration Orders is provided in Section 30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.*

The following paragraphs set forth the basis for the issuance of the Consent Orders by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 and 30811 for the Commission to issue a Cease and Desist Order and a Restoration Order.

## **2. Factual Support for Statutory Elements**

### **Development has occurred without a Coastal Development Permit**

Unpermitted activities, as described in Section IV.A., above, have occurred on the subject property without a CDP. These activities meet the definition of “development” contained in Section Coastal Act Section 30106, as explained below.

“Development” is defined by Section Coastal Act Section 30106 as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land... change in the intensity of use of water, or of access thereto... and the*

*removal or harvesting of major vegetation other than for agricultural purposes...*

In this case, the activities described above in Section IV.A., constitute “development” within the meaning of the above-quoted definition because they involve the placement of solid material, grading, and removal of major vegetation.

These development activities were subject to the permit requirement of Coastal Act Section 30600(a) when they occurred. Section 30600(a) states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP.

At the time the activities occurred, they required a permit from the Commission. A CDP was not obtained by the owner at the time, nor the current owner, to authorize the subject development, and the unpermitted development is not exempt under the permit requirements. Therefore, the requirements for issuance of a Cease and Desist Order under Coastal Act Section 30810, and the first requirement for issuance of a Restoration Order under Coastal Act Section 30811, have been met. In addition, the performance of development activities such as those at issue here without a permit from the City is a violation of the City’s LCP. The City did not issue a CDP for the subject activities either.

## **2. The Unpermitted Development is Inconsistent with the Coastal Act**

As described below, the unpermitted development is inconsistent with resource protection policies of the Coastal Act, including, but not necessarily limited to, Section 30240 (protecting environmentally sensitive habitat areas, or “ESHA”, including from adjacent developments), 30231 (protecting the biological productivity of coastal waters), and 30253 (minimization of adverse impacts), and policies within the City LCP, as fully discussed below.<sup>7</sup>

### **a. Environmentally Sensitive Habitat Areas**

The unpermitted development on the subject property is inconsistent with Coastal Act Section 30240, which requires protection of all ESHA within the Coastal Zone , as well as numerous policies within the City LCP.

ESHA is defined in Coastal Act Section 30107.5 and the City LCP as follows:

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<sup>7</sup> As noted above, the Coastal Commission has jurisdiction over this enforcement matter on the subject property. However, staff notes that the unpermitted development at issue in this matter is also inconsistent with polices of the Dana Point LCP. Although the Dana Point LCP does not directly apply to this enforcement matter, the Commission considers the development standards designed to protect coastal resources contained in the Dana Point LCP as guidance. The LCP policies with which the unpermitted development at issue is inconsistent include, but may not be limited to, the policies cited below.

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

***Conservation Open Space Element (COSE) Policy 3.1 (in relevant part):***

*Environmentally sensitive habitat areas (ESHAs) are any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments, and include, but are not limited to, important plant communities, wildlife habitats, marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1.... A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process.... (Coastal Act/30230, 30240)*

The subject property contains important biological resources, such as the native plant communities, SMC and CSS. SMC is a particularly threatened and significant microhabitat. The Commission’s staff ecologist has reviewed biological surveys of the subject property and determined that areas of SMC and transitional SMC on site constitute ESHA (“Exhibit 6”). SMC is a unique and localized form of chaparral that is currently patchily distributed in three populations from Laguna Beach to Baja California. In Orange County, SMC occurs only on coastal hillsides from San Clemente Canyon south to the vicinity of the subject property. In this location, SMC is defined in part by rare and protected plant species, such as Nuttall’s scrub oak, big-leaved crownbeard, and Laguna Beach dudleya.

Approximately 4.9 acres of the 14.66-acre site have been found to be ESHA. This ESHA is contiguous with the .95-acre area of SMC that was impacted by the subject unpermitted development and will be revegetated pursuant to these Consent Orders. Approximately 7 acres of the site contains native vegetation represented mostly by black sage, sagebrush, and buckwheat (CSS). The unpermitted development impacted an additional .20-acre area of this CSS, which will also be revegetated pursuant to these Consent Orders where located outside the footprint of the development approved pursuant to the CDP. The Commission concurred with the staff ecologist’s ESHA determination in approving CDP No. A-5-DPT-05-306.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts*

*which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, the City LCP includes the following ESHA related policies:

***Land Use Element (LUE) Policy 4.5:*** *Consider the environmental impacts of development decisions. (Coastal Act/30240, 30241, 30242, 30243, 30244)*

***Land Use Element (LUE) Policy 4.9:*** *Encourage the preservation of significant natural areas as cohesive open space.*

***Conservation Open Space Element Policy 3.1:*** *ESHAs shall be preserved.... Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts that would significantly degrade those areas, and such development shall be compatible with the continuance of those habitat areas. Among the methods to be used to accomplish the siting and design of development to prevent ESHA impacts are the practice of creative site planning, revegetation, and open space easement/dedications.*

***Conservation Open Space Element (COSE) Policy 3.3:*** *Encourage retention of natural vegetation and require revegetation of graded areas.*

***Conservation Open Space Element (COSE) Policy 3.7:*** *Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas except as provided in Conservation Open Space Element Policy 3.122. Development in areas adjacent to ESHA shall incorporate buffering design elements, such as fencing, walls, barrier plantings and transitional vegetation around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Variances or modifications to sensitive resource protection standards shall not be granted. (Coastal Act/30240)*

***Conservation Open Space Element (COSE) Policy 6.1:*** *Mitigate the impacts of development on sensitive lands such as, but not limited to, steep slopes, wetlands, cultural resources, and environmentally sensitive habitats areas through the development review process. (Coastal Act/30233, 30240, 30244, 30253)*

***Conservation Open Space Element (COSE) Policy 6.5:*** *Preserve and protect open space, steep slopes, cultural resources, and environmentally sensitive habitat areas through open space deed restrictions, dedication, or other similar means as a part of the development and subdivision review process. (Coastal Act/30250)*

***Conservation Open Space Element (COSE) Policy 7.3:*** *Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)*

The unpermitted development at issue resulted in elimination of CSS and SMC from areas impacted by the unpermitted development. As noted above, SMC on the subject property constitutes ESHA, and the vegetation within this community is a defining characteristic of these habitats. Because the subject development located within ESHA significantly disrupted ESHA (completely destroying/displacing the vegetation within ESHA) and was not dependent on the resource (since the landslide buttress and roads were not necessary to occur in sensitive habitat to function), the subject development in ESHA was inconsistent with Section 30240(a) of the Coastal Act.

As indicated above, the unpermitted activities at issue located within ESHA do not constitute a resource dependent use and caused significant disruption to a unique and fragile native plant community that supports protected plant species, in violation of Section 30240(a). Moreover, the complete clearance of vegetation affected by the unpermitted development has impeded the recovery of ESHA and other natural habitats in the impacted areas. Persistence of the disturbance on the site has degraded the habitat in the impacted areas, which may affect adjacent native plant communities that constitute ESHA, in a way that is not compatible with the continuance of these habitats, in violation of Section 30240(b).

b. Biological Productivity & Water Quality

The unpermitted development is inconsistent with Coastal Act Section 30231, which requires protection of water quality in the Coastal Zone. Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, the City LCP includes the following policy:

***Conservation Open Space Element (COSE) Policy 2.20:*** *The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water reclamation, maintain natural*

*vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/ 30231).*

The unpermitted development performed here involves extensive vegetation removal, thus exposing bare soil, increasing the site's susceptibility to erosion; grading; and importation of dirt. The unpermitted development was undertaken and maintained during multiple rainy seasons without adequate best management practices for controlling runoff and sediment discharge that are necessary to protect water quality.

The vegetation that existed on the subject property prior to the unpermitted development helped to stabilize the soil, limit runoff and erosion, and facilitated infiltration. The removal of that vegetation, especially in the absence of adequate best management practices, has exposed the site and surrounding properties and water bodies to the effects of unregulated runoff. Unmanaged runoff across exposed dirt areas increases the level of sediment entering water bodies, consequently also increasing the turbidity of receiving waters, which reduces the penetration of sunlight needed by aquatic vegetation that provides food and cover for aquatic species and disrupts the reproductive cycles of aquatic species, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters and reduce optimum populations of marine organisms. Similarly, sediment-laden stormwater runoff can increase sedimentation in coastal waters. Sedimentation of coastal waters impacts fish populations in part by burying aquatic vegetation that provides food and cover for aquatic species. For these reasons, the unpermitted development is inconsistent with Coastal Act Section 30231.

c. Minimization of Adverse Impacts and Natural Landform Alteration

The unpermitted development is inconsistent with Section 30253(b) of the Coastal Act, which requires new development to minimize erosion and associated impacts to the site. Section 30253(b) states:

*New development shall... (b) 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.*

In addition, the City LCP contains the following policies:

***Conservation Open Space Element 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 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)*

The unpermitted development removed vegetation from slopes on the subject property, resulting in barren patches of earth. Vegetation provides soil stabilization, especially on slopes, by intercepting water before it hits the ground, slowing the water's flow across the ground's surface, and reducing overall surface runoff by facilitation infiltration.

Removal of vegetation, especially on slopes, increases the risk of erosion. The unpermitted clearing of vegetation from slopes on the subject property has eliminated an important natural slope stabilization mechanism, leaving slopes exposed and vulnerable to erosion. Furthermore, clearing the impacted areas to bare earth without adequate erosion control measures has contributed to wind and water-related erosion across the subject property. The unpermitted development activities have created and contributed significantly to erosion. For this reason, the unpermitted activities are inconsistent with Section 30253(b) of the Coastal Act.

As described above, the unpermitted development is inconsistent with Sections 30240, 30231, and 30253 of the Coastal Act and numerous policies of the City LCP, thus satisfying the second criterion for issuance of a Restoration Order. Mitigation is necessary in this case, due to the fact that even with proper restoration of the habitat on site, the interim loss of ecosystem value will have a significant impact that will be experienced into the future.

### **3. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing "continuing resource damage," as defined in 14 CCR Section 13190, which states:

*'Continuing', when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order.*

*'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)*

The SMC on the subject property, as well as adjacent native plant communities, are afforded protection under Coastal Act Section 30240, as well as the City LCP, and are therefore "resources" as defined in Section 13190(a) of the Commission's regulations.

The “damage” is the degradation of that ESHA and adjacent habitats, as well as associated resources, which is caused by the unpermitted development on the subject property, as described in the prior section.

Without restoration of the ESHA and adjacent habitats, the foregoing impacts are continuing and will continue to occur. The persistence of these impacts constitutes “continuing” resource damage, as defined in Section 13190(c) of the Commission’s regulations.

For the reasons stated above, the unpermitted development is causing continuing resource damage. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is satisfied.

**D. CONSENT ORDERS ARE CONSISTENT WITH CHAPTER 3 OF THE COASTAL ACT**

The unpermitted development at issue significantly impacted coastal resources, including ESHA, on the subject property. The unpermitted development is therefore inconsistent with the resource protection policies of the Coastal Act and City LCP, and the resource damage caused by the unpermitted development will continue unless the unpermitted activities cease and the subject property is properly restored. Issuance of these Consent Orders is essential to resolving the violations and to ensuring compliance with the Coastal Act and City LCP.

The Consent Cease and Desist Order and Consent Restoration Order appended to this staff report are consistent with and, in fact, are designed to further the resource protection policies found in Chapter 3 of the Coastal Act. The Consent Orders require Respondent to remove all unpermitted objects from the subject property, as that term is defined in the Consent Orders; restore sensitive habitat on the subject property using restorative grading and planting of SMC and CSS species; mitigate for temporal losses, and cease and desist from conducting any further unpermitted development on the subject property. As noted above, the Commission’s staff geologist has determined that removal of the unpermitted landslide buttress could cause greater resource damage and threaten site stability, and impact adjacent properties as well, but the restoration work required under these Consent Orders will nonetheless restore the habitat value affected by the violation.

If the vegetation clearance affected by the unpermitted development is allowed to remain unmitigated, its presence and the effects thereof will lead to further adverse impacts (including the temporal continuation of the existing impacts) to ESHA. Therefore, the Consent Cease and Desist Order and Consent Restoration Order are consistent with the Chapter 3 policies of the Coastal Act.

**E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Commission finds that issuance of these Consent Orders to compel the restoration of the subject property is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and



will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c) (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

#### **F. CONSENT AGREEMENT: SETTLEMENT**

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act. Respondent has clearly conveyed its willingness to completely resolve the alleged violations, including any penalties, administratively and amicably, through a settlement process. To that end, Respondent has committed to comply with all terms and conditions of the Consent Orders, and not to contest the issuance and implementation of these Consent Orders. In light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondent has agreed pursuant to these Consent Orders to restore, maintain, and preserve sensitive natural habitats on the subject property and to fund a habitat restoration project in coastal Orange County to resolve the alleged violations fully without litigation.

#### **G. SUMMARY OF FINDINGS OF FACT**

1. Caribbean Dana Point Investors LLC is the owner of property located within the Coastal Zone (as defined in the Coastal Act) at 32354 Caribbean Drive, Dana Point; Orange County APN 670-101-21 ("subject site").
2. Caribbean Dana Point Investors LLC ("Respondent") owns the above-referenced property upon which unpermitted development, as defined in Coastal Act Section 30106, has been performed, including grading roads, removal of major vegetation, placement of sandbags, and installation of a landslide buttress consisting of fill, earthen berms, retention basins, and drains resulting in damage to Environmentally Sensitive Habitat Areas.
3. The unpermitted development described in finding #2 occurred when there was no certified LCP covering the subject site. In addition, City of Dana Point staff indicated support for the Commission's proceeding with administrative action to resolve these violations.
4. The unpermitted development described in finding #2 above impacted ESHA and adjacent habitats, as well as associated resources, inconsistent with the Coastal Act, including Sections 30240, 30231, 30253, and City LCP policies.
5. The unpermitted development described in finding #2 above is "causing continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
6. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
7. Coastal Act Section 30811 authorizes the Commission to issue a restoration order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.

8. The work to be performed under these Consent Orders, if done in compliance with the Consent Orders and the plans approved therein, will be consistent with Chapter 3 of the Coastal Act.
9. On February 15, 2013, an authorized signatory for Respondent signed Consent Cease and Desist Order No. CCC-13-CD-02 and Consent Restoration Order No. CCC-13-RO-02, a copy of which is attached to this staff report as Appendix A. Respondent agreed not to contest commencement of proceedings to issue these Consent Orders, and agreed to issuance of these Consent Orders, without first receiving written notice of intent to commence cease and desist order and restoration order proceedings pursuant to Sections 13181 and 13191, respectively, of the Commission's administrative regulations.
10. Respondent does not object to recordation by the Executive Director of a notice of violation, pursuant to PRC section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders.
11. Impacts to coastal resources resulting from the unpermitted development described in finding #2 will continue until the requirements of the Consent Orders are carried out.

Staff recommends that the Commission issue Consent Cease and Desist Order No. CCC-13-CD-02 and Consent Restoration Order No. CCC-13-RO-02 attached hereto as Appendix A.

# APPENDIX A

## **CONSENT CEASE AND DESIST ORDER CCC-13-CD-02 AND CONSENT RESTORATION ORDER CCC-13-RO-02**

### **1 CONSENT CEASE AND DESIST ORDER CCC-13-CD-02**

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Caribbean Dana Point Investors LLC, all of its successors, assigns, employees, agents, and contractors, and anyone acting in concert with the foregoing (hereinafter collectively referred to as “Respondent”), to take all actions required by this Consent Order CCC-13-CD-02, including:

- 1.1** Cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the property identified in Section 6, below (“subject property”), unless authorized pursuant to the Coastal Act, PRC sections 30000-30900, including by this Consent Order or pursuant to the PRC section 30624 (emergency coastal development permits).
- 1.2** Cease and desist from maintaining on the subject property the following unpermitted development and the following objects or physical changes to the subject property resulting therefrom: sandbags (and the sand/gravel/fill released from the bags), rip-rap and concrete rubble, and plastic tarps, unless authorized, or otherwise exempt, pursuant to the Coastal Act, including by this Consent Order.
- 1.3** Remove from the subject property the following unpermitted development and objects resulting therefrom: sandbags (and the sand/gravel/fill released from the bags), rip-rap and concrete rubble, and plastic tarps, by complying with the requirements of Section 4.3, as set forth below.
- 1.4** Restore, maintain, and preserve coastal sage scrub (“CSS”) and southern maritime chaparral (“SMC”) in accordance with the procedures and other specifications set forth in Section 4.4, below.

### **2 CONSENT RESTORATION ORDER CCC-13-RO-02**

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondent to take all actions required by this Consent Order CCC-13-RO-02, including restoring, maintaining, and preserving CSS and SMC, in accordance with the procedures and other specifications set forth in Section 4.4, below.

### **3 NATURE OF ORDERS AND OF CONSENT**

Through the execution of Consent Cease and Desist Order CCC-13-CD-02 and Consent Restoration Order CCC-13-RO-02 (collectively, the “Consent Orders”), Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require, among other things, restoration, maintenance, and

preservation of CSS and SMC as outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a coastal development permit (“CDP”). Nothing in these Consent Orders guarantees or conveys any right to development on the subject property other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondent agrees to comply with these Consent Orders, including the following terms and conditions.

## **PROVISIONS COMMON TO BOTH ORDERS**

### **4 TERMS AND CONDITIONS**

#### **4.1 Definitions**

Impacted Area: The 1.15-acre area of CSS and SMC on the subject property impacted by the unpermitted development described in Section 7, as generally depicted on Exhibit 1 of these Consent Orders.

HRMP: The Habitat Restoration and Management Program that Respondent was required to prepare, pursuant to Special Condition No. 4 of Coastal Development Permit No. A-5-DPT-05-306 (“the CDP”), the purpose of which was to restore, maintain, and preserve a minimum of 1.9 acres of CSS and SMC that rises to the level of Environmentally Sensitive Habitat Area (“ESHA”) on the subject property, as fully described in Special Condition #4 of the CDP and generally depicted on Exhibit 1 of these Consent Orders. Most of the 1.15-acre Impacted Area is within the 1.9-acre area to be restored pursuant to the HRMP. Impacted Areas within and outside the 1.9-acre HRMP restoration area, but not within the footprint of the development approved pursuant to the CDP, will be restored pursuant to the Expanded HRMP, defined below.

Expanded HRMP: The version of the HRMP submitted pursuant to Section 4.4, below, which is a revision of the original HRMP designed to include restoration of all portions of the Impacted Area outside the footprint of the development approved pursuant to the CDP, as well as the original 1.9-acre HRMP restoration area addressed by the CDP, which is also addressed under these Orders, much of which overlap, but each of which covers some areas not covered by the other. The area subject to the Expanded HMRP is generally depicted in Exhibit 2 of these Consent Orders.

Unpermitted Objects: All unpermitted development, and objects on the subject property resulting therefrom, that are required to be removed from the subject property by these Consent Orders, consisting of: all sandbags, rip-rap and concrete rubble, and plastic tarps on the subject property, subject to Section 4.3.A.2.

#### **4.2 Goals**

A. Removal of all Unpermitted Objects from the subject property.

B. Restoration, pursuant to the Expanded HRMP, of a minimum of 1.9 acres of CSS and SMC, as appropriate to the adjacent habitat type, on the subject property, such that it rises to the level of ESHA, to include all portions of the 1.15 acre Impacted Area outside the development footprint of the project authorized by the CDP.

C. Maintenance and preservation of the CSS and SMC restored pursuant to the Expanded HRMP.

D. Offset temporal loss of habitat resulting from the subject Coastal Act violations and resolve monetary claims under the Coastal Act through payment of \$320,000 to the Violation Remediation Account administered by the Coastal Conservancy pursuant to the Coastal Act (PRC section 30823) to be designated in consultation with the Executive Director of the Commission ("Executive Director") for funding natural habitat restoration and/or acquisition and permanent protection in coastal Orange County.

#### **4.3 Removal Plan**

A. Within 30 days of Respondent's first submittal of a grading plan to the City of Dana Point, or within 12 months of issuance of these Consent Orders, whichever occurs first, Respondent shall submit, for the review and approval of the Executive Director, a removal plan ("Removal Plan") prepared by a qualified resource specialist, which outlines removal of all Unpermitted Objects. The Removal Plan shall be provided to the City of Dana Point for comments prior to submittal for the review and approval of the Executive Director. The Removal Plan shall include the following components and satisfy the following criteria:

1. A site plan showing the location and identity of all Unpermitted Objects on the subject property.
2. A provision that removal activities shall not decrease the stability of, or exacerbate erosion on, any portion of the subject property, and shall not otherwise disturb areas outside the removal area. The Executive Director shall review any removal activities required by these Orders that the Respondent can demonstrate, to the satisfaction of the Executive Director, will contribute to instability or erosion on the subject property.
3. A description of all equipment that will be used for the removal work.
4. A description including name and location of an appropriate, licensed disposal site where the Unpermitted Objects will be taken for disposal. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
5. A proposed series of dates and times for performing the removal work.

6. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.

7. The Removal Plan shall include a site plan showing the location and identity of all existing, temporary Best Management Practices (BMPs) installed to address erosion control and water quality on the eastern portion of the site that are proposed to remain in place. Such approved temporary BMPs shall be removed within 24 months of issuance of these Orders and by no later than 180 days subsequent to initiation of development authorized pursuant to the CDP. This deadline may be extended by the Executive Director for good cause pursuant to Section 13, below.

B. Upon approval of the Removal Plan by the Executive Director, Respondent shall implement the plan completely, pursuant to the approved schedule/timeline included in the plan, with all work under the Removal Plan to be completed as early as possible pursuant to recommendations by the consulting resource specialist, but by no means later than 90 days after issuance of any grading permit for the subject property or within 18 months of issuance of these Consent Orders, whichever occurs first. The Executive Director may extend this deadline or modify the approved schedule upon a showing of good cause, pursuant to Section 13 of these Consent Orders.

C. Within 30 days of the completion of the activities set forth in the Removal Plan, Respondent shall submit to the Executive Director of the Commission a report documenting removal of the Unpermitted Objects from the property. This report shall include a summary of dates when work was performed and photographs that show implementation of the Removal Plan, as well as photographs of the property before and after the removal activities required by the Removal Plan have been completed, taken from, and depicting, the same locations on the site.

#### **4.4 Expanded Habitat Restoration and Management Program**

A. Within 30 days of Respondent's first submittal of a grading plan to the City of Dana Point, or within 12 months of issuance of these Consent Orders, whichever occurs first, Respondent shall submit an Expanded HRMP for the review and approval of the Executive Director that satisfies the requirements of Special Condition #4 of Coastal Development Permit No. A-5-DPT-05-306 and also incorporates restoration, maintenance, and preservation, in the same manner and subject to all the same requirements as the work done in the 1.9-acre restoration area, of all portions of the Impacted Area outside the 1.9-acre HRMP restoration area but not within the development footprint of the project authorized by the CDP. The final Expanded HRMP approved by the Executive Director will satisfy the requirement to submit an HRMP pursuant to Special Condition #4 of the CDP.

These Orders are designed to be complementary to any work which may be authorized under the CDP. However, that does not affect the independent nature of each set of requirements. The parties agree that nothing herein affects the obligations addressed in

the CDP.

B. Upon approval by the Executive Director, Respondent shall implement the Expanded HRMP completely, pursuant to the approved schedule/timeline as set forth therein, with all work to be completed as early as possible and consistent with recommendations by the consulting resource specialist. In specific regard to all planting and site preparation described in the Expanded HRMP, Respondent shall complete these activities by no later than 90 days after issuance of any grading permit for the subject property or within 18 months of issuance of these Consent Orders, whichever occurs first.

#### **4.5 Revisions of Deliverables**

The Executive Director may require revisions to deliverables required under these Consent Orders, including the Removal Plan and Expanded HRMP described in Sections 4.3. and 4.4, above, and Respondent shall revise any such deliverables consistent with the Executive Director's specifications and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 13 of these Consent Orders.

#### **4.6 Submittal of Documents**

All documents submitted to the Commission pursuant to these Consent Orders must be sent to:

California Coastal Commission  
Attn: Andrew Willis  
200 Oceangate, Suite 1000  
Long Beach, CA 90802

with a copy sent to:  
California Coastal Commission  
Attn: Aaron McLendon (same address)

- 4.7** Nothing in these Consent Orders shall preclude development authorized by and conducted consistent with the CDP.

### **5 PERSONS SUBJECT TO THE ORDERS**

Caribbean Dana Point Investors LLC, all of its successors, assigns, employees, agents, and contractors, and anyone acting in concert with the foregoing, and successors in interest to the subject property, are jointly and severally subject to all requirements of these Consent Orders. Respondent agrees to undertake the work required herein and agrees to cause its employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities, as well as any future owners of the subject property, to comply with the terms and conditions of these Consent Orders. Respondent shall provide notice to all successors, assigns, and potential purchasers of the subject property of any remaining restrictions or obligations under these Consent Orders.

**6 IDENTIFICATION OF THE SUBJECT PROPERTY**

The property that is the subject of these Consent Orders is described as follows:

Property at 32354 Caribbean Drive, Dana Point; Orange County APN 670-101-21.<sup>1</sup>

**7 DESCRIPTION OF UNPERMITTED DEVELOPMENT CONSTITUTING COASTAL ACT VIOLATIONS**

The alleged violations of the Coastal Act that formed the basis for these Consent Orders consist of development, as that term is defined in the Coastal Act (PRC section 30106), on the subject property that required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, consisting of the following development: grading roads, removal of major vegetation, placement of sandbags, and installation of a landslide buttress consisting of fill, earthen berms, retention basins, rip-rap and concrete rubble, tarps, and drains on the western portion of the site, which was undertaken prior to Commission approval of the CDP.

**8 COMMISSION JURISDICTION**

The Commission has jurisdiction over resolution of the Coastal Act violations described in Section 7 pursuant to PRC sections 30810 and 30811. In light of the desire of the parties to settle these matters, Respondent agrees to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

**9 SETTLEMENT OF MATTER PRIOR TO HEARING/NONSUBMISSION OF STATEMENT OF DEFENSE**

In light of the intent of the parties to resolve these matters in settlement, Respondent has not submitted a "Statement of Defense" form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases and the terms and issuance of these Consent Orders. Specifically, Respondent has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding. In the interest of expeditious settlement of this issue, Respondent has agreed not to contest commencement of proceedings to issue these Consent Orders without first receiving a formal written notice of intent to commence cease and desist order and restoration order proceedings pursuant to sections 13181 and 13191, respectively, of the Commission's administrative regulations.

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<sup>1</sup> Parcel 2 as shown on Parcel Map 77-26, filed in Book 109, Pages 3 and 4 of Parcel Maps, in the Office of the County Recorder, Orange County.



## **10 EFFECTIVE DATE AND TERMS OF THE ORDERS**

The effective date of these Consent Orders is the date of issuance of these Consent Orders, but by no later than April 30, 2013. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

## **11 FINDINGS**

These Consent Orders are issued on the basis of the findings adopted by the Commission at its March, 2013 meeting, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-13-CD-02 and Consent Restoration Order No. CCC-13-RO-02." The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

## **12 SETTLEMENT/COMPLIANCE OBLIGATION**

**12.1** In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to submit \$320,000 to the attention of Andrew Willis of the Commission's staff, at the address listed in Section 4.3, above, payable to the California Coastal Commission, to be deposited into the Violation Remediation Account administered by the California Coastal Conservancy (see PRC section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. Respondent shall submit the full settlement amount directly to the Commission in three separate payments of \$120,000, \$120,000, and \$80,000, to be paid on or before issuance of any grading permit on the subject property, 6 months subsequent to issuance of such grading permit, and 12 months subsequent to such grading permit, respectively; or 15 months, 21 months, and 27 months subsequent to issuance of these Consent Orders, respectively, whichever occurs first.

**12.2** Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$250 per day per violation until the violation is resolved. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Executive Director for such penalties regardless of whether Respondent has subsequently complied. Stipulated penalty payments shall be made payable to the account designated under the Coastal Act and shall be sent to the Commission to the attention of Andrew Willis at the address listed in Section 4.6, above. If Respondent violates these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil

penalties and other remedies pursuant to PRC sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

### **13 DEADLINES**

Prior to the expiration of any given deadline established by these Consent Orders, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing 10 days in advance of the deadline, and directed to the Executive Director, care of Andrew Willis of the Commission's staff, in the Long Beach office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondent has demonstrated that it has diligently worked to comply with its obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond its control.

### **14 SITE ACCESS**

Respondent shall provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the subject property to view the areas where development is being performed pursuant to the requirements of these Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondent in carrying out the terms of these Consent Orders.

### **15 GOVERNMENT LIABILITIES**

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to these Consent Orders.

### **16 SETTLEMENT VIA CONSENT ORDERS**

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondent hereby agrees not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

## **17 SETTLEMENT OF MONETARY CLAIMS**

The Commission and Respondent agree that these Consent Orders fully settle the Commission's claims for civil penalties, fines, and damages (under the Coastal Act, including under PRC sections 30805, 30820, and 3082) for those violations of the Coastal Act that occurred prior to Commission approval of the CDP and that are resolved pursuant to, and consistent with the terms of, these Consent Orders, with the exception that, if Respondent fails to comply with any term or condition of these Consent Orders, the Commission may bring monetary or other claims against Respondent, including the current owner of the property at that time, for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of these Consent Orders.

## **18 CONTRACTUAL OBLIGATION**

Respondent agrees that these Consent Orders, including such waiver of rights in Section 9 above, constitute both an administrative order issued to Caribbean Dana Point Investors LLC individually and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect until all terms are fulfilled, regardless of whether Respondent has a financial interest in the property identified in Section 6, above, or any other property within the Coastal Zone. In order to ensure that these Consent Orders are efficiently implemented and the agreements herein are effective as soon as possible, the parties agree that the agreements, including Respondent's waiver of rights, contained herein are null and void if the effective date of these Consent Orders is later than April 30, 2013.

## **19 MODIFICATIONS AND AMENDMENTS**

Except as provided in Section 13, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondent, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in sections 13188(b) and 13197 of the Commission's administrative regulations.

## **20 GOVERNING LAW**

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

## **21 ENFORCEMENT AUTHORITY**

- 21.1** Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these

Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

- 21.2 Correspondingly, Respondent has entered into these Consent Orders and waived its right to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

## 22 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

## 23 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, it shall be severable from the rest of these Consent Orders, and the remaining terms shall remain in full force and effect as if the unenforceable term had not existed.

## 24 STIPULATION

Respondent attests that it has reviewed the terms of these Consent Orders with counsel of their choosing and understands that its consent is final and stipulate to its issuance by the Commission. Because Respondent was represented by counsel, these Consent Orders are not subject to a presumption that it should be construed in favor of Respondent in the event of a dispute over its terms.

## 25 RECORDATION OF A NOTICE OF VIOLATION

Respondent does not object to recordation by the Executive Director of a notice of violation, pursuant to PRC section 30812(b). Accordingly, a notice of violation will be recorded after issuance of these Consent Orders. No later than thirty days after the Commission determines that Respondent has fully complied with these Consent Orders, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to PRC section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:

  
Caribbean Dana Point Investors LLC

  
Date

Executed in San Diego on behalf of the California Coastal Commission:

---

Charles Lester, Executive Director





---

Date





### Caribbean property - Dana Point

-  Project Boundary
-  Restoration Area per HRMP 1.90 ac
-  Additional preservation area 8.64 ac
-  Impacted Area






All Locations Approximate.  
For Illustrative Purposes Only.  
Sources: NAIP 2007



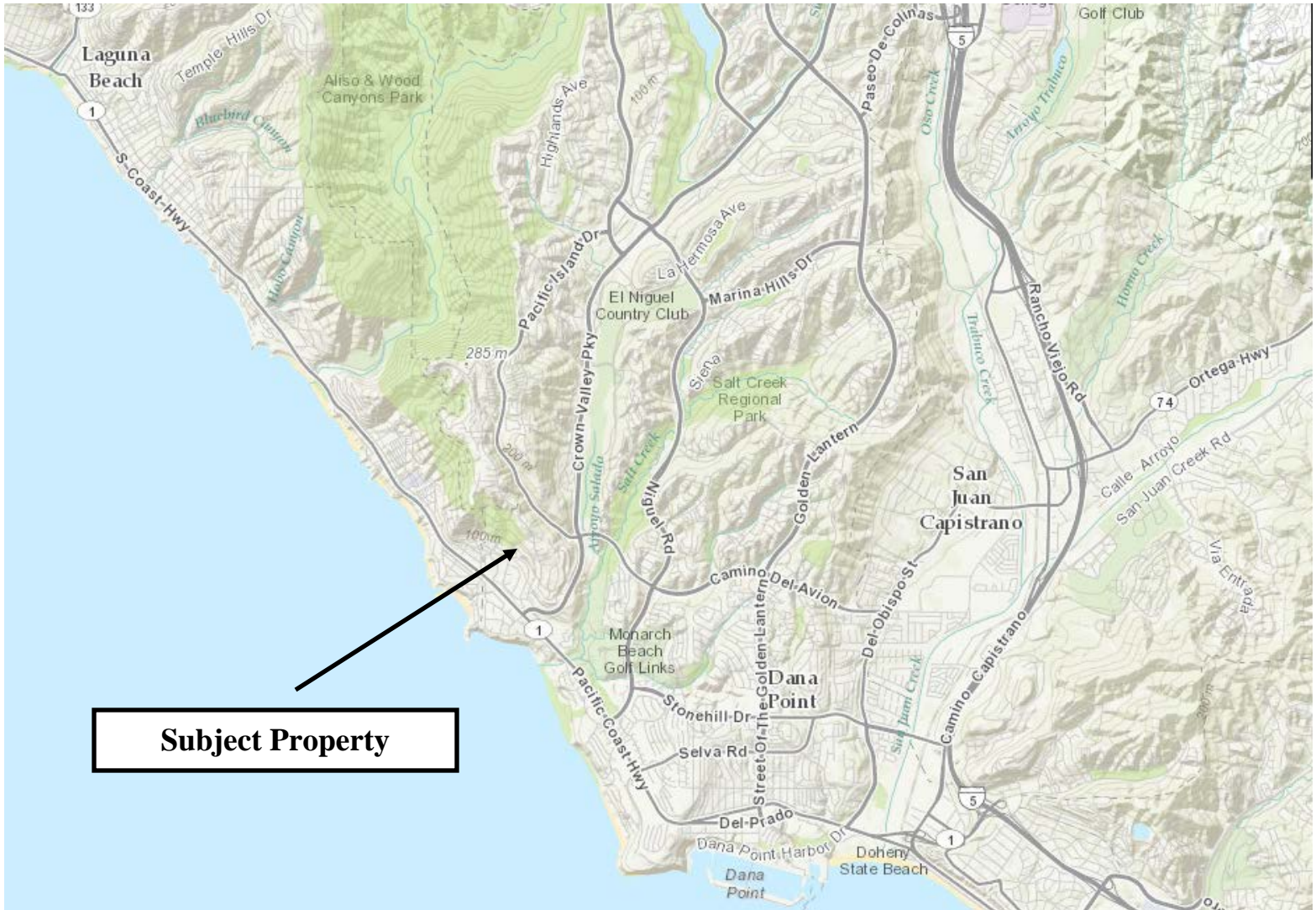


### Caribbean property - Dana Point

-  Project Boundary
-  Restoration Area per Expanded HMRP
-  Additional preservation area 8.64 ac











**Representative photos of areas  
graded without a CDP**





**Overview of disturbed areas  
on subject property**

**Approximate property  
line**

**CALIFORNIA COASTAL COMMISSION**

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

**F9b****2<sup>nd</sup> ADDENDUM**

April 12, 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 F9b, APPEAL DE NOVO APPLICATION NO. A-5-DPT-05-306-(SAFARI) 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 Summary of Staff Recommendation, Section II (Special Conditions) and Section III (Findings). 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-2 – Modify the Summary of Staff Recommendation, as follows:

**SPECIAL CONDITION NO. 1** requires submittal of Local Permits **and other Agency approvals.** **SPECIAL CONDITION NO. 2** requires submittal of Final Project Plans. **SPECIAL CONDITION NO. 3** requires submittal of a Final Wetland Restoration Plan. **SPECIAL CONDITION NO. 4** requires submittal of a Final Habitat Restoration and Monitoring Program. **SPECIAL CONDITION NO. 5** requires submittal of a Landscape Plan. **SPECIAL CONDITION NO. 6** requires conformance with the proposed Environmentally Sensitive Habitat Area (ESHA) Buffer. **SPECIAL CONDITION NO. 7** requires submittal of Orange County Fire Authority (OCFA) approval for the Revised Fuel Modification Zone. **SPECIAL CONDITION NO. 8** requires an Open Space (OS) Restriction. **SPECIAL CONDITION NO. 9** requires lighting not be directed toward ESHA and other sensitive biological habitat. **SPECIAL CONDITION NO. 10** requires a California gnatcatcher Pre-Construction Survey. **SPECIAL CONDITION NO. 11** requires an assumption of risk. **SPECIAL CONDITION NO. 12** requires additional approvals for any future development. **SPECIAL CONDITION NO. 13** requires evidence of conformance with geotechnical recommendations. **SPECIAL CONDITION NO. 14** requires submittal of a Pool Protection Plan. **SPECIAL CONDITION NO. 15** requires submittal of a Visual Treatment Plan. **SPECIAL CONDITION NO. 16** requires submittal of an Erosion Control Plan and Construction Best Management Practices (BMPs) Plan. **SPECIAL CONDITION NO. 17** requires submittal of a Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 18** provides guidelines for pool drainage and maintenance. **SPECIAL CONDITION NO. 19**

requires Condition Compliance. **SPECIAL CONDITION NO. 20** requires a Deed Restriction against the property.

Page 7 – Modify Section II, Special Condition No. 1, as follows:

1. **STATUS OF LOCAL PERMITS AND OTHER AGENCY APPROVALS**  
**SUBMITTAL OF LOCAL PERMITS**
  - A. **The local government conditions associated with approvals other than the Coastal Development Permit remain in effect to the extent they do not conflict with the Special Conditions of the subject Commission approved Coastal Development Permit.**
  - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director a copy of all Local Permits (i.e., Conditional Use Permit from the City of Dana Point allowing the proposed recreational uses in the Open Space (OS) Zone, etc) and Amended Local Permits (i.e., Site Development Permits) from the City of Dana Point regarding the revised project, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the City of Dana Point. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.
  - C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit/approval issued by the California Department of Fish and Game (CDF&G) or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the California Department of Fish and Game (CDF&G). Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.**

Page 14 – Modify Section II, Special Condition No.8, as follows:

8. **OPEN SPACE RESTRICTION**
  - A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur in the Open Space (OS) **Restricted** Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:



Page 27 – Modify Section III.A.4., as follows:

Additionally, since the project design has changed numerous times since the original approvals by the City, revised approvals from the City regarding the new design are needed besides the conditional use permit for the development in the Open Space (OS) zone. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires any Amended Local Permits from the City of Dana Point regarding the revised project. *The City's conditions remain in effect to the extent they don't conflict with the Special Conditions of the Commission's approval of the subject Coastal Development Permit.*

*Prior to the appeal of the originally proposed project in which the City of Dana Point processed a Coastal Development Permit, the California Department of Fish & Game (CDF&G) had requested a number of issues be dealt with and consequently Special Conditions were imposed by the City to address those concerns. Since then the project has been appealed and the Commission is now the coastal permit issuing authority and the actual project has gone through a number of changes that the CDF&G has not yet reviewed. Therefore, the Commission is imposing SPECIAL CONDITION NO. 1, which requires submittal of California Department of Fish and Game (CDF&G) approval. The City of Dana Point is a signatory to the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) administered in conjunction with the CDF&G. The City has ongoing obligations relative to this project, but the NCCP/HCP is not a part of the LCP and so the provisions of the NCCP/HCP cannot be used to satisfy/address LCP/Coastal Act requirements.*

Page 35 – Modify Section III.B.2., as follows:

The project site contains important biological resources, such as ESHA. While the proposed project will not impact ESHA, additional measures should be implemented in order to make sure that it is not adversely impacted by future development. One way of doing this is by imposing an Open Space (OS) restriction on the ESHA areas (and buffers) that would prevent development on those sites. The proposed project also includes a wetland restoration area to offset proposed wetland impacts, as well as restoration and enhancement of CSS impacted areas resulting in higher quality habitat, considered to be ESHA and preservation of existing native habitat and other ESHA areas. These areas must be protected from disturbance by any further development. The area to be restricted is depicted in Exhibit No. ~~7 5, page 2~~. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires an Open Space (OS) restriction be placed on the ESHA areas and additional areas proposed by the applicant.

**2) Letters of Opposition from: Salvatore T. Dimascio received April 10, 2012 (Attached as Exhibit A); Richard L. Dombrow received April 11, 2012 (Attached as Exhibit B); and Linda Rappaport received April 11, 2012 (Attached as Exhibit C)**

These letters share similar concerns regarding the stability of the bluff and impact of construction activity upon their property. The proposed project includes the remediation of existing landslides found on the property. Extensive geotechnical investigations into this matter has taken place and a plan has been devised to remediate these landslides. Commission staff concurs with these reports and the recommendations identified in these investigations. In order to verify that these recommendations are adhered to, the project has been conditioned (**SPECIAL CONDITION NO. 13**) to require conformance with the geotechnical recommendations found in these investigations. In order to minimize the potential for adverse impacts due to construction activity, the Commission requires the incorporation of Best Management Practices. Therefore, the Commission imposed **SPECIAL CONDITION NO. 16**, which requires submittal of an Erosion Control Plan and Construction Best Management Practices (BMPs) Plan.

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 these letters.

## 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

MY POSITION ON THIS  
MATTER HAS NOT CHANGED  
SEE MY NOTE DATED  
8/18/2010 ATTACHED

Page: 1

Date: March 27, 2012

**IMPORTANT PUBLIC HEARING NOTICE****COASTAL PERMIT APPLICATION**CALIFORNIA  
COASTAL COMMISSION

PERMIT NUMBER: A-5-DPT-05-306

APPLICANT(S): Mehrdad Safari, Attn: Abraham Mosaddegh

**PROJECT DESCRIPTION:**

Construction of a 14,017 sq.ft., 2-story, single-family home, 9-car parking garage, 2 separate 1-story accessory buildings totaling 3,407 sq. feet, and landscape/hardscape on vacant 14.66 ac. lot; construction of retaining walls and grading to remediate landslides along Caribbean Drive and grading to prepare site for development consisting of 15,452 cu.yds. of cut, 9,402 cu.yds. of fill and 6,050 cu.yds. of export to location outside of coastal zone; and creation of an on-site 700 sq.ft. wetland mitigation and native habitat due to grading.

**PROJECT LOCATION:**

32354 Caribbean Drive, Dana Point (Orange County) (APN(s) 670-101-21)

**HEARING DATE AND LOCATION:**

DATE: Friday, April 13, 2012  
TIME: Meeting begins at 8:00 AM ITEM NO: F9b  
PLACE: Ventura City Hall Council Chambers  
501 Poli Street, Ventura, CA  
PHONE: (415) 407-3211

**COASTAL COMMISSION**EXHIBIT # A  
PAGE 1 OF 3**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.

CALIFORNIA COASTAL COMMISSION  
SOUTH COAST DISTRICT1000 Ocean Gate, 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: January 24, 2012

**IMPORTANT PUBLIC HEARING NOTICE**  
**COASTAL PERMIT APPLICATION****PERMIT NUMBER:** A-5-DPT-05-306**APPLICANT(S):** Mehrdad Safari, Attn: Abraham Mosaddegh**PROJECT DESCRIPTION:**

Development of part of a 14.66 acre vacant lot, containing sensitive habitat, zoned Residential Single Family 2 (RSF 2) and Open Space (OS) with a 14,017 sq. ft., two-story, single-family residence, nine (9)-car parking garage, two separate one-story accessory buildings totaling 3,407 sq. ft., and landscape/hardscape. Three (3) landslide areas along Caribbean Drive will be remediated by grading and installing retaining wall. Grading for the development and geologic remediation will consist of approximately 15,452 cubic yards of cut, 9,402 cubic yards of fill and 6,050 cubic yards of export to a location outside of the Coastal Zone. A 174 sq.ft. wetland would be impacted in conjunction with the grading, to be mitigated on site by creation of approx. 700 sq.ft. wetland

**PROJECT LOCATION:**

32354 Caribbean Drive, Dana Point (Orange County) (APN(s) 670-101-21)

**HEARING DATE AND LOCATION:****DATE:** Wednesday, February 8, 2012**TIME:** Meeting begins at 10:00 AM **ITEM NO:** W12a**PLACE:** Santa Cruz County  
701 Ocean Street, Santa Cruz, CA**PHONE:** (831) 588-4112

*see attached*  
*Signature: T. Mosaddegh*  
*I am opposed to the project*

**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).

**COASTAL COMMISSION**EXHIBIT # APAGE 2 OF 3

CALIFORNIA COASTAL COMMISSION



From: sdimascio@aol.com

To: bubblesloan@yahoo.com; libindp@cox.net

Bcc: SDimascio@aol.com

Subject: PETITION

Date: Wed, Aug 18, 2010 4:08 pm

Dear Monarch Bay Terrace Board of Directors:

8/18/2010

I am in receipt of your request to sign a petition endorsing the approval of the proposed residence at 32354 Caribbean Drive.

I would gladly sign a petition requiring the owner of the property to clean up the site. It has been an eyesore for years.

I will not sign a petition endorsing the approval to build a residence. The residence is not in M.B.T. and is none of our business. Our business is to have the owner clean up the site.

Why would we approve the construction of a 30000 square foot monstrosity on an unstable slope, which, if we have an earthquake, might collapse on homes in M.B.T. (including the DiMascio residence)

I appreciate the concerns of the M.B.T. Board of Directors, which I share, but I think the petition in its present form is misguided and exposes the M.B.T. residents to future risks.

Respectfully submitted,

Salvatore T. DiMascio  
22951 Aegean Sea Dr.  
Monarch Beach, Ca., 92629  
949-248-1639  
[sdimascio@aol.com](mailto:sdimascio@aol.com)

cc—Gilbert Lasky, Esq

COASTAL COMMISSION

EXHIBIT # A  
PAGE 3 OF 3

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South Coast Region

APR 11 2012

CALIFORNIA  
COASTAL COMMISSION

2 PARK PLAZA, SUITE 1050  
IRVINE, CALIFORNIA, 92614  
(949) 955-1950  
Fax (949) 2087128

**RICHARD L. DOMBROW**

*Attorney & Counselor at Law*

CERTIFIED SPECIALIST FAMILY LAW  
CALIFORNIA BOARD OF LEGAL SPECIALIZATION

April 9, 2012

California Coastal Commission

RE: F9b Set for Friday April 13, 2012

Dear Commission members,

My name is Richard L. Dombrow and I own the property located at 23132 Somerset Circle, Monarch Beach, California. That property is adjacent to the subject property. I object to the Commission's approving the proposed plan as submitted with the conditions as set forth.

The plan calls for moving almost 16,000 cubic yards of soil covering approximately 44,500 square feet of area. I saw nothing in the plan requiring the applicant to remediate the dust and damage necessarily caused by moving such vast amounts of material. Nothing is done to keep the dust and contamination away from the adjacent properties, and the sensitive habitat that is within 200 feet of the grading. Extensive grading that close to the ESHA will destroy the fauna and flora due the coating of dust and debris that will spill over into the area. The onshore winds will push the dust and dirt up the slope and into the adjacent homes. The trucks (and there will be many) carting the dirt away, 6,000 cubic yards, will drop dirt on the city streets, and cause major traffic problems. This is a quite residential area with many children and pets and only one way to exit the development from this building site on narrow two lane streets.

I saw nothing in the plan to assure the adjacent properties slopes will not be undermined due to the extensive grading and cutting of the natural contours that currently do not have any slippage problems. We have been in our home for over 25 years with absolutely no slope problems. Nothing in the 48 page report addresses the adjacent properties and the impact that this project will have on them and the surrounding community.

I respectfully request the application be denied in its present form.

Very truly yours,

  
Richard L. Dombrow

COASTAL COMMISSION

EXHIBIT # B  
PAGE 1 OF 1

April 9, 2012

California Coastal Commission  
South Coast District  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

**RECEIVED**  
South Coast Region

APR 11 2012

CALIFORNIA  
COASTAL COMMISSION

Re: Agenda Number 9B  
Permit Number: A-5-DPT-05-306  
Applicant: Mehrdad Safari  
APN 670-101-21

Position: Opposed

Dear Coastal Commission Members:

I am a 36 year resident of Monarch Bay Terrace, and live directly above the property where the Mehrdad residence is to be built. Clearly the property owner has invested a great deal of time and money, in trying to plan for this home. While I would like to see the unsightly and hazardous landslide areas on Caribbean Drive corrected, and cannot understand why it has not been the responsibility of prior property owners, or indeed, the present owner to remediate, I have several serious concerns that are not addressed in the Staff Report. I also have a concern about the clear placement of all liability for damages to current residents, on the Caribbean property owner, Mr. Safari. With acceptance of the terms of this Report, he appears to assume great financial liability that far exceed the costs to which he has currently committed.

It also appears unreasonable to me that despite the very comprehensive report, and the staff recommendation to proceed; and in the face of the many studies that Mr. Safari has undertaken, the Report stresses (twice) that he is to accept all liability for any damages that occur when he builds, and afterward. If the staff is confident enough to recommend that the project proceed, and find the building "...feasible and safe from a geotechnical perspective ..." if the many requirements are followed, the report also states that the project will (only) "sufficiently reduce the risks to make it approvable ..." and that the applicant must be aware of the remaining risks ..." That hardly appears a confident endorsement of the project.

1. There is no indication as to how properties above the construction site are to be protected from ground slippage or a landslide. Prior land owners have all developed plans to address this, and it is noteworthy that after study they have abandoned plans to build. So the potential risk of land slippage or landslide, with either damage or loss of our homes is of great concern to residents of the Upper Monarch Bay Terrace.

2. There is no plan for how residents of the Upper Monarch Bay Terrace are to be protected from the inevitable dust from movement of 16,000 square feet of soil, and other construction dust. This is particularly an issue when winds pick up off the ocean in the afternoon, but it will be an issue all day.

3. There is no plan as to how potential odors (fireplace, barbecue smoke) would be ameliorated in the finished home. The prevailing winds are off the ocean, and by late afternoon, blow directly into the homes above the property.

**COASTAL COMMISSION**

EXHIBIT # C  
PAGE 1 OF 2

4. Over the past 30+ years there have been four landslides. Obviously this is a fragile area. In observation of that, the Plan calls for only temporary, above ground irrigation, and no permanent system. Oddly, there are large Palm trees (which may, depending on position, intrude into views of others) in the landscape drawings, rather than the natural vegetation the Report mandates. In two places in that document, the Staff Report notes that the applicant must acknowledge that the property may be subject to "slope instability, erosion, landslides ..." and that the applicant will "assume the risks ..." and to "...unconditionally waive any claim of damage or liability against the Commission ... with respect to the Commission's approval of the project against any and all liability, claims, demands ... including costs and fees incurred in defense of such claims ..."

I work for a mental health agency, and helped provide service to the victims of the first Laguna Beach (Blue Bird Canyon) landslide, in which people lost their homes and property. I witnessed firsthand the emotional suffering and financial costs of what happened. It was devastating to the residents. The City of Laguna Beach – as always a unique and supportive city – and the community rallied to help victims. They fund raised, and even went to Washington, D.C., to obtain disaster funding. However, by the terms of this Report, all responsibility and liability should things go sadly amiss, Mr. Safari (or any subsequent owner of the property) is to assume all liability and responsibility for what could be massive damages that would far exceed the costs of developing his property.

We cannot get landslide insurance to cover potential damages to our property, and naturally would look to others for recompense should there be problems as a result of the construction that the Commission and the City of Dana Point would approve. I doubt that any insurer would look at the Report and consider this an assumable risk, even if coverage would be available. Land slippage or a slide could impact many homes in the Terrace area above as well as below the property. I really cannot imagine how one person could or would compensate homeowners for loss.

Thank you for consideration of my views on the Report, and your plans for the property.

Sincerely yours,



Linda Rappaport,  
23141 Somerset Circle  
Dana Point, CA 92629

**COASTAL COMMISSION**

EXHIBIT # C  
PAGE 2 OF 2

**CALIFORNIA COASTAL COMMISSION**

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

**F9b****ADDENDUM**

April 10, 2012

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F9b, APPEAL DE NOVO APPLICATION NO. A-5-DPT-05-306-(SAFARI) 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 Section II (Special Conditions) and Section III (Findings). 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

Pages 14-15 – Modify Section II, Special Condition No.8, as follows:

**8. OPEN SPACE RESTRICTION**

- A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur in the Open Space (OS) Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:
- (1) The wetland and habitat restoration approved pursuant to **SPECIAL CONDITION NO. 3 AND NO. 4**, Final Wetland Restoration Plan and Final Habitat Restoration and Monitoring Program, of this permit;
  - (2) The landscaping and erosion control plans approved pursuant to **SPECIAL CONDITION NO. 5**, Landscape Plan and **SPECIAL CONDITION NO. 16**, Erosion Control & Construction Best Management Practices (BMPs) Plan, of this permit;
  - (3) **The excavation of the existing landslide and installation of a seismically stable keyway, compaction of soil, installation of geogrid and installation of native vegetation and (plantable) crib retaining wall system in accordance with the final plans**

**approved by the Executive Director pursuant to SPECIAL  
CONDITION NO. 2, Final Project Plans, and SPECIAL  
CONDITION NO. 13, conformance with geotechnical  
recommendations, of this permit;**

- (4) Planting of native vegetation and other restoration activities beyond what's approved by this permit, if approved by the Commission as an amendment to this Coastal Development Permit or a new Coastal Development Permit; **and**
- (4 5) If approved by the Commission as an amendment to this Coastal Development Permit or a new Coastal Development Permit,
- (a) construction and maintenance of public hiking trails; and
  - (b) construction and maintenance of roads, trails, and utilities consistent with existing easements.
  - (c) **repair and maintenance of structures identified in 8.A.3, above.**

**B. PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the portion of the subject property affected by this condition, as generally described on Exhibit #7 attached to the findings in support of approval of this permit.

Page 26 – Modify Section III.A.4., as follows:

Additionally, the applicant has **proposed** ~~voluntarily offered~~ to restore native scrub habitat that was impacted by prior alleged unpermitted grading (see Unpermitted Development section for further discussion of alleged violation). The applicant states that he will restore and enhance 1.90 acres of native scrub habitat on-site with higher quality CSS and Maritime Chaparral/SS that rises to the level of ESHA, which has been verified by our Staff Biologist. In addition to the habitat restoration and enhancement, the applicant has also offered to preserve an existing 8.6 acre area of habitat on site that includes ESHA. The total area to be preserved will include the 8.6 acre area and the restored/enhanced 1.9 acre area, for a total of 10.5 acres.

Page 34 – Modify Section III.B.2., as follows:

In addition to creation of the wetland as discussed previously, the applicant has **proposed** ~~voluntarily offered~~ to restore native scrub habitat (Exhibit #5) that was impacted by prior alleged unpermitted grading (see Unpermitted Development section for further discussion of alleged

violation). The applicant states that they will restore and enhance 1.90 acres of native scrub habitat on-site with higher quality CSS and Maritime Chaparral/SS that rises to the level of ESHA, which has been verified by our Staff Biologist. The existing native scrub habitat that would be impacted by the proposed development is not considered ESHA, hence the mitigation proposed herein is not explicitly required in this case to offset that impact. Nevertheless, that habitat restoration has been offered and incorporated into this proposal. A portion of the area where the restoration and enhancement would occur is in an area that was formerly ESHA but was degraded by alleged unpermitted development consisting of grading and installation of drainage features. This situation will be further discussed in the unpermitted section of the staff report. In addition to the habitat restoration and enhancement, the applicant has also offered to preserve an existing 8.6 acre area of habitat on site that includes ESHA. The total area to be preserved will include the 8.6 acre area and the restored/enhanced 1.9 acre area, for a total of 10.5 acres. Both of these proposals are only “conceptual”, so a Final Plan needs to be submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**, submittal of a Final Habitat Restoration Plan.

Page 43 – Modify Section III.E, as follows:

**E. UNPERMITTED DEVELOPMENT**

Development has allegedly occurred on the project site without all required Coastal Act authorizations. For instance, ~~memorandums (Exhibits #3-4 & #6) prepared by the Commission Staff Biologist discussing the ESHA onsite says that~~ the project site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. *Memorandums (Exhibits #3-4 & #6) prepared by the Commission Staff Biologist discussing the ESHA onsite note* For example, it is noted that in 1979, the vegetation on the project site appeared to be relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside and some lesser trails extending from Caribbean Drive are also visible. Subsequent photographs depict additional disturbance, including the construction of the existing entry road off Caribbean Drive (expanding the pre-existing trail) and drainage features on the western portion of the site (i.e., berms, retention basins, grading and down drains). Some of this development *the slope stability features along the front property line on Caribbean Drive* may have received temporary authorization under a City-issued emergency Coastal Development Permit. However, there has been no follow-up authorization of a regular CDP for that emergency work.

Based on an analysis by the Commission’s Staff Biologist (see Exhibit #6), the western portion of the site where unpermitted drainage features were constructed was previously covered with ESHA. While the applicant is not seeking authorization nor is the applicant proposing mitigation for the unpermitted development at this location, the applicant has voluntarily proposed to restore and enhance 1.90 acres of native scrub impacted by grading onsite with habitat that is higher quality CSS and Maritime Chaparral/CSS that rises to the level of ESHA, which includes the area where the unpermitted drainage features are located. The proposed restoration and enhancement is allowed under the Coastal Act since it does restore and enhance native habitat area and results in ESHA habitat. However, at this time, it is not proposed by the

applicant as mitigation for the unpermitted development which had impacted the ESHA previously located onsite. One reason that mitigation for the unpermitted development isn't being sought at this time is because of uncertainty regarding the success of the proposed restoration. The prior grading in the restoration area altered the pre-existing topography. The habitat once present there, Maritime Chaparral/SS, is highly sensitive to slope angle/aspect. Thus, the changes to the topography may affect whether Maritime Chaparral/SS can be successfully restored in that location. As required by **SPECIAL CONDITION NO. 4**, the proposed restoration and enhancement will be monitored. The monitoring will show whether the restoration efforts are successful. Additional steps necessary to fully address the unpermitted development will be considered by the Commission's enforcement unit, and handled as a separate matter.

**2) Letter received April 9, 2012 from Kenneth Braun (Monarch Terrace Property Owners Association) (Attached as Exhibit A)**

A letter of support was received from Kenneth Braun representing the Monarch Terrace Property Owners Association. The letter also stated that there is a petition in support of the proposed project with over 200 signatures. An example of the petition has been included with the letter.



**MONARCH BAY TERRACE PROPERTY  
OWNERS ASSOCIATION**

P.O. Box 3526 • Dana Point, CA 92629  
Telephone (949) 460-6229

**RECEIVED**  
South Coast Region

Fernie Sy – Coastal Properties Analyst  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, Ca. 90802-4416

APR 9 2012

April 6, 2012

CALIFORNIA  
COASTAL COMMISSION

Dear Fernie Sy,

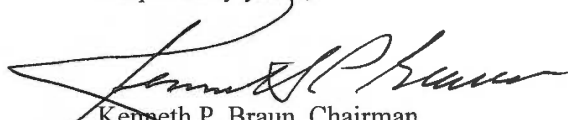
This letter is written to let you know we have been holding the enclosed petitions with over 200 signatures gathered by our residents in support of development of the project at 32354 Caribbean Drive, Dana Point, which is adjacent to our community, for almost two years.

For over two decades our association, representing 343 homes, has attempted without success to resolve the hazardous nuisance to the Caribbean roadway and the eyesores and landslides created from the applicant's property. We are informed by the City of Dana Point that no action can be taken to force the needed improvements to the property which will address these safety and esthetic issues without the approval of the California Coastal Commission and that the plan for the needed retaining walls and slope modification is tied to the approval of the overall project.

The 14.7 acre property has gone through many hands and aborted plans and extensive reworking to meet CCC and City requirements. We understand you will again be reviewing the plans and that the first phase of development will provide the necessary retaining wall to resolve the continuing mess on and hazard to Caribbean Drive. Therefore, we urge you to work expeditiously to mediate any remaining project concerns, so that this ongoing hazardous, environmental blight can be addressed.

Attached are several photographs which show the condition of the slope and roadway. Hopefully, you understand why the residents are so frustrated by the condition of this property and are looking to you as the only authority which can approve an acceptable development plan and solution to the problem. The property does not only create a dangerous condition, but also adversely affects property values in the area.

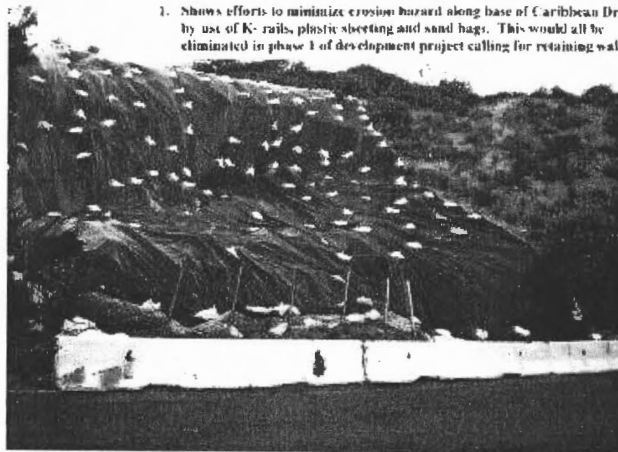
Respectfully yours,

  
Kenneth P. Braun, Chairman  
Community Relations Committee

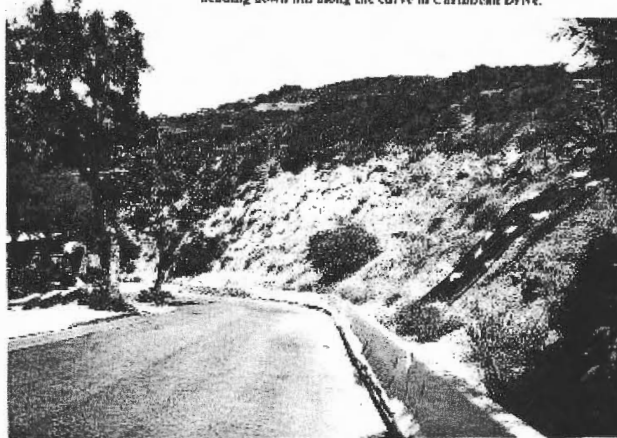
**COASTAL COMMISSION**

EXHIBIT # A  
PAGE 1 OF 4

1. Shows efforts to minimize erosion hazard along base of Caribbean Drive by use of K-rails, plastic sheeting and sand bags. This would all be eliminated in phase 1 of development project calling for retaining walls.



2. Seven homes directly front on hazardous, highted area with several more being immediately adjacent to it as shown on the left of this view heading down hill along the curve in Caribbean Drive.



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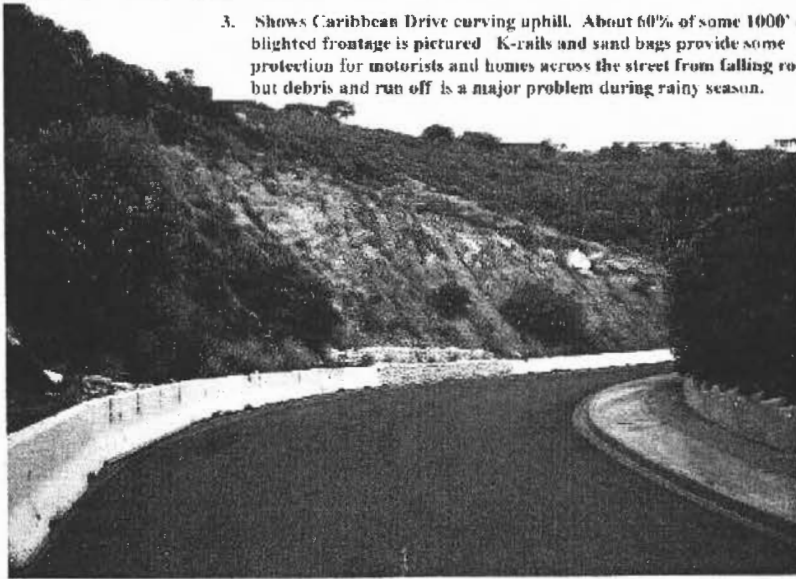
CALIFORNIA  
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**COASTAL COMMISSION**

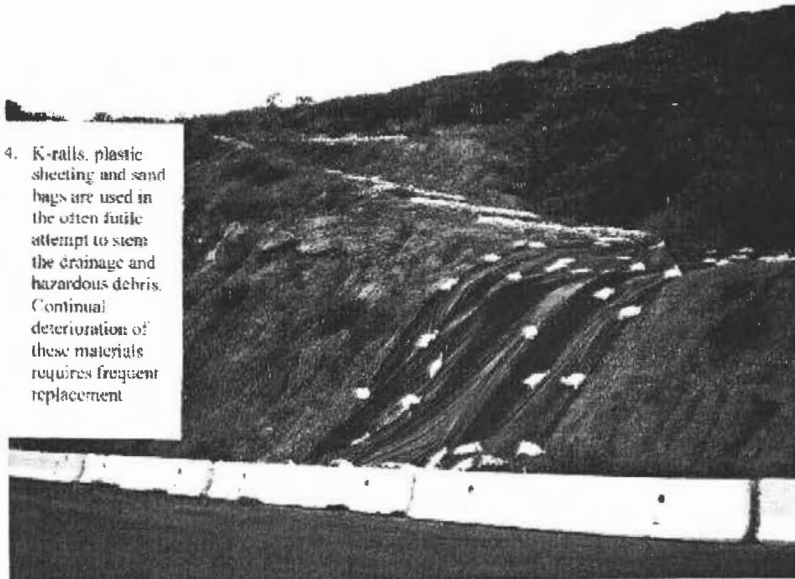
EXHIBIT # A  
PAGE 2 OF 4

7/24/2011

3. Shows Caribbean Drive curving uphill. About 60% of some 1000' of blighted frontage is pictured. K-rails and sand bags provide some protection for motorists and homes across the street from falling rocks, but debris and run off is a major problem during rainy season.



4. K-rails, plastic sheeting and sand bags are used in the often futile attempt to stem the drainage and hazardous debris. Continual deterioration of these materials requires frequent replacement.



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EXHIBIT # A  
PAGE 3 OF 4

7/24/2011

280 signed

PETITIONS

PETITION:

Pg 1

We, the undersigned, endorse the California Coastal Commission's approval of the proposed single family detached custom residence located within the 14 acre private parcel at **32354 Caribbean Drive** in Dana Point, CA. In conjunction with the proposed home, retaining walls and landscaping are proposed which will rectify the unsightly erosion and drainage conditions of the existing undeveloped hillside, for the mutual benefit of the property owner and the neighborhood. The slopes on this property have been deteriorating for many years and, besides being unsightly, have created a serious and increasing hazard from falling rocks to the street and houses below,

The Local Coastal Program Development Permit for this home including the proposed site improvements was approved by the Dana Point Planning Commission in 2005, but that approval was immediately appealed by two board members of the California Coastal Commission. We urge the Commission to approve this project on a timely basis in order to allow the owner to begin construction of the long awaited site improvements.

Providing our signatures to this Petition in favor of this project does not preclude us from the opportunity to address the commission with our comments at the next public hearing.

Signature:	Print Name:	Home Address:	Date Signed:
<i>Jo Frkovich</i>	Jo Frkovich	32621 Adriatic	8/4/10
<i>James Frkovich</i>	James Frkovich	32621 Adriatic	8/4/10
<i>Jenna Frkovich</i>	Jenna Frkovich	32621 Adriatic	8/4/10
<i>Polly Sloan</i>	Polly Sloan	32331 Baltic Sea	8/4/10
<i>Dwight Allison</i>	DWIGHT ALLISON	32641 SEA ISLAND DR	8/4/10
<i>Lyona Allison</i>	Lyona Allison	32641 Sea Island Dr.	8/4/10
<i>Jaleh Lehrich</i>	Jaleh Lehrich	32681 CARIBBEAN DR.	8/4/10
<i>Nancy Zibyock</i>	Nancy Zibyock	32682 SEVEN SEAS DR.	8-4-10
<i>Nicholas Zibyock</i>	Nicholas Zibyock	32682 Seven Seas Dr	8/4/10
<i>Susan Olsson</i>	SUSAN OLSSON	32492 AZORES RD	8/4/10
<i>Terrance Schuchke</i>	Terrance Schuchke	23022 BEARING SEA DR.	8/5/10
<i>Lisa D. Kraft</i>	LISA D KRAFT	32451 ADRIATIC DR.	8/5/10
<i>Jean L. Glab</i>	Jean L. Glab	32622 Adriatic Dr	8/6/10

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EXHIBIT # A  
PAGE 4 OF 4

**CALIFORNIA COASTAL COMMISSION**

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

**F 9b**

Appeal Filed: August 18, 2005  
180th Day: N/A  
Staff: Fernie Sy-LB  
Staff Report: March 29, 2012  
Hearing Date: April 11-13, 2012  
Commission Action:

**STAFF REPORT: APPEAL – DE NOVO**

**APPEAL NUMBER:** A-5-DPT-05-306

**APPELLANTS:** Coastal Commissioners: Meg Caldwell & Mary Shallenberger

**APPLICANT:** Mehrdad Safari; Attn: Abraham Mosaddegh

**AGENT:** Fleetwood Joiner and Associates, Inc., Attn: Tom Stewart

**PROJECT LOCATION:** 32354 Caribbean Drive, Dana Point (Orange County)

**PROJECT DESCRIPTION:** Construct 14,017 square foot, 2-story, single-family residence, 9-car parking garage, 2 separate 1-story accessory buildings totaling 3,407 square feet, and landscape/hardscape on a vacant 14.66 acre lot; construction of retaining walls and grading to remediate landslides along Caribbean Drive and grading and to prepare site for development consisting of 15,452 cubic yards of cut, 9,402 cubic yards of fill and 6,050 cubic yards of export to location outside of Coastal Zone; and creation of on-site 700 square foot wetland mitigation to offset impacts to 174 square foot wetland caused by landslide remediation.

**SUMMARY OF STAFF RECOMMENDATION**

On August 18, 2005, Coastal Commissioners, Meg Caldwell & Mary Shallenberger appealed the development on the project site approved by the City of Dana Point through Coastal Development Permit (CDP03-21) Site Development Permit (SDP03-60(m)).

On September 16, 2005, the Commission determined that the appeal raised a Substantial Issue and overturned the City of Dana Point's approval of the Local Coastal Development Permit.

On August 7, 2008, it went De Novo before the Commission and staff was recommending Denial, but it was postponed at the hearing.

This staff report is for the De Novo portion of the hearing on the appeal where the Commission will deny or approve the proposed development. Since 2008, the applicant has made significant changes to the proposed development to address issues raised in the prior denial recommendation. These changes are discussed in further detail in the staff note below. Staff is recommending **APPROVAL** of the proposed (revised) project subject to **TWENTY (20) SPECIAL CONDITIONS**. The motion to approve the permit is on Page Four.

**SPECIAL CONDITION NO. 1** requires submittal of Local Permits. **SPECIAL CONDITION NO. 2** requires submittal of Final Project Plans. **SPECIAL CONDITION NO. 3** requires submittal of a Final Wetland Restoration Plan. **SPECIAL CONDITION NO. 4** requires submittal of a Final Habitat Restoration and Monitoring Program. **SPECIAL CONDITION NO. 5** requires submittal of a Landscape Plan. **SPECIAL CONDITION NO. 6** requires conformance with the proposed Environmentally Sensitive Habitat Area (ESHA) Buffer. **SPECIAL CONDITION NO. 7** requires submittal of Orange County Fire Authority (OCFA) approval for the Revised Fuel Modification Zone. **SPECIAL CONDITION NO. 8** requires an Open Space (OS) Restriction. **SPECIAL CONDITION NO. 9** requires lighting not be directed toward ESHA and other sensitive biological habitat. **SPECIAL CONDITION NO. 10** requires a California gnatcatcher Pre-Construction Survey. **SPECIAL CONDITION NO. 11** requires an assumption of risk. **SPECIAL CONDITION NO. 12** requires additional approvals for any future development. **SPECIAL CONDITION NO. 13** requires evidence of conformance with geotechnical recommendations. **SPECIAL CONDITION NO. 14** requires submittal of a Pool Protection Plan. **SPECIAL CONDITION NO. 15** requires submittal of a Visual Treatment Plan. **SPECIAL CONDITION NO. 16** requires submittal of an Erosion Control Plan and Construction Best Management Practices (BMPs) Plan. **SPECIAL CONDITION NO. 17** requires submittal of a Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 18** provides guidelines for pool drainage and maintenance. **SPECIAL CONDITION NO. 19** requires Condition Compliance. **SPECIAL CONDITION NO. 20** requires a Deed Restriction against the property.

The Commission's De Novo public hearing on the merits of the application uses the certified Local Coastal Program (LCP), commonly referred to as the "1996" LCP as the standard of review. This "1996" LCP consists of the three (3) elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation and Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, and the Headlands Development Conservation Plan. The Commission can approve the Coastal Development Permit only if the proposed development is found to be consistent with the certified LCP of the local government. In this case, that finding can be made since the proposed project, as conditioned, is consistent with the Biological Resources, Hazards, Geologic Stability, Landform Alteration and Water Quality policies of the City of Dana Point LCP.

### **STAFF NOTE**

The subject 14.66 acre site is a vacant, irregularly shaped hillside lot in the Monarch Beach community of Dana Point. The site is inland of Pacific Coast Highway (PCH). The property is bordered by single-family residential development to the east, to the south, across Caribbean Drive, and at the southwest corner of the property. Open space areas are located toward the north and northwest. Except for some areas that have experienced past disturbance, the site is largely covered in native vegetation, including coastal sage scrub. The Commission's biologist has concluded that the areas vegetated with Southern Maritime Chaparral are Environmentally Sensitive Habitat Areas (ESHA). The ESHA occupies about 4.9 acres of the central and northwesterly portions of the property. There is also a small, approximately 174 square foot freshwater wetland seep toward the southeasterly portion of the site, on a steep slope adjacent to Caribbean Drive. Much of the

development proposed in the current application is located in the south/south easterly parts of the site (near Caribbean Drive).

On August 7, 2008, a proposal for development on the subject site was scheduled for a De Novo hearing before the Commission and staff was recommending Denial; the hearing was ultimately postponed at the request of the applicant. Staff recommended Denial for the following reasons: 1) the applicant's ESHA determination was inconsistent with the certified LCP; 2) since the sensitive habitat on site is ESHA, the proposed project had impacts upon ESHA that were inconsistent with the City's LCP (1996 LCP); and 3) the proposed project did not adhere to the landform alteration policies of the LCP.

Since that hearing date in 2008, the project has been through many revisions. The proposed residence has been reduced in size and moved 283-feet southeast of the former position (i.e. moved toward Caribbean Drive). The residence (and associated grading for construction) is no longer within ESHA. In addition, the residence has been positioned to avoid impacts on ESHA caused by the Fuel Modification Zone. The development has a 100-foot Fuel Modification Zone and then a 100-foot ESHA buffer (to clarify, the Fuel Modification Zone and ESHA buffer do not overlap) (Exhibit #1, page 1). Hence the development is now approximately 200-feet away from any ESHA.

Additional information submitted to staff since 2008 has also clarified the purpose behind much of the proposed grading, and the design of a proposed retaining wall system along Caribbean Drive. With that new understanding, staff has concluded the project does minimize landform alteration and adheres to the applicable policies of the LCP. Caribbean Drive is a public road that provides the sole access to residences in the neighborhood. The slope on the applicant's property, adjacent to Caribbean Drive, is extremely steep. Geologic studies show there are four (4) landslides on the site and three (3) of those are located near the front property line contiguous to Caribbean Drive (Exhibit #1, page 1). For over 20 years, slope failures have required road closures and significant roadway maintenance by the City. Drainage and erosion control measures on the applicant's property and the installation of debris capture systems along the road (e.g. k-rails) have been unsuccessful at addressing the slope failures. To address these landslide induced impacts upon Caribbean Drive, the City's approval of the project included a requirement that the applicant remediate the three (3) landslides. To remediate the landslide and protect Caribbean Drive, the applicant is proposing to excavate the landslide and install a seismically stable keyway, compacted soil, geogrid, native vegetation and (plantable) crib retaining wall system. Other alternatives were evaluated, but were found to result in more landform alteration or would not satisfy all the required elements in the City's approval of the project. For example, use of shotcrete on the sloped surface would prevent the required landscaping of the slope to reduce visual impacts. Thus, Commission staff determined that the proposed landslide remediation, which includes crib retaining walls, would result in the least amount of landform alteration, would be consistent with the City's conditions of approval and more so would be consistent with the Landform Alteration policies of the City of Dana Point LCP.

One significant constraint to remediating the landslides is the presence of a 174 square foot "Fresh Water Seep" (wetland) located in one of the three (3) landslide areas proposed for remediation. The precise origin of the wetland is uncertain, but may have formed following movement of the

landslide. The wetland has relatively low biological value containing southern cattail, pampas grass, and salt cedar. This wetland would be completely excavated by the grading necessary to remediate the landslide. Wetlands are protected under the Coastal Act and in the City's LCP. Specifically, Policy 3.6 of the Conservation and Open Space Element (COSE) of the City's LCP, prohibits the dredging and/or fill of wetlands, unless such dredging/fill is in association with one of seven (7) allowable uses. One (1) of the allowable reasons for dredging/filling a wetland is dredging/fill association with an "incidental public service." That is, dredging/filling associated with some activity necessary to continue to provide an important public service. In this case, the proposed landslide remediation work is necessary to stabilize an area adjacent to a public road (Caribbean Drive) that has been adversely impacted by landslide activity. It is important for the City to maintain Caribbean Drive in a safe and passable condition as that road provides the only access for residences in the area. Remediation of the landslides is necessary to continue to provide this important public service. Therefore, the wetland impact would be a result of an "incidental public service" (protection of a public road for continued use by the public).

Another complicating factor is the need to provide vehicular access to the proposed development onsite. The applicant has proposed a private driveway to achieve that goal. However, that road passes through the same area occupied by the wetland and landslide. Staff initially questioned whether it was this private driveway, not the landslide remediation that was necessitating the wetland impact. If so, there is no provision in the LCP that would allow a wetland impact to construct a private driveway needed to render the subject site 'developable'. Staff was ultimately convinced that the grading was necessary to remediate the landslides to protect the public road, and not necessary in conjunction with construction of the private driveway, because the applicant demonstrated that the private driveway could be constructed using caissons, in an alignment that would avoid the wetlands. Thus, while it is possible to construct private access to the site without impacting the existing wetland, protection of the public road (Caribbean Drive) from the landslides, would still need to be addressed.

Even though staff was able to conclude that the excavation of the wetland is necessary for an incidental public service purpose, the LCP still requires that the project chosen be the least environmentally damaging alternative. Thus, alternatives to the proposed landslide remediation were considered. Among those alternatives, Commission staff requested that the applicant look at one that would leave the landslide materials in place in an effort to avoid the wetland impact.

The applicant's geologist responded with a proposed system that would include a caisson or grade beam and tieback anchor support system with a shotcrete cover, totaling approximately 20 to 25-feet in height. In this alternative, the upper half of the slide area would be unremediated and uncovered. Potential reactivation of the slide would be controlled behind a debris wall encatchment facility located atop the 20-foot high shotcrete cover. The debris wall would require sufficient height (estimated at 20'-25') and width (150 linear feet or more) to contain reactivation of the slide. The geologist stated that the system would leave an unstable area in the center of the site, and strongly opposed reliance on that system in lieu of the proposed and recommended stabilizing system. Furthermore, the geologist showed that this alternative would require periodic debris removal, which would ultimately involve the wetland material. Additionally, the geologist states that the unstable area would eventually fail and destroy the wetland regardless of the wall



protection. Furthermore, the geologist states that this option would have a low factor of safety for onsite conditions and would not provide a long-term solution to adequately protect the wetland in its present location due to the underlying soil instability.

The City also took a look at this alternative and found that it was unacceptable since it would not satisfy the City of Dana Point's requirement to provide a permanently stable and adequately safe hillside condition, a plantable crib retaining wall system of a reasonable height for the neighborhood, and a plantable finished slope surface with erosion control per the Conditions of Approval.

Therefore, the proposed landslide remediation alternative involving grading and installing a seismically stable keyway, compacted soil, geogrid and (plantable) retaining wall system is the least environmentally damaging alternative. While the wetland impact has been determined to be for an allowable use and has been determined to be the least environmentally damaging alternative, appropriate mitigation for the impacted wetland must be provided. The applicant has proposed to mitigate the unavoidable direct permanent impacts to the 174 square feet wetland located in the southwest portion of the site by creating a 700 square feet wetland habitat (4:1 ratio) onsite at a site near the southwest corner of the site. The created wetland will be planted with a riparian species that are adapted to seasonally wet conditions, during winter and spring and that are also tolerant of dry conditions during the summer and fall.

One final complicating factor is the presence of alleged unpermitted development on the site. The project site appears to have been disturbed sometime in the past, but after 1979, by grading roads, terracing, ground clearing, the placement of sandbags to control erosion, and the construction of drainage features on the western portion of the site (i.e., berms, retention basins, grading and down drains). Staff was concerned that the area where the applicant is proposing the home and other significant development, which is not ESHA today, may have been ESHA in the past that was degraded by the alleged unpermitted development. With assistance from the applicant's biologist, the Commission's biologist has concluded that the area where the proposed development is located was not ESHA prior to the alleged unpermitted development. Thus, the current proposal does not rely on/take advantage of conditions caused by the past alleged unpermitted development. The applicant is proposing habitat restoration on the site that will improve the habitat on the site in areas where some of the alleged unpermitted development occurred. However, at this time, except for the removal of graded non-ESHA areas that happen to be in the footprint of the proposed development, they are not seeking authorization for any of the past alleged unpermitted development, nor are they requesting that the proposed habitat restoration count toward resolving any portion of the alleged violation. All aspects of resolving the alleged violation would be handled through enforcement as a separate matter.

The proposed project has gone through many variations and has significantly been reduced in overall size. Below is a chart that shows the changes to the proposed project from the original design to the currently proposed project.

#### **Changes to Project since Original City Approval**

	Summary of Original Design	Summary of Revised Design
<b>Main House Enclosed Area</b>	18,704 square feet	14,017 square feet (Reduced by: 4,687 square feet = 25% Reduction)
<b>Footprint Area of Enclosed Buildings</b>	15,694 square feet	10,350 square feet (Reduced by 5,344 square feet = 34% Reduction)
<b>Overall Length of Developed Building Pad</b>	340 feet	170 feet (Reduced by: 170 feet = 50% Reduction)
<b>Limit of Site Grading Area for Residence and Driveway</b>	121,469 square feet	44,575 square feet (Reduced by: 76,894 square feet = 63% Reduction)
<b>Impact on Sensitive Vegetation</b>	101,562 square feet	0 square feet (Reduced by 101,562 square feet = 100% Reduction)

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## **I. MOTION, STAFF RECOMMENDATION *DE NOVO*, & RESOLUTION:**

### **Motion:**

*I move that the Commission approve Coastal Development Permit No. A-5-DPT-05-306 subject to conditions.*

### **Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit 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 to Approve Permit:**

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified City of Dana Point Local Coastal Program (1996 LCP). Approval of the permit complies with the California Environmental Quality Act (CEQA) because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the 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 CONDITIONS:**

### **1. SUBMITTAL OF LOCAL PERMITS**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director a copy of all Local Permits (i.e., Conditional Use Permit from the City of Dana Point allowing the proposed recreational uses in the Open Space (OS) Zone, etc) and Amended Local Permits (i.e., Site Development Permits) from the City of Dana Point regarding the revised project, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the City of Dana Point. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

### **2. FINAL 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 Final Project Plans (floor, elevation, section, foundations, grading, crib retaining wall, driveway, drainage plans, etc.). The Final Project Plans shall be in substantial conformance with the plans received in the Commission's South Coast Area office on September 6, 2011, except they shall be modified according to the following:

The unpermitted drainage features and associated grading shall be identified and labeled with the following: "These drainage features and associated grading are not permitted by this Coastal Development Permit".

- 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. FINAL WETLAND RESTORATION PLAN**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall develop, in consultation with the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS) as appropriate, and submit for review and written approval of the Executive Director, a detailed Final Wetland Restoration Plan designed by a qualified wetland biologist for enhancement, monitoring and long term management of the wetland areas in substantial conformance with the plan dated December 2010 [Revised August 2011] and the revised wetland location shown on a plan received on March 23, 2012. Said plan proposes creation of at least 700 square feet of freshwater wetland habitat (4:1 ratio) on the subject site to offset the proposed impacts to 174 square feet of freshwater wetland habitat, except that the program shall be revised to, at a minimum, include the following:

1. The "Act of God" exception to success criteria found on page 10 in the currently proposed restoration plan shall be removed;
2. Provisions that assure that all runoff from the developed site that is directed toward the wetland area shall be filtered prior to discharge into the wetland area;
3. Plans for site preparation and invasive plant removal;
4. Restoration plan including planting design, plant palette, source of plant material, plant installation, erosion control;

5. Final Success Criteria including target vegetation cover, target species composition, target wildlife usage and methods of monitoring;
  6. Provisions for assessing the initial biological and ecological status of the “as built” enhancement site within 30 days of establishment of the site in accordance with the approved enhancement, monitoring and management program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
  7. Provisions for monitoring and remediation of the enhancement site in accordance with the approved final enhancement, monitoring and management program for a period of five years (5) or until it has been determined that success criteria have been met, whichever comes first.
  8. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall be a cumulative report that summarizes all previous reports. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the wetland enhancement project in relation to the performance standards.
  9. Provisions for final monitoring for success after at least three years (3) after end of all remediation and maintenance activities other than weeding.
  10. Provisions for submission of a final monitoring report to the wetland enhancement site conforms to the goals, objectives, and performance standards set forth in the approved final enhancement program. The report must address all of the monitoring data collected over the monitoring period.
  11. The permittee shall implement a long term perpetual management, maintenance and monitoring plan for the wetland area. The goal of the long term plan shall be to preserve the enhanced wetland area in its enhanced condition. The plan shall include a description of the perpetual management, maintenance and monitoring actions. The landowner(s) shall provide funding adequate to achieve the goal of the plan.
- B.** If the final report indicates that the enhancement has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental enhancement program to compensate for those portions of the original program which did not meet the approved performance

standards. The revised enhancement program, if necessary, shall be processed as an amendment to this Coastal Development Permit.

- C. The permittee shall enhance, monitor and manage the wetland area in accordance with the approved program, including any revised program approved by the Commission or its staff. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the approved program shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

#### 4. **FINAL HABITAT RESTORATION AND MONITORING PROGRAM**

- A. **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall develop, in consultation with the California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) as appropriate, and submit for review and written approval of the Executive Director, a detailed Final Habitat Restoration and Monitoring Program. The Final Habitat Restoration and Monitoring Program shall be in substantial conformance with the preliminary draft plan received on March 5, 2012. Said plan proposes to restore 1.90 acres of native habitat on the subject site with 1.9 acres of CSS and Maritime Chaparral/SS, higher quality habitat that rises to the level of ESHA. In addition to the habitat restoration and enhancement, the applicant has also offered to preserve an existing 8.6 acre area of habitat on site that includes ESHA. Supplementary restoration may be identified in the restoration and monitoring program. A qualified biologist for restoration and monitoring of the coastal sage scrub restoration site shall design the restoration and monitoring program. The restoration and monitoring program shall at a minimum include the following:

- (1) Plans for site preparation and preservation of native seed bank;
- (2) Restoration plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
- (3) Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. The Army Corps of Engineers "50/20" rule shall be used to determine dominance. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site. The vegetative cover of dominant species at the restoration and reference sites will be compared with an appropriate statistical test. Random sampling of the restoration and reference sites will be done with sufficient replication to detect a 10% absolute difference in cover with 90% power with  $\alpha=0.10$ .

The cover of dominant species will be considered similar if there is no statistical difference ( $P > 0.10$ ) in the average cover of each dominant species between the two sites; or, if there is a statistically significant difference, it is no greater than 10% absolute cover;

- (4) The sampling design to be employed, an estimate of the sample variance, and a statistical power analysis to estimate the necessary number of samples to meet the requirements specified above. Power analysis software is available commercially and on the world wide web (e.g, <http://www.stat.uiowa.edu/~rlenth/Power/index.html>).
- (5) Provisions assessing the initial biological and ecological status of the “as built” restoration site within 30 days of establishment of the restoration site in accordance with the approved restoration program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
- (6) Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five (5) years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.
- (7) Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall be a cumulative report that summarizes all previous reports. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards.
- (8) Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. Final performance monitoring shall take place after at least three years without remediation or maintenance other than weeding. The performance monitoring period shall either be five (5) years or three (3) years without maintenance or remediation, whichever is longer. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five (5) year period.

- B.** If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this Coastal Development Permit.
- C.** The permittee shall monitor and remediate the coastal sage scrub restoration site in accordance with the approved monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**5. LANDSCAPE PLAN**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Landscape Plan, to include proposed landscaped areas located outside of the wetland and habitat restoration areas subject to the requirements of **SPECIAL CONDITIONS NO. 3 AND NO. 4**), prepared by a licensed landscape architect that includes the following:

- (1) The plan shall demonstrate that:

  - (a) All landscaping shall consist of native plant species 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 existing landscaping that doesn’t meet the above requirements shall be removed;
  - (b) For the landscaping proposed for the landslide remediation area and crib retaining wall to soften the visual impact of its massing, the Landscape Plan shall include specific plantings that once mature will



provide screening from above, within, and at the base of the proposed crib retaining walls. Said landscaping shall include a growth schedule for the species used to screen the crib retaining walls. Failure to meet growth schedule will require additional plantings or new species that will achieve the required screening and assist in slope stability;

- (c) No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground low-flow irrigation to allow the establishment of the plantings is allowed.
  - (d) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage; and
  - (e) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (2) The plan shall include, at a minimum, the following components:
- (a) Two (2) full size copies of a map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
  - (b) A schedule for installation of plants.

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

## **6. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA) BUFFER**

The applicant shall conform to the proposed 100-foot wide Environmentally Sensitive Habitat Area (ESHA) Buffer as shown on the plans received in the Commission's South Coast Area office on September 6, 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.

7. **ORANGE COUNTY FIRE AUTHORITY (OCFA) APPROVAL FOR THE REVISED FUEL MODIFICATION ZONE**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director a copy of a permit/approval issued by the Orange County Fire Authority (OCFA), or letter of permission, or evidence that no permit or permission is required for the Fuel Modification Zone as shown on the plans received on September 6, 2011. Any landscaping proposed shall be consistent with the wetland restoration plan and habitat restoration and monitoring program required pursuant to **SPECIAL CONDITION NO. 3 AND NO. 4**, and the landscaping requirements of **SPECIAL CONDITION NO. 5**. The applicant shall inform the Executive Director of any changes to the project required by the Orange County Fire Authority (OCFA). Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

8. **OPEN SPACE RESTRICTION**

- A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur in the Open Space (OS) Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:
- (1) The wetland and habitat restoration approved pursuant to **SPECIAL CONDITION NO. 3 AND NO. 4**, Final Wetland Restoration Plan and Final Habitat Restoration and Monitoring Program, of this permit;
  - (2) The landscaping and erosion control plans approved pursuant to **SPECIAL CONDITION NO. 5**, Landscape Plan and **SPECIAL CONDITION NO. 16**, Erosion Control & Construction Best Management Practices (BMPs) Plan, of this permit;
  - (3) Planting of native vegetation and other restoration activities beyond what's approved by this permit, if approved by the Commission as an amendment to this Coastal Development Permit or a new Coastal Development Permit;
  - (4) If approved by the Commission as an amendment to this Coastal Development Permit or a new Coastal Development Permit,
    - (a) construction and maintenance of public hiking trails; and
    - (b) construction and maintenance of roads, trails, and utilities consistent with existing easements.

- B. PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the portion of the subject property affected by this condition, as generally described on Exhibit #7 attached to the findings in support of approval of this permit.

**9. LIGHTING**

All exterior lighting within the proposed development shall be shielded and directed so that light is directed toward the ground and away from Environmental Sensitive Habitat Areas (ESHA) and other sensitive biological habitat. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.

**10. CALIFORNIA GNATCATCHER PRE-CONSTRUCTION SURVEY**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit two (2) copies of a valid California gnatcatcher pre-construction survey, prepared in accordance with survey protocols established by the U.S. Fish and Wildlife Service, and subject to the review and approval of the Executive Director. The California gnatcatcher survey shall be completed before construction of the proposed project.
- B.** If impacts to California gnatcatcher are found within the project area, or within 500 feet of the project area, the applicant shall not proceed with the project until a Coastal Commission approved amendment to this Coastal Development Permit is obtained or unless the Executive Director determines that no amendment is legally required.

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

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from slope instability, erosion, landslides and fire hazards; (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.

## **12. FUTURE DEVELOPMENT**

This permit is only for the development described in Coastal Development Permit No. A-5-DPT-05-306. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. A-5-DPT-05-306. Accordingly, any future improvements to the single-family residence and appurtenances authorized by this permit, including a change in use and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. A-5-DPT-05-306 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government as determined by the Executive Director of the Commission.

## **13. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS**

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations: *Preliminary Geotechnical Investigation for New Single Family Residence, 32354 Caribbean Drive, Dana Point, California* prepared by Geofirm dated November 11, 2003; *Review of Slope Repair Alternatives for Caribbean Drive Slope Instability and Seepage* prepared by Geofirm dated December 23, 2010; and *Grading Plan Review, Proposed Access Road Grading and 2010 California Building Code* (Vol. I & II) prepared by Geofirm dated September 1, 2011.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final design and construction plans (foundations, grading and drainage plans, etc.) along with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering reports.
- C.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

## **14. POOL PROTECTION PLAN**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of a Pool Protection Plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability

caused by leakage from the proposed pool. The pool plan shall incorporate and identify on the plans the following measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and spa design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet.

- 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 unless the Executive Director determines that no amendment is legally required.

**15. VISUAL TREATMENT PLAN**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Visual Treatment Plan that is designed to soften, through selective placement of architectural elements, appropriate colors, textures and finishes, and vegetation, the visual impact of the residence and associated structures (i.e., crib retaining walls). All exterior walls and building exteriors shall be finished in earth tones including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features. The plan shall provide for the adequate planting of shrubs, vines, and occasional trees, selectively placed to soften the visual impact of the approved retaining wall from significant vantage points and shall be consistent with **SPECIAL CONDITION NO. 5 (Landscape Plan)**.

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

**16. EROSION CONTROL PLAN AND CONSTRUCTION BEST MANAGEMENT PRACTICES (BMPs) PLAN**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of an Erosion Control and Construction Best Management Practices (BMPs) Plan, prepared by licensed civil engineer or qualified water quality professional. The

consulting civil engineer/water quality professional shall certify in writing that the Erosion Control and Construction Best Management Practices (BMPs) Plan is in conformance with the following requirements:

1. Erosion Control Plan

- (a) The plan, which shall be in conformance with the requirements of **SPECIAL CONDITION NO. 6 (ESHA Buffer)**, shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags;
- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction;
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures;
- (d) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); temporary drains and swales; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible;
- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill; and
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be planted with native drought tolerant non-invasive plants. These temporary erosion control measures shall be

monitored and maintained until grading or construction operations resume.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas (ESHA), streams, wetlands or their buffers;
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;



- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**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.

**17. DRAINAGE AND RUN-OFF CONTROL PLAN**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Drainage and Run-Off Control Plan, including supporting calculations. The plan shall be prepared by a licensed civil engineer or qualified licensed professional and shall incorporate Best Management Practices (BMPs) including site design and source control measures designed to control pollutants and minimize the volume and velocity of stormwater and dry weather runoff leaving the developed site. In addition to the specifications above, the consulting civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Run-Off Control Plan is in substantial conformance with the following minimum requirements:

- (1) BMPs should consist of site design elements and/or landscape based features or systems that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas onsite, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns;

- (2) Landscaping materials shall consist of native drought tolerant non-invasive plant specie which have low water and chemical treatment demands consistent with **SPECIAL CONDITION NO. 5 (Landscape Plan)**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application. No permanent irrigation systems are to be used in the area graded for landslide remediation.
- (3) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains;
- (4) For projects located on a hillside, slope, or which may otherwise be prone to instability, Final Drainage Plans should be approved by the project consulting geotechnical engineer; and
- (5) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new Coastal Development Permit is required to authorize such work.

**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.

## **18. POOL DRAINAGE AND MAINTENANCE**

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

**19. CONDITION COMPLIANCE**

Within 180 days of Commission action on this Coastal Development Permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**20. 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.

**III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION**

The proposed site is a vacant 14.66 acre lot located in the City of Dana Point above the Monarch Bay Terrace Community in Monarch Beach, near the intersection of Pacific Coast Highway and Crown Valley Road (Exhibit #2). The property is comprised of a large hillside lot located in a Biological Sensitive Area as shown on Figure COS-1 in the Conservation and Open Space Element (COSE) of the City's Certified LCP. Except for some areas that have experienced past disturbance, the site is largely covered in native vegetation, including coastal sage scrub. In a memo to Commission staff, the Commission's biologist, Dr. John Dixon, has concluded that the areas vegetated with *Transitional Southern Maritime Chaparral* and *Maritime Chaparral-Sage Scrub*, which are both considered *Southern Maritime Chaparral* are Environmentally Sensitive Habitat Areas (ESHA). The ESHA occupies about 4.9 acres of the central and northwesterly portions of the property. There is also a small, approximately 174 square foot freshwater wetland seep toward the southeasterly portion of the site, on a steep slope adjacent to Caribbean Drive. The property is bordered by single-family residential development to the east, to the south, across Caribbean Drive, and at the southwest corner of the property. At the southeastern corner of the property are two (2)

water tanks located on lots owned by the South Coast Water District. The remainder of the property is bordered on the west by the Aliso and Wood Canyons Wilderness Park and on the north by a lettered open space lot (owned by the neighboring Monarch Point Homeowners Association) located in the City of Laguna Niguel. The subject site contains two (2) zoning/land use designations according to the City's Zoning Map and General Plan Land Use Policy Diagram. The southern portion of the property that has frontage along Caribbean Drive is zoned Residential Single Family 2 DU/AC (RSF 2) and the upper (northern) portion is designated as Open Space (OS).

The subject site was created through the County of Orange's approval of Tentative Parcel Map 77-26 in March 1977. The California Coastal Commission further modified the County's approval in March of 1978, by requiring the recordation of a deed restriction against the property limiting the use of the parcel to single-family dwelling use, and prohibiting further subdivisions of the property. No limitations on the size of the proposed structures were included in the deed restriction.

On April 14, 1997, the City granted emergency Coastal Development Permit CDP97-05 to allow emergency remedial and protective measures necessary to address a landslide which occurred on the southern portion of the property along the Caribbean Drive frontage.

On July 6, 2005, the City of Dana Point Planning Commission approved Resolution No. 5-07-06-29 and Resolution No. 5-07-06-28 allowing development of a large single family residence. Concerns raised in the City's approvals centered on the biological resources located on the property. The location and potential impacts to two (2) sensitive vegetation communities (*Transitional Southern Maritime Chaparral* and *Coastal Sage Scrub* (CSS)) on the property influenced the scope of the proposed grading, fuel modification, and the size of the project including the elimination of a tennis court and associated structures, and golf cart path on the lower western portion of the property originally proposed with the development.

Three (3) Government Agencies commented on the Mitigated Negative Declaration (MND) for this project when it was circulated. The California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS) provided a joint letter primarily addressing habitat issues. A second letter from the County of Orange Resources & Development Management Department focused on aesthetic issues in addition to the biological resource issues associated with the project. To acknowledge the concerns raised in these letters and to strengthen mitigation measures included in the MND, additional conditions of approval were added to the project by the City. For example, one of the City's approved conditions requires the applicant to include those areas of chaparral/CSS ecotone located in the RSF 2 Zone in a permanent open space easement, in addition to those areas of preserved *Transitional Southern Maritime Chaparral* and re-vegetated CSS that are to be included in an open space easement pursuant to the MND.

#### 1. Coastal Development Permit (CDP03-21)

The City's Coastal Development Permit (CDP03-21) allows the construction of a single-family dwelling and accessory structures ancillary to the main residence and associated improvement on a vacant lot. The primary structure the City approved was a 18,704 square foot, two-story, single-

family dwelling with a basement. The residence was designed with a flat roof to the maximum 24-foot height limit for roofs with pitches less than 3:12. This primary dwelling also included two (2) permitted projections above the height limit one projection by 3-feet and the other by 5-feet.

Three (3) other accessory structures were also proposed in conjunction with the primary dwelling: 1) a detached, two-story, 820 square foot caretaker's (2<sup>nd</sup> dwelling unit) unit located at the front of the main residence; 2) a detached, 3,472 square foot, two-level theater/bowling alley located at the rear of the main dwelling; and 3) a detached, 400 square foot astronomical observatory located at the rear of the primary dwelling and nestled between the theater/bowling alley and proposed retaining walls.

Related site improvements included several crib retaining walls reaching a maximum height of 21-feet, a 700-foot driveway, pool and spa, and landscaping. A large water feature was also proposed which would cascade down from the slope at the rear of the main dwelling into an aqueduct and larger shallow pond below between the main dwelling and the swimming pool. There were additional hardscape improvements that included on-site guest parking and several firetruck turn out/around areas due to the long access driveway connecting the development to Caribbean Drive. With the exception of landscaping, all the above-mentioned site improvements were to occur within the boundaries of the RSF 2 Zoning District. The only proposed improvements in the OS District were related to landscaping, and included the associated landscape fuel modification and re-vegetation of displaced habitat area.

## 2. Site Development Permit (SDP03-60(m))

The City's Site Development Permit (SDP03-06(m)) allows the construction of several crib retaining walls associated with the development. The highest and most visible retaining walls were proposed near the front property line along Caribbean Drive. These (plantable) crib retaining walls originate at the proposed driveway entrance to the site at the southeast corner of the lot. The walls were proposed to assist in stabilizing existing landslide areas and to create the access driveway between Caribbean Drive and the proposed development. The lower retaining wall, immediately adjacent to Caribbean Drive, would be 6-feet in height and then would step back before continuing to vary in height as high as 15-feet. The upper retaining wall supporting the access driveway ranged from 12 to 21-feet in height. Both of these walls are crib type and would be landscaped to mitigate the appearance of the walls from surrounding properties and the street. The City conditioned the permit so that these stabilization walls would be constructed prior to commencement of the next rainy season (then Oct. 1, 2005) and prior to commencing construction of the dwelling structures due to the continued sloughing of the slope along Caribbean Drive. In lieu of constructing the retaining walls by that date, the applicant was required to remove the existing "K-Rail" at the base of the slope along Caribbean Drive and replace it with a more attractive yet functional debris wall or fence.

Additionally, in order to create the building pads for the proposed structures, useable outdoor living space, and water features, many retaining walls were proposed at the rear and along the southern side of the main dwelling. These walls varied in height and step up around the back of the lot with the highest walls being 18-feet.

### 3. Appeal, Significant Issue, Previous De-Novo Action and Standard of Review

On August 18, 2005, Coastal Commissioners, Meg Caldwell & Mary Shallenberger appealed the development on the project site approved by the City of Dana Point through Coastal Development Permit (CDP03-21) Site Development Permit (SDP03-60(m)). The proposed development is located in the Monarch Beach area of the City of Dana Point, which has a certified Local Coastal Program (LCP) commonly referred to as the “1996” LCP. These local approvals would have allowed the construction of a single-family residence and ancillary structures on a portion of a vacant lot that would have resulted in direct impacts to sensitive habitat (*Bushrue, Coastal Sage Scrub*) and potential impacts (e.g. fuel modification) to sensitive habitat (*Transitional Southern Maritime Chaparral*). These sensitive habitats may have qualified as Environmentally Sensitive Habitat Area (ESHA) that were protected from disturbance by policies in the City’s certified LCP. Although required by the City’s LCP (Conservation and Open Space Element (COSE) Policies 3.1 and 3.2), there was no evidence in the City’s approval of any determination regarding the presence of ESHA on the site. Furthermore, if the sensitive habitat was ESHA, the proposed project would have impacts upon ESHA that were inconsistent with the City’s LCP (Conservation and Open Space Element (COSE) Policies 3.1 and 3.7). Thus, the City’s approval raised issues as to conformity with the policies of City of Dana Point’s LCP regarding protection of biological resources and thus was appealed.

On September 16, 2005, Commission staff recommended that the Commission find that the appeal raised Substantial Issue and overturn the City of Dana Point’s approval of the Local Coastal Development Permit. The Commission agreed and Substantial Issue was found.

On August 7, 2008, a proposal for development on the subject site was scheduled for a De Novo hearing before the Commission and staff was recommending Denial; the hearing was ultimately postponed at the request of the applicant. Staff recommended Denial for the following reasons: 1) the applicant’s ESHA determination was inconsistent with the certified LCP; 2) since the sensitive habitat on site is ESHA, the proposed project had impacts upon ESHA that were inconsistent with the City’s LCP (1996 LCP); and 3) the proposed project did not adhere to the landform alteration policies of the LCP.

The Commission’s De Novo public hearing on the merits of the application uses the certified Local Coastal Program (LCP), commonly referred to as the “1996” LCP as the standard of review. This “1996” LCP consists of the three (3) elements of the City’s General Plan (the Land Use Element, Urban Design Element, and Conservation and Open Space Element), the City’s Zoning Code, the Monarch Beach Resort Specific Plan, and the Headlands Development Conservation Plan. The Commission can approve the Coastal Development Permit only if the proposed development is found to be consistent with the certified LCP of the local government.

### 4. Current Proposal

The project design has been reduced and modified numerous times since it was originally appealed. The proposed residence is now smaller and has been moved 283-feet southeast of the former

position (i.e. moved toward Caribbean Drive). However, the proposed crib retaining wall and associated landslide remediation work has not changed in design or intent. Currently, the project consists of the following: grading and construction of a 14,017 square foot, two-story, single-family residence with a nine (9)-car parking garage and two separate one-story accessory buildings (one 18-foot high, approximately 1,000 square foot detached accessory use guest building and one 18-foot high, approximately 1,425 square foot detached accessory use recreational building) totaling 3,407 square feet. The on-site accessory use buildings are intended for non-intensive private use and will consist of uses such as a family recreation room, exercise room, game room, billiards, kid's playroom, a home theater, and associated outdoor swimming pool and spa, water features, courtyard and fenced children's outdoor play areas including necessary supporting facilities. The residence's massing is notched and terraced to follow the existing contours of the northeastern hillside within the City's allowable height limit envelope of 29-feet above existing grade. The foundation of the residence is anticipated to consist of footings and retaining walls (Exhibit #1).

Additional development consists of: a new driveway (supported by caissons) leading to the residence from Caribbean Drive with a firetruck turnaround, a pool and waterfall, hardscape and landscape. Two (2) landslide areas along Caribbean Drive will be remediated by excavating and installing a seismically stable keyway, compacted soil, geogrid and plantable crib retaining wall system with native vegetation (up to 20-feet in height). The plantable crib retaining walls will visually blend with the landscaped slopes to enhance the neighborhood appearance including the rectified landslide areas, as required by the City. Additional landscape work with native vegetation and hardscape work is also proposed. Grading will consist of approximately 15,452 cubic yards of cut, 9,402 cubic yards of fill and 6,050 cubic yards of export to a location outside of the Coastal Zone. Direct impact to a 174 square foot wetland from the proposed grading to remediate the landslide is proposed. The applicant is proposing mitigating this impact by creating a 700 square foot wetland onsite, near its southwesterly boundary.

Additionally, the applicant has voluntarily offered to restore native scrub habitat that was impacted by prior alleged unpermitted grading (see Unpermitted Development section for further discussion of alleged violation). The applicant states that he will restore and enhance 1.90 acres of native scrub habitat on-site with higher quality CSS and Maritime Chaparral/SS that rises to the level of ESHA, which has been verified by our Staff Biologist. In addition to the habitat restoration and enhancement, the applicant has also offered to preserve an existing 8.6 acre area of habitat on site that includes ESHA. The total area to be preserved will include the 8.6 acre area and the restored/enhanced 1.9 acre area, for a total of 10.5 acres.

A majority of the development is located within the Residential Single Family 2 (RSF 2) Zone. However, portions of the attached and detached accessory structures are located within the Open Space Zone (OS). The enclosed recreational portion of the residence footprint that is within the OS Zone totals approximately 3,376 square feet, which covers less than 2% of the OS Zone area (10% coverage is allowed for recreational uses). The OS zone allows "Recreational Uses" for both active and passive recreational activities. This includes things such as, gymnasiums, game courts, swimming pools and private recreational facilities. However, any recreational facilities in the OS zone requires approval of a conditional use permit by the City prior to construction. In a letter



dated September 1, 2011, the City of Dana Point stated that the proposed development in the OS zone would be consistent with the allowable uses:

*“Given the fact that the proposed uses (recreation rooms, exercise, game rooms, playroom, home theater, and necessary support facilities) of the accessory structures associated with the project are considered recreational uses ancillary to the primary dwelling, the structures would be allowed on the OS zoned portion of the property. The structures within the OS Zone will be designed to meet the development standards of the OS Zoning District.*

*The proposed relocation would also necessitate an amendment to the original coastal and site development permit for the project. The required conditional use permit for the recreational uses in the OS would be processed concurrently with the amendments.”*

While consistent with the uses allowed in the OS zone, a Conditional Use Permit from the City of Dana Point, as previously discussed, is needed. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires approval from the City of Dana Point for the development to take place in the Open Space (OS) zone.

Additionally, since the project design has changed numerous times since the original approvals by the City, revised approvals from the City regarding the new design are needed besides the conditional use permit for the development in the Open Space (OS) zone. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires any Amended Local Permits from the City of Dana Point regarding the revised project.

As discussed above, the project design has changed numerous times. Thus, there have been various design plans submitted. Additionally, the foundation plans for the residence and specific plans for the proposed crib wall and driveway (to be discussed further later) have not been submitted. In order to clarify the final project design, the Commission is imposing **SPECIAL CONDITION NO. 2**, which requires submittal of Final Project Plans that are in substantial conformance with the plans received on September 6, 2011.

## **B. BIOLOGICAL RESOURCES**

***Land Use Element (LUE) Policy 4.5:*** Consider the environmental impacts of development decisions. (Coastal Act/30240, 30241, 30242, 30243, 30244)

***Land Use Element (LUE) Policy 4.9:*** Encourage the preservation of significant natural areas as cohesive open space.

***Conservation Open Space Element (COSE) Policy 2.20:*** The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water

reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/ 30231).

**Conservation Open Space Element (COSE) Policy 3.1 (in relevant part):** *Environmentally sensitive habitat areas (ESHAs) are any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments, and include, but are not limited to, important plant communities, wildlife habitats, marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1. ESHAs shall be preserved, except as provided in Conservation Open Space Element Policy 3.12<sup>1</sup>. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts that would significantly degrade those areas, and such development shall be compatible with the continuance of those habitat areas. Among the methods to be used to accomplish the siting and design of development to prevent ESHA impacts are the practice of creative site planning, revegetation, and open space easement/dedications. A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. For the Headlands..., . (Coastal Act/30230, 30240)*

**Conservation Open Space Element (COSE) Policy 3.2:** *Require development proposals in areas expected or known to contain important plant and animal communities and environmentally sensitive habitat areas, such as but not limited to marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, to include biological assessments and identify affected habitats. (Coastal Act/30230, 30240)*

**Conservation Open Space Element (COSE) Policy 3.3:** *Encourage retention of natural vegetation and require revegetation of graded areas.*

**Conservation Open Space Element (COSE) Policy 3.4:** *Ensure urban use of open space lands that have conservation or open space easements is limited to only those uses expressly allowed by the easements. Document those easements to increase knowledge of their existence. (Coastal Act/30240)*

**Conservation Open Space Element (COSE) Policy 3.6:** *The diking, filing, or dredging of open coastal waters, wetlands, estuaries, and lakes shall only be permitted in accordance with Section 30233 of the Coastal Act. (Coastal Act/30233)*

**Conservation Open Space Element (COSE) Policy 3.7:** *Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas except as provided in Conservation Open Space Element Policy 3.12<sup>2</sup>. Development in areas adjacent to ESHA shall incorporate buffering design elements, such as fencing, walls, barrier plantings and transitional vegetation around ESHAs to serve as transitional habitat and provide distance and physical*

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<sup>1</sup> This 'exception' only applies to development at the Dana Point Headlands.

<sup>2</sup> This 'exception' only applies at the Dana Point Headlands.

*barriers to human intrusion. Variances or modifications to sensitive resource protection standards shall not be granted. (Coastal Act/30240)*

***Conservation Open Space Element (COSE) Policy 6.1:*** *Mitigate the impacts of development on sensitive lands such as, but not limited to, steep slopes, wetlands, cultural resources, and environmentally sensitive habitats areas through the development review process. (Coastal Act/30233, 30240, 30244, 30253)*

***Conservation Open Space Element (COSE) Policy 6.5:*** *Preserve and protect open space, steep slopes, cultural resources, and environmentally sensitive habitat areas through open space deed restrictions, dedication, or other similar means as a part of the development and subdivision review process. (Coastal Act/30250)*

***Conservation Open Space Element (COSE) Policy 7.3:*** *Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)*

The project site is located in an area determined to be a Biological Sensitive Area as shown on Figure COS-1 in the Conservation and Open Space Element (COSE) of the City's Certified LCP. Except for some areas that have experienced past disturbance, the site is largely covered in native vegetation, including coastal sage scrub. Biological analyses have been conducted on site by Glenn Lukos and have mapped areas onsite to include "Transitional Southern Maritime Chaparral" (mapped by Glen Lukos as area designation 3.6) and "Maritime Chaparral-Sage Scrub" (mapped by Glen Lukos as area designation 3.1.6). The Commission Staff Biologist has reviewed these reports and determined that both of these areas are considered "Southern Maritime Chaparral" (a rare habitat type), which is considered ESHA. Approximately 4.9 acres of the 14.66 acre site have been found to be ESHA. About 2.7 acres is disturbed and/or covered by non-native grasses and ornamental plantings (except for some bare strips that snake throughout the property, these areas are mostly along the edges of the property near Caribbean Drive). The remaining approximately 7 acres of the site contains native vegetation of varying quality, mostly black sage, sagebrush, and buckwheat. The Commission's biologist determined these other native plant areas were not ESHA because there was no evidence that the areas were being utilized by any sensitive, threatened, or endangered wildlife (e.g. California gnatcatcher), nor were any sensitive, threatened, or endangered plant species known to be present there (Exhibits #3-4 & #6).

In addition, to ESHA being found on the project site, a wetland is also located in a landslide area that is found near the front property line contiguous to Caribbean Drive. This wetland, a "Fresh Water" seep, is vegetated with southern cattail (*Typha domingensis*), pampas grass (*Tamarisk*), and salt cedar (*Tamarisk ramosissima*). This wetland was formed where a failed slope associated with an ancient landslide occurred that exposed a shallow groundwater lens resulting in the creation of a seasonally saturated condition at the newly exposed ground surface.

# 1. Wetlands

The subject property is located adjacent to Caribbean Drive and has experienced several slope failures that continue to be an ongoing source of concern for both the surrounding neighborhood and the City. For over 20 years, slope failures have been an issue along Caribbean Drive. A failure

in 1997 led to the site being identified as a public nuisance and the issuance of an Emergency Coastal Development Permit by the City to clean up the failure. To clean up the failure, temporary measures were installed to eliminate and/or limit the amount of failing soil along the street frontage, such as K-rail at the curb line, sand bags, and plastic tarps. These improvements remain there today, though they are largely ineffective. City staff annually removes soil from the street resulting from the continued failures on the project site and/or soils that are deposited on the street from run-off during storm events that create unsafe driving conditions. These annual slides and run-off events have constantly raised concerns by the neighbors of the project site.

A geotechnical investigation prepared by Geofirm dated November 11, 2003 indicates that there are four (4) landslides on the site (Exhibit #1, page 1). Three (3) of the landslides are located near the front property line contiguous to Caribbean Drive. A “Fresh Water” Seep (wetland) comprising of 0.004 acres (174 square feet) is located at one of the landslide areas near the front property line (Qls-1) (Exhibit #1, page 1). The wetland is vegetated with southern cattail (*Typha domingensis*), pampas grass (*Tamarisk*), and salt cedar (*Tamarisk ramosissima*). This wetland was verified in a jurisdictional wetland delineation prepared by Glenn Lukos Associates dated December 21, 2010. The Conceptual Habitat Restoration Plan (to be discussed in more detail furthermore in this section) states that the wetland formed where a failed slope associated with an ancient landslide occurred that exposed a shallow groundwater lens. Thus, creating a seasonally saturated condition at the newly exposed ground surface. The fourth (4<sup>th</sup>) landslide area is located inland at the upper northwest portion of the site. Since this area is covered with ESHA and no development is proposed in this location, this landslide area is not proposed to be repaired.

The Coastal Act and the City’s LCP define wetlands, in part, as “...lands within the coastal zone which may be covered periodically or permanently with shallow water....” The more specific definition adopted by the Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines a wetland, in relevant part, as, “...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes....” In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a “predominance” of hydrophytic cover or a “predominance” of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone<sup>3</sup>, in practice, hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was “wet enough long enough” to develop wetland characteristics. As discussed in the Glenn Lukos Report, the soils associated with the “Fresh Water” Seep appear to have been exposed to long-term saturation. Thus, this “Fresh Water” Seep fits the definition of a wetland found in the Coastal Act and the City’s LCP.

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<sup>3</sup> As demonstrated by the definitions of hydric soils and hydrophytes: “A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.” National technical committee for hydric soils, October 18, 1994; A hydrophyte is, “Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content....” Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

In order to remediate the landslides near the front property line contiguous to Caribbean Drive to protect Caribbean Drive, a public road, the applicant is proposing to remediate the landslide's instability via grading and installing a seismically stable keyway, compacted soil, geogrid, native vegetation and (plantable) crib retaining wall system, as described in the November 11, 2003 Geofirm report as well as the geotechnical investigation (Vol. I & II) prepared by Geofirm dated September 1, 2011. The work necessary to remediate the slides would necessitate impacting (grading) and removing the wetland since it is located entirely in one (1) of the landslide areas. Installation of this system will comply with the conditions found in Resolutions 05-07-06-28 and 05-07-06-29 by the City of Dana Point Planning Commission approving the Coastal Development Permit and adopting a Mitigated Negative Declaration. For example, Condition No. 39 states the following:

*During grading and prior to issuance of any building permits, landslides identified contiguous to the Caribbean Drive front property line identified as landslide 1 and 2 on the Geotechnical Plot Plan, Plate 1, included in the "Preliminary Geotechnical Investigation for the New Single Family Residence, 32354 Caribbean Drive, Dana Point, California" dated November 11, 2003, shall be completely removed.*

Wetlands are protected under the Coastal Act and in the City's LCP. Specifically, Policy 3.6 of the Conservation and Open Space Element (COSE) of the City's LCP (which incorporates by references Section 30233 of the Coastal Act), prohibits the dredging and/or fill of wetlands, unless such dredging/fill is in association with one of seven allowable uses. One (1) of the allowable reasons for dredging/filling a wetland is dredging/fill association with an "incidental public service." That is, dredging/filling associated with some activity necessary to continue to provide an important public service. In this case, the proposed landslide remediation work is necessary to stabilize an area adjacent to a public road (Caribbean Drive) that has been adversely impacted by landslide activity. This adverse impact has been documented in letters from the City of Dana Point (Letters dated December 23, 2010 and September 1, 2011) and from the Monarch Bay Terrace Property Owners Association (Letter dated August 9, 2011). These letters state that the safe use Caribbean Drive has been impacted by soils and rocks that continue to slough off the slope onto the public road, especially during the winter, thereby creating a public safety hazard for the public driving along the road. It is important for the City to maintain Caribbean Drive in a safe and passable condition as that road provides the only access for residences in the area. Remediation of the landslides is necessary to continue to provide this important public service. Therefore, the dredging/filling of the 174 square foot wetland is consistent with the City's LCP because it is an "incidental public service" (protection of a public road for continued use by the public) and the applicant will complete proper mitigation measures to fully mitigate the impact to the wetlands, as described more fully below.

Another complicating factor is the need to provide vehicular access to the proposed development onsite. The applicant has proposed a private driveway to achieve that goal which passes through the same area occupied by the wetland and landslide. Given the proximate location of the driveway, the landslide, and the landslide remediation, information submitted by the applicant is convincing that the grading is necessary to remediate the landslides to protect the public road, and not necessary in conjunction with construction of the private driveway, because the applicant demonstrated that the private driveway could be constructed using caissons, in an alignment that

would avoid the wetlands. Thus, while it is possible to construct private access to the site without impacting the existing wetland, protection of the public road (Caribbean Drive) from the landslides, still involves impacting the wetland.

Even though the excavation and removal of the wetland is necessary for an incidental public service purpose, the LCP still requires that the project chosen be the least environmentally damaging alternative. Thus, alternatives to the proposed landslide remediation were analyzed and discussed in a letter by the geologist (Geofirm) dated December 23, 2010. These possible geotechnical alternatives that would correct both the gross and surficial instability along Caribbean Drive were analyzed and included:

- a. 2 to 3 rows of caisson grade beams and multiple tiebacks with a reinforced rock bolt/soil-nailed shotcrete cover across the entire slope surface.
- b. 2 to 3 rows of structural grade beams and multiple tiebacks with a reinforced rock bolt/soil-nailed shotcrete cover across the entire slope surface.
- c. A combination of the structural repairs including de-watering wells with horizontal drains and drainage blanket backing and shotcrete cover.
- d. Hybrid structural options with limited re-grading.

However, all of these alternatives would either immediately or eventually result in impacts to the wetland. For instance, alternatives (a) and (b) still require grading and/or placement of structures that directly impact the wetland. These alternatives are also inferior to the proposed project because they leave the landslide either partly or wholly in place, and they are much more structurally massive, with attendant visual impacts. Alternative (c) involves massive structures, and results in draining the wetland through dewatering. These alternative systems do not satisfy all the required elements in the City Planning Commission Resolutions. The landslides would not be removed, and the finished slope surfaces under these alternatives would be largely shotcrete covered. This surface could not be landscaped normally as required by the City.

Thus, the Commission requested that the applicant look at an additional alternative (alternative (d) above) that would leave the landslide materials in place in an effort to avoid removal of the 174 square foot wetland. The applicant's geologist responded with a proposed system that would include a caisson or grade beam and tieback anchor support system with a shotcrete cover, totaling approximately 20-feet in height. The upper half of the slide area would be unremediated and uncovered. Potential reactivation of the slide would be controlled behind a debris wall encatchment facility located atop the 20-foot high shotcrete cover. The debris wall would require sufficient height (estimated at 20'-25') and width (150 linear feet or more) to contain reactivation of the slide. The geologist states that the system leaves an unstable area in the center of the site, and would be inferior to the proposed and recommended stabilizing system. It would also require periodic debris removal, which will ultimately involve removing the wetland material. Additionally, the geologist states that the retained soils containing the wetland area would eventually fail and destroy the wetland regardless of the wall protection. Furthermore, the geologist states that this option would have a low factor of safety for onsite conditions and would not provide a long-term solution to adequately protect the wetland in its present location due to the underlying soil instability.

In addition, the City in a letter dated November 21, 2011 reviewed this alternative and found it infeasible since it would not satisfy the City of Dana Point's requirement to provide a permanently stable and adequately safe hillside condition, a plantable crib retaining wall system of a reasonable height for the neighborhood, and a plantable finished slope surface with erosion control per the Conditions of Approval.

Therefore, out of the proposed landslide remediation alternatives, the proposed alternative involving grading and installing a seismically stable keyway, compacted soil, geogrid and (plantable) retaining wall system is the least environmentally damaging alternative. While the wetland impact has been determined to be for an allowable use and has been determined to be the least environmentally damaging alternative, appropriate mitigation for the impacted wetland must still be proposed.

To mitigate the unavoidable direct permanent impacts to the 174 square foot wetland resulting from the proposed grading necessary to remediate the landslide, the applicant proposes to create 700 square foot of wetland habitat (4:1 ratio) onsite at a site near the southwest portion of the site. This mitigation is discussed in the *Conceptual Habitat Restoration Plan for the Safari Project* prepared by Abraham Mosaddegh dated December 2010 [Revised August 2011]. In this conceptual plan, the created wetland was to be located at the southwest corner of the site. However, it was recently moved to another location in the southwest portion of the site, closer to Caribbean Drive, that is outside of areas designated "ESHA" (Exhibit #1, page 1). It is anticipated that the discussion provided in the conceptual plan regarding the original proposed site can be carried over to the new proposed site. The impacted wetland consists of southern cattail (*Typha domingensis*), pampas grass (*Tamarisk*), and salt cedar (*Tamarisk ramosissima*). The plan further states that the only hydrologic function provided by the wetland is seasonal discharge of groundwater. The created wetland will be located at an elevation where it could receive groundwater collected from the remediated landslide area and piped via gravity to the wetland creation area. The created wetland will be planted with native riparian species that are adapted to seasonally wet conditions, during winter and spring and that are also tolerant of dry conditions during the summer and fall. A five (5)-year monitoring program is proposed to review performance. The Commission Staff Biologist has reviewed the conceptual plan and determined that it is sufficient, except that the "Act of God" exception to success criteria found on page 10 should be removed. Also, the revised site location was not reviewed by the Commission Staff Biologist yet as well. Additionally, this plan is only a "conceptual" plan, so a Final Plan needs to be submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3**, submittal of a Final Wetland Restoration Plan.

Thus, the proposed wetland impact may be found consistent with Policy 3.6 of the COSE in that it has been determined to be for an allowable use (incidental public service purpose), has been determined to be the least environmentally damaging alternative, and appropriate mitigation for the impacted wetland has been proposed.

## 2. Environmentally Sensitive Habitat Area (ESHA)

In addition to a wetland being located on the project site, ESHA is also found on the site. Biological Reports have been completed by Glen Lukos for the site that have mapped areas as “Transitional Southern Maritime Chaparral” (mapped by Glen Lukos as area designation 3.6) and “Maritime Chaparral-Sage Scrub” (mapped by Glen Lukos as area designation 3.1.6) onsite. The Commission Staff Biologist has reviewed these reports and completed memorandums (Exhibits #3-4 & #6) stating that since both of these areas are considered “Southern Maritime Chaparral”, which is a rare habitat type, they are considered ESHA (as more fully explained in the memorandum). Normally, a 100-foot ESHA setback is established in order to prevent any impacts to this ESHA. The proposed development will not impact ESHA as it will be setback at least 100-feet from development (Exhibit #1, page 1). In this case, the 100-feet is setback from a proposed 100-foot Fuel Modification Zone setback for fire protection from the proposed residence. Thus, the ESHA will be 200-feet from the proposed residential development (Exhibit #1, page 1). In order to make sure that the proposed ESHA Buffer is applied and maintained, the Commission is imposing **SPECIAL CONDITION NO. 6**, which requires the applicant to conform to the proposed Environmentally Sensitive Habitat Area (ESHA) Buffer as shown on the plans received on September 6, 2011.

As stated above, a Fuel Modification Zone for fire protection has been proposed. Although the site is bordered by urbanized development over 50% of its perimeter, the site is also contiguous to the Aliso & Woods Canyon Wilderness Park that has potential for wildfires. Incorporation of the Fuel Modification Zone will mitigate any impacts from wildfires originating in the Aliso & Woods Canyon Wilderness Park. Since the City’s approval of the project, the layout and design of the project has changed resulting in changes to the Fuel Modification Zone. While the applicant has made these changes to conform to the now proposed project, the revised Fuel Modification Zone has not been approved by the Orange County Fire Authority (OCFA), which authorized the previous zone. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 7**, which requires submittal of approval from the Orange County Fire Authority (OCFA) for the Fuel Modification Zone as shown on the plans received on September 6, 2011.

In addition to creation of the wetland as discussed previously, the applicant has voluntarily offered to restore native scrub habitat (Exhibit #5) that was impacted by prior alleged unpermitted grading (see Unpermitted Development section for further discussion of alleged violation). The applicant states that they will restore and enhance 1.90 acres of native scrub habitat on-site with higher quality CSS and Maritime Chaparral/SS that rises to the level of ESHA, which has been verified by our Staff Biologist. The existing native scrub habitat that would be impacted by the proposed development is not considered ESHA, hence the mitigation proposed herein is not explicitly required in this case to offset that impact. Nevertheless, that habitat restoration has been offered and incorporated into this proposal. A portion of the area where the restoration and enhancement would occur is in an area that was formerly ESHA but was degraded by alleged unpermitted development consisting of grading and installation of drainage features. This situation will be further discussed in the unpermitted section of the staff report. In addition to the habitat restoration and enhancement, the applicant has also offered to preserve an existing 8.6 acre area of habitat on site that includes ESHA. The total area to be preserved will include the 8.6 acre area and the restored/enhanced 1.9 acre area, for a total of 10.5 acres. Both of these proposals are only



“conceptual”, so a Final Plan needs to be submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**, submittal of a Final Habitat Restoration Plan.

The project site contains important biological resources, such as ESHA. While the proposed project will not impact ESHA, additional measures should be implemented in order to make sure that it is not adversely impacted by future development. One way of doing this is by imposing an Open Space (OS) restriction on the ESHA areas (and buffers) that would prevent development on those sites. The proposed project also includes a wetland restoration area to offset proposed wetland impacts, as well as restoration and enhancement of CSS impacted areas resulting in higher quality habitat, considered to be ESHA and preservation of existing native habitat and other ESHA areas. These areas must be protected from disturbance by any further development. The area to be restricted is depicted in Exhibit No. 5, page 2. Therefore, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires an Open Space (OS) restriction be placed on the ESHA areas and additional areas proposed by the applicant.

To ensure that any prospective future owners of the property are made aware of the applicability of this Open Space (OS) restriction condition of this permit (and other restrictions imposed under the permit), the Commission imposes **SPECIAL CONDITION NO. 20** requiring that the property owners record a deed restriction against the property, referencing this Special Condition and all the other Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property.

The City of Dana Point’s approvals contain a requirement for an easement over certain areas of preserved/restored habitat. Since the proposed project has changed significantly since review by the City, the location of the areas the City requires to be restricted will likely change. Any easements required by the City will need to be in conformity with the restrictions imposed by the Commission. If any elements of the easement are not in conformity, an amendment to this permit would be required prior to recording any such easement.

The proposed project takes place in a location where ESHA and sensitive habitat is located. An additional way to minimize adverse impacts to these ESHA and sensitive habitat areas is by controlling light on the project site. No existing development is currently located onsite. Thus, the proposed project would create a new source of exterior lighting for the new facilities that could disturb wildlife if not properly controlled. There should be buffering elements to address lights located on buildings. This can be addressed by controlling the direction of light and minimizing the amount of lighting. In order to minimize the potential for light spillage and glare, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires that exterior onsite lighting be shielded and confined within boundaries of the developed portion of the site.

The Mitigated Negative Declaration (MND) for the site stated that no other portion of the site supports sensitive species and/or biological habitat that will be disturbed. California gnatcatcher surveys were completed and none were found. However, the MND did state that surveys for the California Gnatcatcher were out of date and recommended up to date California gnatcatcher surveys prior to commencement of construction. Since conducting the protocol surveys, the applicant’s biologist has stated, in a memo dated March 16, 2012, that biological staff have been to the site on

seventeen (17) additional occasions, and that no California gnatcatchers were opportunistically encountered. The applicant's biologist states these findings are not surprising because the "...mix of southern maritime chaparral and maritime chaparral/CSS [on the site] does not exhibit conditions that are typical of CAGN [California gnatcatcher] occupied areas...". Nevertheless, given the sensitivity of California gnatcatcher (threatened/endangered), it is important to assure that species is protected. A pre-construction survey should be completed by a qualified biologist in order to determine if any California gnatcatchers are located onsite and would be adversely impacted with construction of the proposed project. If surveys reveal the presence of gnatcatcher and/or any other sensitive wildlife, a permit amendment would be required prior to proceeding with development. Therefore, the Commission imposes **SPECIAL CONDITION NO. 10**, which requires a California gnatcatcher Pre-Construction Survey.

The applicant has stated that landscaping is proposed on the project site and that it will consist of native vegetation. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly, thereby disrupting the habitat values of ESHA. 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. Furthermore, any plants in the landscape plan should only be drought tolerant, appropriate to the habitat type and native to coastal Orange County. 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" 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>. However, no landscape plans have been submitted with the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires submittal of a Landscape Plan that only consists of native plant species appropriate to the habitat type.

### CONCLUSION

The Commission has imposed **NINE (9) SPECIAL CONDITIONS**, which are intended to bring the proposed development into conformance with the biological resource policies of the Dana Point LCP. These Special Conditions include the following: **SPECIAL CONDITION NO. 3** requires submittal of a Final Wetland Restoration Plan. **SPECIAL CONDITION NO. 4** requires submittal of a Final Habitat Restoration Plan. **SPECIAL CONDITION NO. 5** requires submittal of a Landscape Plan. **SPECIAL CONDITION NO. 6** requires conformance with the proposed Environmentally Sensitive Habitat Area (ESHA) Buffer. **SPECIAL CONDITION NO. 7** requires submittal of Orange County Fire Authority (OCFA) approval for the Revised Fuel Modification Zone. **SPECIAL CONDITION NO. 8** requires an Open Space (OS) Restriction. **SPECIAL CONDITION NO. 20** requires a Deed Restriction against the property. **SPECIAL CONDITION NO. 9** requires lighting not be directed toward ESHA and other sensitive biological habitat. **SPECIAL CONDITION NO. 10** requires a California gnatcatcher Pre-Construction Survey. Only as conditioned to comply with the provisions of these Special Conditions does the Commission find that the proposed development conforms with the biological resource policies of the Dana Point LCP.

**C. HAZARDS, GEOLOGIC STABILITY, LANDFORM ALTERATION AND VISUAL IMPACTS**

***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) 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)

***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 certified City of Dana Point LCP requires that permitted development be sited and designed to minimize the alteration of natural landforms. The proposed project involves extensive grading that could result in significant landform alteration. As also discussed in the findings above regarding wetland impacts, a geotechnical investigation prepared by Geofirm dated November 11, 2003 indicates that there are four (4) landslides on the site. Three (3) of the landslides are located near the front property line contiguous to Caribbean Drive. The majority of the landslide located on the southeast portions of the site above Caribbean Drive was removed during emergency repairs to remove debris from Caribbean Drive and to increase temporary slope stability until permanent repairs are completed. One of the other landslides contiguous to the southwest portions of the site above Caribbean Drive was reactivated during a winter storm several years ago. The report states that complete removal of all of these landslides during grading activities and the inclusion of a new crib wall along the Caribbean Drive street frontage will take place with the project. A 4<sup>th</sup> landslide, located on the upper northwest portion of the site, had also been recommended for removal and reconstruction as a fill slope. However, this landslide is covered by Transitional Southern Maritime Chapparal. Since the original project approved by the City was revised in the past to no longer have development in this area and that it is covered by Transitional Southern Maritime Chapparal, the remediation of this landslide was no longer necessary or proposed.

In order to remediate the landslide and protect Caribbean Drive, a public road, the applicant is proposing to remediate the landslides instability via grading and installing a seismically stable keyway, compacted soil, geogrid, native vegetation and (plantable) crib retaining wall system, as described in the November 11, 2003 Geofirm report as well as the geotechnical investigation (Vol. I & II) prepared by Geofirm dated September 1, 2011. Installation of this system will comply with the conditions found in the City's approval.

As stated previously, the proposed landslide remediation work is necessary to stabilize an area adjacent to a public road (Caribbean Drive) that has been, and is still currently, adversely impacted by landslide activity. This adverse impact has been documented in several letters collectively stating that soils and rocks continue to slough off the slope, especially during the winter that have raised public safety issues and impacted use of Caribbean Drive.

These (plantable) crib retaining walls originate at the proposed driveway entrance to the site at the southeast corner of the lot. The walls are proposed to assist in stabilizing existing landslide areas and, coincidentally, can also function to support the access driveway between Caribbean Drive and the proposed development. They will be terraced to reduce the overall visual height of the required retaining conditions. The lower retaining wall, immediately adjacent to Caribbean Drive, will be 6-feet in height and then will step back before continuing to vary in height as high as 15-feet. The upper retaining wall supporting the access driveway ranges from 12 to 21-feet in height. Both of these walls are crib type and will be landscaped to mitigate the appearance of the walls from surrounding properties and the street.

As discussed in the findings above regarding the wetland impacts associated with the grading, other alternatives were considered, but the proposed alternative was found to involve the least amount of landform alteration and have the least visual impact.

Additionally, the proposed retaining wall would be consistent with the LCP (COSE Policy 2.13) in that the proposed crib retaining wall system is necessary to protect an existing structure (Caribbean Drive) that is in danger from erosion and doing so would minimize risks to life and property. Additionally, this proposed alternative would involve the least amount of landform alteration.

Staff was ultimately convinced that the grading was necessary to remediate the landslides to protect the public road, and not necessary in conjunction with construction of the private driveway, because the applicant demonstrated that the private driveway could be constructed using caissons, in an alignment that would avoid the wetlands.

The applicant has proposed a private driveway to achieve that goal. However, that road passes through the same area occupied by the wetland and landslide. Given the proximate location of the driveway, the landslide, and the landslide remediation, one can question whether the landslide remediation project is being proposed to allow for construction of the private driveway as opposed to protecting the public roadway. If so, there is no provision in the LCP that would allow a wetland impact to construct a private driveway needed to render the subject site 'developable'. However, information submitted by the applicant is convincing that the grading is necessary to remediate the landslides to protect the public road, and not necessary in conjunction with construction of the private driveway, because the applicant demonstrated that the private driveway could be constructed using caissons, in an alignment that would avoid the wetlands. Thus, while it is possible to construct private access to the site without impacting the existing wetland, protection of the public road (Caribbean Drive) from the landslides, still involves impacting the wetland. Thus, it appears the proximity of the private driveway and the landslide remediation to protect the public road is purely coincidence.

Besides the crib retaining wall and caisson for the driveway discussed in the geotechnical reports, the foundation of the residence is anticipated to consist of footings and retaining walls. However, no foundation plans or even specific plans for the crib retaining wall or caissons for the driveway have been submitted. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 2**, which requires submittal of Final Project Plans, including the Foundation Plans for the residence, the crib retaining walls and caissons for the driveway that are in substantial conformance with the plans received on September 6, 2011.

To address site-specific issues, the applicant has submitted several geotechnical investigations. These reports have evaluated the proposed geology of the site, which is located on an inland lot and does not consist of a coastal bluff, and have discussed issues such the landslide areas and the geology of the site. Ultimately each concludes that the proposed development is considered feasible and safe from a geotechnical perspective provided the applicant complies with the recommendations contained in their investigations. The Commission Geologist has reviewed these materials and agrees with the conclusions made in these geotechnical evaluations (personal communication). Some of the recommendations for construction of the project site include: a foundation system consisting of footings and retaining walls for the residence and grading and installing a seismically stable keyway, compacted soil, geogrid and (plantable) crib retaining wall system to remediate the onsite landslides. Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage in an area where landslides have occurred, the risk is not entirely eliminated. The findings in these geotechnical investigations support the contention that development onsite involves risks and that structural engineering can minimize some of the risk but it cannot eliminate it entirely. Therefore, although, as conditioned, the project will sufficiently reduce the risks to make it approvable, the applicant must be aware of the remaining risks and must assume responsibility for the project should he decide to proceed. Accordingly, the Commission imposes **SPECIAL CONDITION NO. 11**, which requires an assumption of risk. By this means, and by the recordation of this condition against the title to the property pursuant to **SPECIAL CONDITION NO. 20** (discussed more later), the applicant and future buyers are notified that the proposed development is located in an area that is subject to landslides that can damage the applicant's property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the Coastal Development Permit.

The development is located within an existing developed area and, as conditioned, is visually compatible with the character and scale of the surrounding area. While the home is large in scale (14,000 square feet), it is small compared to the size of the lot (14 acres) and is surrounded by existing large residences above and below the project site, that are on much smaller lots and far more densely spaced. Additionally, the residence has been stepped into the hillside close to the adjacent residential structures in order to blend in with the surrounding area. Also as discussed later, the project has been conditioned to have a Visual Treatment Plan that will show how the exterior features of the proposed residence and associated structures (i.e. crib retaining wall, etc), will be softened and enhanced so as to blend with the surrounding natural area. However, without controls on future development, the applicant could construct future improvements to the single-family house, including that could have negative impacts on coastal resources, and could do so without first acquiring a Coastal Development Permit, due to exemption for improvements to

existing single-family residences. Unpermitted improvements could lead to negative geologic impacts such as slope instability, especially since this is an area where landslide failures have previously occurred. In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a Coastal Development Permit. Therefore, the Commission imposes **SPECIAL CONDITION NO. 12**, a future improvements special condition.

The geotechnical consultant has found that development is feasible provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in regards to the design and construction of the project. The geotechnical recommendations address things such as foundations and landslide remediation, etc... In order to assure that risks of development are minimized, as per the LCP, the Commission imposes **SPECIAL CONDITION NO. 13**, which requires the applicant to submit Final Project Plans that have been revised to conform to the geotechnical recommendations and have been reviewed and certified by an appropriately licensed professional that such plans do conform to the geotechnical recommendations.

The proposed project consists of construction of a pool on a slope located within the proposed residential development. The project site has a history of landslides, thus if water from the proposed pool is not properly controlled there is a potential for additional landslides. For this reason, the potential for infiltration into the slope should be minimized. This can be achieved by various methods, including having the pool double lined and installing a pool leak detection system to prevent the infiltration of water into the slope due to any possible pool problems. In addition, a water meter may be installed to monitor the amount of water used for the new pool. However, no such plans have been submitted that show these elements have been included into the project. Therefore, the Commission imposes **SPECIAL CONDITION NO. 14**, which requires the applicant to submit a Pool Protection Plan.

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. 20** 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.

As part of the landslide remediation, the applicant has proposed installation of crib retaining walls. These walls would be as tall as 21-feet and would potentially result in visual impacts as seen from Caribbean Drive. As a condition of approval, the City required that they be landscaped to reduce the visual impact and also further assist in slope stability. The applicant has stated that native vegetation will be used. However, no specific plans (only site and section plans) have been submitted for these crib retaining walls. Additionally, while the applicant has stated that native vegetation will be used to soften the visual impact of the crib retaining walls, no landscape plans have been submitted to show what type of vegetation will be used onsite, as well as, to reduce

visual impacts of the crib retaining walls. Ideally, the plantable crib retaining walls will visually blend with the landscaped slopes to enhance the neighborhood appearance including the rectified landslide areas, as required by the City. Therefore, in order to verify that visual impacts associated with these crib retaining walls, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of Final Project Plans, including specific plans for the crib retaining walls that are in substantial conformance with the plans received on September 6, 2011 and **SPECIAL CONDITION NO. 5**, which requires submittal of a Landscape Plan that only consists of native plant species appropriate to the habitat type that will show the landscape palette for the crib retaining walls.

Besides the crib retaining walls, there are potential visual impacts that could occur due to the architectural finish of the residence and associated structures. For example, a white finish applied to the residence or crib retaining walls would not visually blend with the color palette of the surrounding vegetated area. Using such a finish would create a significant visual impact. Colors, textures and/or a mix of architecture features should be applied in order to help blend the proposed development with its surroundings. Therefore, the Commission imposes **SPECIAL CONDITION NO. 15**, which requires the applicant to submit a Visual Treatment Plan that shows how the exterior features of the proposed residence and associated structures (i.e. crib retaining wall, etc), will be softened and enhanced through a mix of architectural elements, color and texture treatments and landscaping elements. Imposing this condition would also be consistent with the City's conditions of approval.

### CONCLUSION

The Commission has imposed **SIX (6) SPECIAL CONDITIONS**, which are intended to bring the proposed development into conformance with the Hazards, Geologic Stability and Landform Alteration policies of the Dana Point LCP. These Special Conditions include the following: **SPECIAL CONDITION NO. 20** requires a Deed Restriction against the property. **CONDITION NO. 10** requires an assumption of risk. **SPECIAL CONDITION NO. 12** requires additional approvals for any future development. **SPECIAL CONDITION NO. 13** requires evidence of conformance with geotechnical recommendations. **SPECIAL CONDITION NO. 14** requires submittal of a Pool Protection Plan. **SPECIAL CONDITION NO. 15** requires submittal of a Visual Treatment Plan. Only as conditioned to comply with the provisions of these Special Conditions does the Commission find that the proposed development conforms with the Hazards, Geologic Stability and Landform Alteration policies of the Dana Point LCP.

## **D. WATER QUALITY**

***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 Commission recognizes that new development has the potential to adversely impact coastal water quality and aquatic resources because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation, reductions in groundwater recharge, and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health. Additionally, both leakage and periodic maintenance drainage of the proposed swimming pool, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing the instability of the site and adjacent properties and potential impacts from pool chemicals (i.e. pool water algaecides, chemical pH balancing, and other water conditioning chemicals).

Therefore, in order to minimize the potential for such adverse impacts to water quality and aquatic resources resulting from runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with native landscaping.

Therefore, the Commission is imposing the following: **SPECIAL CONDITION NO. 16.** requires submittal of an Erosion Control Plan and Construction Best Management Practices (BMPs) Plan. **SPECIAL CONDITION NO. 17** requires submittal of a Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 18** provides guidelines for pool drainage and maintenance.

### CONCLUSION



The Commission has imposed **THREE (3) SPECIAL CONDITIONS**, which are intended to bring the proposed development into conformance with the Water Quality policies of the Dana Point LCP. These Special Conditions include the following: **SPECIAL CONDITION NO. 16.** requires submittal of an Erosion Control Plan and Construction Best Management Practices (BMPs) Plan. **SPECIAL CONDITION NO. 17** requires submittal of a Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 18** provides guidelines for pool drainage and maintenance. Only as conditioned to comply with the provisions of these Special Conditions does the Commission find that the proposed development conforms with the Water Quality policies of the Dana Point LCP.

#### **E. UNPERMITTED DEVELOPMENT**

Development has allegedly occurred on the project site without all required Coastal Act authorizations. For instance, memorandums (Exhibits #3-4 & #6) prepared by the Commission Staff Biologist discussing the ESHA onsite says that the project site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. For example, it is noted that in 1979, the vegetation on the project site appeared to be relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside and some lesser trails extending from Caribbean Drive are also visible. Subsequent photographs depict additional disturbance, including the construction of the existing entry road off Caribbean Drive (expanding the pre-existing trail) and drainage features on the western portion of the site (i.e., berms, retention basins, grading and down drains). Some of this development may have received temporary authorization under a City-issued emergency Coastal Development Permit. However, there has been no follow-up authorization of a regular CDP for that emergency work.

Based on an analysis by the Commission's Staff Biologist (see Exhibit #6), the western portion of the site where unpermitted drainage features were constructed was previously covered with ESHA. While the applicant is not seeking authorization nor is the applicant proposing mitigation for the unpermitted development at this location, the applicant has voluntarily proposed to restore and enhance 1.90 acres of native scrub impacted by grading onsite with habitat that is higher quality CSS and Maritime Chaparral/CSS that rises to the level of ESHA, which includes the area where the unpermitted drainage features are located. The proposed restoration and enhancement is allowed under the Coastal Act since it does restore and enhance native habitat area and results in ESHA habitat. However, at this time, it is not proposed by the applicant as mitigation for the unpermitted development which had impacted the ESHA previously located onsite. One reason that mitigation for the unpermitted development isn't being sought at this time is because of uncertainty regarding the success of the proposed restoration. The prior grading in the restoration area altered the pre-existing topography. The habitat once present there, Maritime Chaparral/SS, is highly sensitive to slope angle/aspect. Thus, the changes to the topography may affect whether Maritime Chaparral/SS can be successfully restored in that location. As required by **SPECIAL CONDITION NO. 4**, the proposed restoration and enhancement will be monitored. The monitoring will show whether the restoration efforts are successful. Additional steps necessary to fully address the unpermitted development will be considered by the Commission's enforcement unit, and handled as a separate matter.

Except as described further below, the applicant is not seeking authorization for the existing unpermitted development described herein through this application, and approval of the proposed development does not authorize the alleged unpermitted development. Therefore, in order to clarify that the approval of the proposed project does not authorize this alleged unpermitted development, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicant to submit revised plans clearly indicating that the unpermitted development, including grading and drainage features, are not approved by this Coastal Development Permit.

Meanwhile, the entry road that exists on site is within the footprint of the grading/development now proposed. That development will be removed in conjunction with the current approval. Based on an analysis by the Commission's Staff Biologist, the area of the entry road was not previously ESHA, and the grading/vegetation removal involved with the installation of the entry road did not impact ESHA. Thus, to the extent this current project removes the existing unpermitted entry road, the proposed project partly addresses that aspect of the unpermitted development. To the extent this permit partly resolves the unpermitted development it is important to ensure timely compliance with the requirements of this permit. Therefore, the Commission imposes **SPECIAL CONDITION NO. 19**, which requires the applicant to fulfill all of the Special Conditions that are a prerequisite to the issuance of this permit, within 180 days of Commission action.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the certified LCP. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. The Commission's enforcement division will evaluate further actions to address this matter.

#### **F. LOCAL COASTAL PROGRAM (LCP)**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) *Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.*

The Commission certified the City of Dana Point Local Coastal Program on November 5, 1997. For the reasons stated in this report, the proposed development is consistent with the certified City of Dana Point LCP. In this case, that finding can be made since the proposed project, as conditioned, is consistent with the Biological Resources, Hazards, Geologic Stability, Landform Alteration and Water Quality policies of the City of Dana Point LCP. Therefore, the Commission approves the Coastal Development Permit.

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a Coastal Development Permit application 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). The City of Dana Point is the lead agency and has determined that in accordance with CEQA, that a Mitigated Negative Declaration must be processed. However, 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.

While the City of Dana Point found that a Mitigated Negative Declaration must be processed and had imposed mitigation measures, the Commission, pursuant to its certified regulatory program under CEQA, the Coastal Act, determined that the proposed development would have adverse environmental impacts that must be minimized.

The Coastal Development Permit is approved because all adverse environmental impacts have been minimized. Special Conditions have been imposed to minimize any adverse impacts, including submittal of a Landscape Plan, a Visual Treatment Plan, submittal of a Final Wetland Restoration Plan and Final Habitat Restoration and Monitoring Program, adherence to the ESHA buffer, etc. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the City's Local Coastal Program and, therefore, conforms to CEQA.

## APPENDIX 1

### **SUBSTANTIVE FILE DOCUMENTS**

1. City of Dana Point Certified Local Coastal Program (1996 LCP).
2. City of Dana Point Planning Commission Resolution No. 5-07-06-028 (MND)
3. City of Dana Point Planning Commission Resolution No. 5-07-06-029 (CDP03-21/SDP03-60(m))
4. *Preliminary Geotechnical Investigation for New Single Family Residence, 32354 Caribbean Drive, Dana Point, California* prepared by Geofirm dated November 11, 2003
5. Memorandum from John Dixon, PH.D, Commission Staff Ecologist dated May 26, 2007
6. Letter from the Commission to Fleetwood B. Joiner & Associates dated May 20, 2008
7. Letter from Fleetwood B. Joiner & Associates dated June 19, 2008.
8. Letter from Fleetwood B. Joiner & Associates dated December 12, 2008
9. Letter from Firesafe dated December 12, 2008
10. *Vegetation Analysis and Discussion of 0.29-Acre Fuel Modification Zone and Adjacent Vegetation Communities Located on the Safari Residence, Dana Point, California* prepared by Glenn Lukos Associates dated January 27, 2009
11. Memorandum from John Dixon, PH.D, Commission Staff Ecologist dated April 15, 2009
12. Letter from City of Dana Point dated May 22, 2009
13. *Analysis of Impacts for Safari Residence Associated with Revised Site Plan Designed to Reduce Impacts to potential ESHA* prepared by Glenn Lukos Associates dated October 23, 2009
14. *Geotechnical Review of Current Site Plan* prepared by Geofirm dated November 9, 2009
15. Letter from Fleetwood B. Joiner & Associates dated December 15, 2009
16. *Clarification Regarding Potential Impacts to ESHA for Safari Property* prepared by Glenn Lukos Associates dated May 13, 2010
17. Letter from Fleetwood B. Joiner & Associates dated June 1, 2010
18. *Jurisdictional Delineation of the California Coastal Commission Wetland Within the 14-Acre Safari Property Located in Dana Point, Orange County, California* prepared by Glenn Lukos Associates dated December 21, 2010
19. *Conceptual Habitat Restoration Plan for the Safari Project* prepared by Abraham Mosaddegh dated December 2010 [Revised August 2011]
20. Letter from City of Dana Point dated December 23, 2010
21. *Review of Slope Repair Alternatives for Caribbean Drive Slope Instability and Seepage* prepared by Geofirm dated December 23, 2010
22. Letter from Fleetwood B. Joiner & Associates dated January 18, 2011
23. Letter from Kuno's Grading, Inc. dated August 8, 2011
24. Letter from Monarch Bay Terrace Property Owners Association dated August 9, 2011
25. Letter from Soil Retention dated August 24, 2011
26. Letter from Fleetwood B. Joiner & Associates dated August 31, 2011
27. Letter from City of Dana Point dated September 1, 2011
28. Letter from City of Dana Point dated September 1, 2011
29. *Grading Plan Review, Proposed Access Road Grading and 2010 California Building Code (Vol. I & II)* prepared by Geofirm dated September 1, 2011

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De Novo  
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30. Project Plans received September 6, 2011.
31. Letter from Fleetwood B. Joiner & Associates dated November 21, 2011
32. Letter from City of Dana Point dated November 21, 2011
33. Memorandum from Glenn Lukos Associates (Tony Bomkamp) dated February 9, 2012
34. Memorandum from Glenn Lukos Associates (Tony Bomkamp) dated February 27, 2012
35. Memorandum from Glenn Lukos Associates (Tony Bomkamp) dated February 29, 2012
36. Letter from Fleetwood B. Joiner & Associates dated March 5, 2012.
37. Memorandum from Glenn Lukos Associates (Tony Bomkamp) dated March 5 2012
38. Letter from Glenn Lukos Associates (Tony Bomkamp) dated July 22, 2002
39. Memorandum from John Dixon, PH.D, Commission Staff Ecologist dated March 7, 2012
40. Memorandum from Glenn Lukos Associates (Tony Bomkamp) dated March 16, 2012
41. Revised Wetland Restoration Location Plan from Fleetwood B. Joiner & Associates received on March 23, 2012

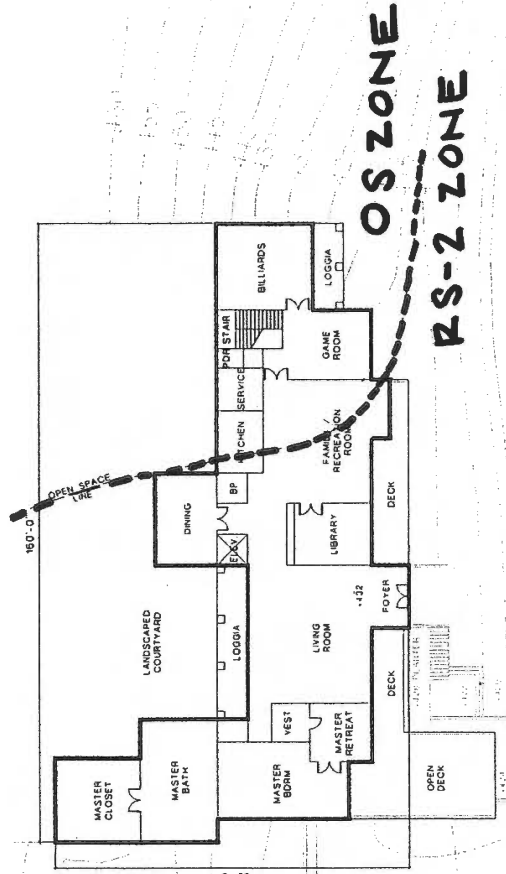
## APPENDIX 2

### **STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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.



# ACCESSORY BUILDING FLOOR PLAN



## UPPER LEVEL FLOOR PLAN

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 2 OF 8

## PROPOSED FLOOR PLANS

THE SAFARI RESIDENCE  
32354 CARIBBEAN DRIVE  
DANA POINT, CA

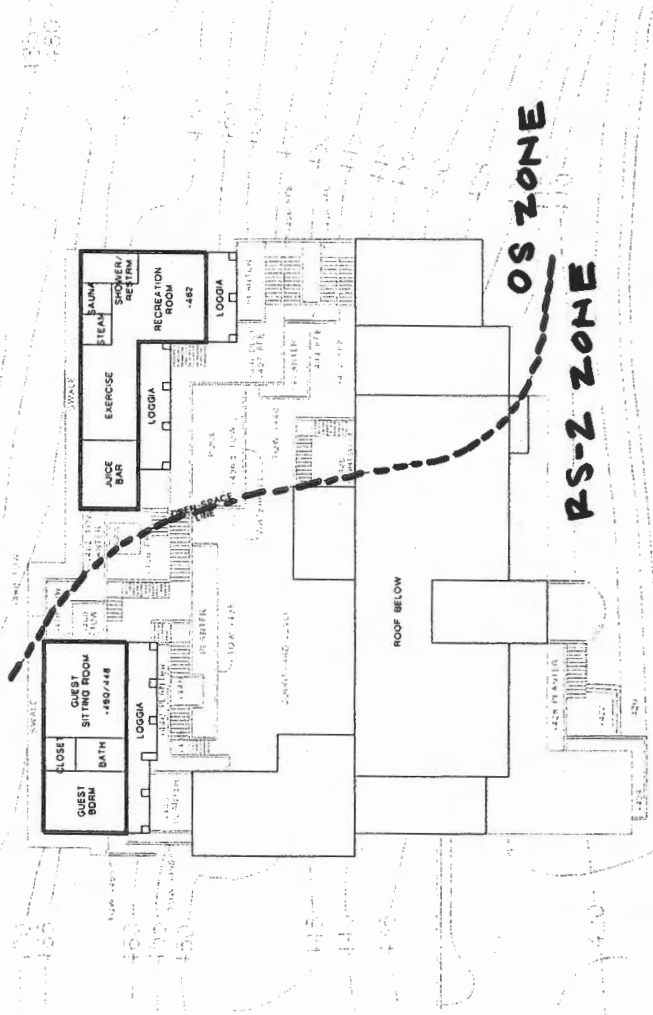
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REVISED COASTAL SUBMITTAL  
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ACCESSORY BUILDING FLOOR PLAN

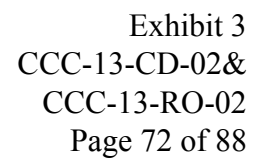
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PAGE 4 OF 8

COASTAL COMMISS

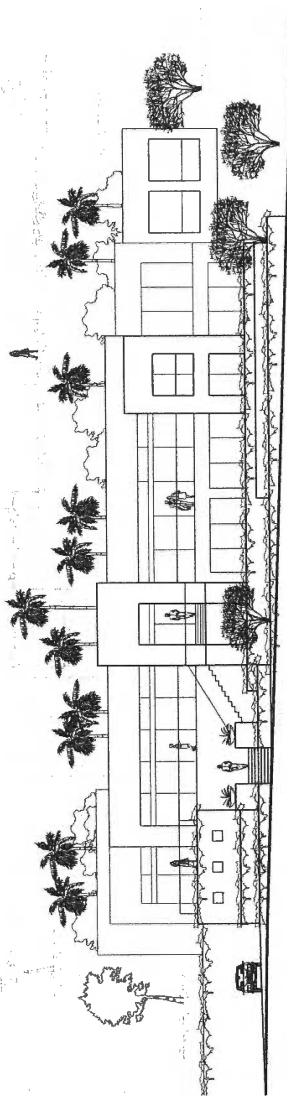
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ACCESSORY/  
GUEST BEYOND

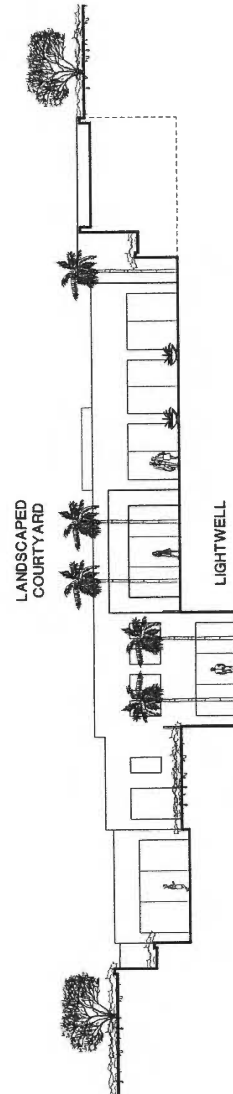
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RECREATION BEYOND



WEST ELEVATION

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PAGE 7 OF 8



EAST ELEVATION

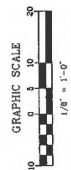
EXTERIOR ELEVATIONS

THE SAFARI RESIDENCE  
32354 CARIBBEAN DRIVE  
DANA POINT, CA

FLEETWOOD B. JONES  
AND ASSOCIATES  
ARCHITECTS  
32354 CARIBBEAN DRIVE  
DANA POINT, CA 92629  
(714) 251-1111

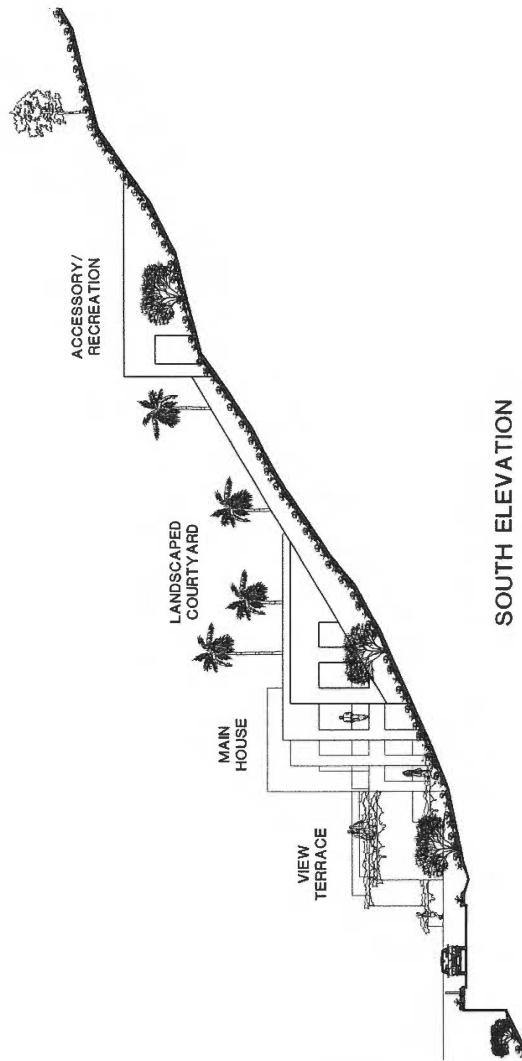
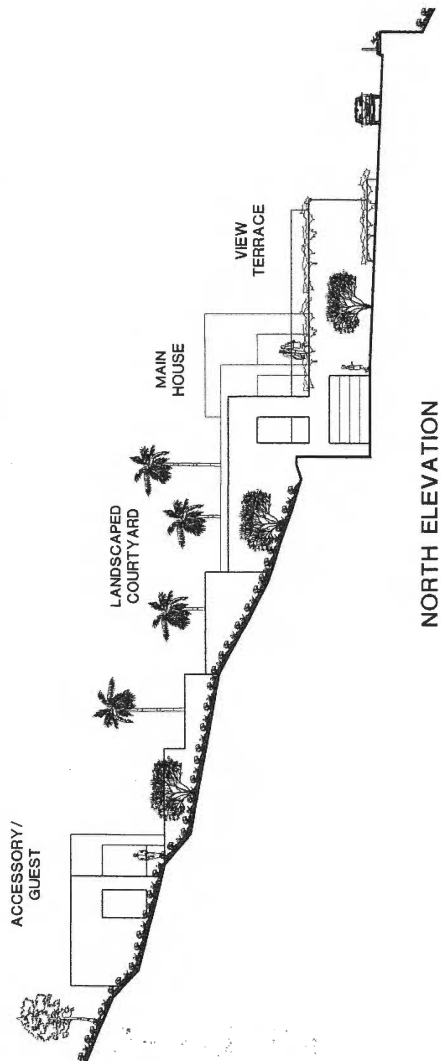


ALL DIMENSIONS IN ARCHITECTURAL, CIVIL, AND  
MECHANICAL DRAWINGS ARE TO FACE UNLESS  
NOTED OTHERWISE. DIMENSIONS ARE TO BE  
MAINTAINED THROUGHOUT THE CONSTRUCTION  
PROCESS. THE ARCHITECT IS NOT RESPONSIBLE FOR  
THE ACCURACY OF THE INFORMATION PROVIDED  
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03-20-08  
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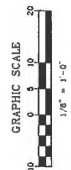


**SOUTH ELEVATION**  
**EXTERIOR ELEVATIONS**

THE SAFARI RESIDENCE  
32354 CARIBBEAN DRIVE  
DANA POINT, CA

**REVISED:**  
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12-23-10  
07-14-11  
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PAGE 8 OF 8

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FLEETWOOD B. JOINER  
AND ASSOCIATES  
PLANNERS AND ARCHITECTURE  
2050 SW BIRCH BLVD 140  
SEASIDE, CA 92080





## CALIFORNIA COASTAL COMMISSION

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



## MEMORANDUM

FROM: John Dixon, Ph.D.  
Ecologist

TO: Fernie Sy

SUBJECT: 32354 Caribbean Drive, Dana Point

DATE: May 26, 2007

## Documents reviewed:

Bomkamp, T. (Glenn Lukos Associates). November 18, 2004. Letter to F. Joiner regarding: Revised report of 2002 biological surveys at Simpson property, Dana Point, CA.

Bomkamp, T. (Glenn Lukos Associates). October 2, 2006. Letter to F. Sy (CCC) regarding: "Updated vegetation mapping for approximately 15-acre property at 32354 Caribbean Drive, Dana Point, Orange County, California."

Gray, J. and D. Bramlet. May 1992. Habitat classification system, A report prepared for the Environmental Management Agency, County of Orange, California.

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

Merkle & Associates. February 1, 1996. Binion Estates Property, City of Laguna Niguel, Maritime Chaparral Mitigation Program (FEIR 90-01). A report prepared for Bettencourt & Associates and the City of Laguna Niguel.

Watchtel, J. September 1978. Soil Survey of Orange County and Western Part of Riverside County, California. United States Department of Agriculture (Soil Conservation Service and Forest Service) in cooperation with University of California Agricultural Experiment Station.

Southern maritime chaparral is recognized as a rare plant community by the California Department of Fish and Game Natural Diversity Data Base. This unique chaparral occupies a distinct microhabitat. It occurs on well-drained, relatively infertile soils derived from sandstones and conglomerates that are located on coastal hillsides that receive summer fog. It is currently patchily distributed from Laguna Beach to Baja California. There are three distinctive types of southern maritime chaparral, which are

**COASTAL COMMISSION**

EXHIBIT # 3  
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centered on Laguna Beach in Orange County, Del Mar in San Diego County, and La Jolla in Baja California, Mexico. In Orange County, southern maritime chaparral occurs on coastal hillsides from San Clemente Canyon to Crown Valley Parkway and is defined by the presence of bushrue (*Cneoridium dumosum*) and an unusual form of big-pod ceanothus (*Ceanothus megacarpus*), which may be a distinct subspecies. The presence of Nuttall's scrub oak (*Quercus dumosa*), big-leaved crownbeard (*Verbissina dissita*), or Laguna Beach dudleya (*Dudleya stolonifera*) is also diagnostic of the Laguna form of southern maritime chaparral. Soils are typically Soper gravelly loams, which formed in weakly consolidated sandstone and conglomerate.

The subject site is about 0.5 mile west of Crown Valley Parkway and 0.5 mile inland from the coast. Much of the site is on the relatively steep, more-or-less ocean-facing slopes of a roughly north-south oriented ridge line. The soils are principally Soper gravelly loams. The northeastern portion of the site supports a dense cover of big-pod ceanothus and scattered bushrue. Although this area was mapped as southern maritime chaparral, the vegetation report (Bomkamp 2006) nevertheless asserts that, "GLA does not concur that southern maritime chaparral occurs on the site. As described above, at best, limited portions of the site are more appropriately characterized as 'transitional' southern maritime chaparral." Despite this disclaimer, the area mapped as southern maritime chaparral clearly meets the definition.

Based on an examination of aerial photographs from Google Earth and the California Coastal Records Project, the rest of the site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. Vegetation clearing and thinning adjacent to the existing residences on the top of the slope to the east is probably ongoing for fire safety. In 1979, the vegetation on the site appears relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside. The whole site was probably southern maritime chaparral. The various ruderal and coastal sage scrub vegetation types that currently dominate much of the site are probably successional to maritime chaparral. This is a common pattern in Laguna Beach following disturbance. It should be determined whether a coastal development permit was issued for the vegetation clearing and ground form alterations.

The area immediately adjacent to the maritime chaparral is mapped as "maritime chaparral-sage scrub." This area does not currently support big-pod ceanothus, although bushrue is present. However, it is contiguous with the mapped maritime chaparral, it has the same type of soil, the same microclimate, and similar slope and aspect. The physical environment, the adjacency to mapped maritime chaparral, and the presence of bushrue all suggest that this habitat is also southern maritime chaparral (Dr. T. Keeler-Wolf, Senior Vegetation Ecologist, Natural Heritage Program, CDFG personal communication to J. Dixon on March 15, 2007).

I recommend that both the habitat mapped as "southern maritime chaparral" and the immediately adjacent habitat mapped as "maritime chaparral-sage scrub" be considered southern maritime chaparral and, as such, an Environmentally Sensitive Habitat Area under the Coastal Act because it is a rare habitat and it is easily disturbed by human activities.

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## CALIFORNIA COASTAL COMMISSION

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FAX (415) 904-5400



## MEMORANDUM

FROM: John Dixon, Ph.D.  
Ecologist

TO: Fernie Sy

SUBJECT: 32354 Caribbean Drive, Dana Point

DATE: April 15, 2009

## Documents reviewed:

Bomkamp, T. (Glenn Lukos Associates). October 2, 2006. Letter to F. Sy (CCC) regarding: "Updated vegetation mapping for approximately 15-acre property at 32354 Caribbean Drive, Dana Point, Orange County, California."

Bomkamp, T. (Glenn Lukos Associates). January 27, 2009. Letter to F. Sy (CCC) regarding: "Vegetation analysis and discussion of 0.29-acre fuel modification zone and adjacent vegetation communities on the Safari residence, Dana Point, California"

Southern maritime chaparral is a rare plant community that occurs on well-drained, relatively infertile soils derived from sandstones and conglomerates that are located on coastal hillsides that receive summer fog. In Orange County, this vegetation community is defined by the presence of bushrue (*Cneoridium dumosum*) and an unusual form of big-pod ceanothus (*Ceanothus megacarpus*), which is intermediate in character between the big-pod ceanothus farther north and the more southern wart-stemmed ceanothus (*C. verrucosus*). The latter is characteristic of this habitat type in San Diego county. Nuttall's scrub oak (*Quercus dumosa*), big-leaved crownbeard (*Verbissina dissita*), and Laguna Beach dudleya (*Dudleya stolonifera*) are also diagnostic of the Laguna form of southern maritime chaparral.

The northwest<sup>1</sup> portion of the subject site supports a dense cover of big-pod ceanothus and scattered bushrue and was mapped as southern maritime chaparral. An adjacent area was characterized as "maritime chaparral-sage scrub." This area is not currently occupied by big-pod ceanothus. However, bushrue is present. In my May 26, 2007 memorandum to you I stated that, "[t]he physical environment, the adjacency to mapped maritime chaparral, and the presence of bushrue all suggest that this habitat is also southern maritime chaparral (Dr. T. Keeler-Wolf, Senior Vegetation Ecologist, Natural Heritage Program, CDFG personal communication to J. Dixon on March 15, 2007)." I

<sup>1</sup> Incorrectly designated "northeastern" in my earlier memorandum.

COASTAL COMMISSION

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recommended that this habitat also be considered southern maritime chaparral and an Environmentally Sensitive Habitat Area under the Coastal Act because it is a rare habitat and it is easily disturbed by human activities.

In his recent submission Mr. Bomkamp presents a quantitative description of a portion of the area that he described as "maritime chaparral-sage scrub" and that would be subject to fuel modification adjacent to the proposed development. He argues that the area should not be considered southern maritime chaparral, particularly because big-pod ceanothus is not present. I again discussed the vegetation pattern present on the site with Dr. Todd Keeler-Wolf, Senior Vegetation Ecologist with the California Department of Fish and Game's Biogeographic Data Branch. During our conversation, we both examined the aerial photograph of the site on Google Earth and I read aloud Mr. Bomkamp's habitat description. Dr. Keeler-Wolf considers bushrue as one of the better indicators of southern maritime chaparral in Orange County, thinks the observed cover of this indicator plant is significant, and concurred that the area in question be considered southern maritime chaparral (personal communication to J. Dixon on April 15, 2009). There are no changed circumstances from two years ago and there is no reason to change my recommendation.

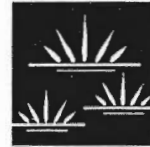
**COASTAL COMMISSION**

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PAGE 2 OF 2

## MEMORANDUM

### GLENN LUKOS ASSOCIATES

Regulatory Services



**PROJECT NUMBER:** 04660004SAFA  
**TO:** Tom Stewart  
**FROM:** Tony Bomkamp  
**DATE:** March 5, 2012  
**SUBJECT:** Habitat Restoration Opportunities, Safari Property, Dana Point, California

Project redesign has resulted in a significant reduction of impacts to areas of native habitat on the proposed project site. As proposed, grading for the project would impact approximately 1.15 acres of native scrub habitat including coastal sage scrub, and maritime chaparral sage scrub. Clearing of vegetation for purposes of Fuel Modification would result in impacts to an additional 0.75 acre resulting in 1.90 acres of native habitat affected by the project.

With project redesign, the overall project impacts are substantially reduced resulting in preservation of large areas of the site, that includes 8.6 acres of native scrub habitats. This combined with the opportunity for restoration of disturbed areas of 1.90 acres ensures that mitigation for the project will compensate for any potential impacts.

Proposed Impacts	CSS/Chaparral Restoration	CSS/Chaparral Preservation
1.90 acres	1.90 acres	8.6 acres

In summary, the project will result in impacts to 1.90 acres of CSS and Chaparral/CSS, which will be mitigated by 1:1 restoration/replacement plus 4.5:1 preservation (8.6 acres) for a total mitigation ratio of 5.5:1.

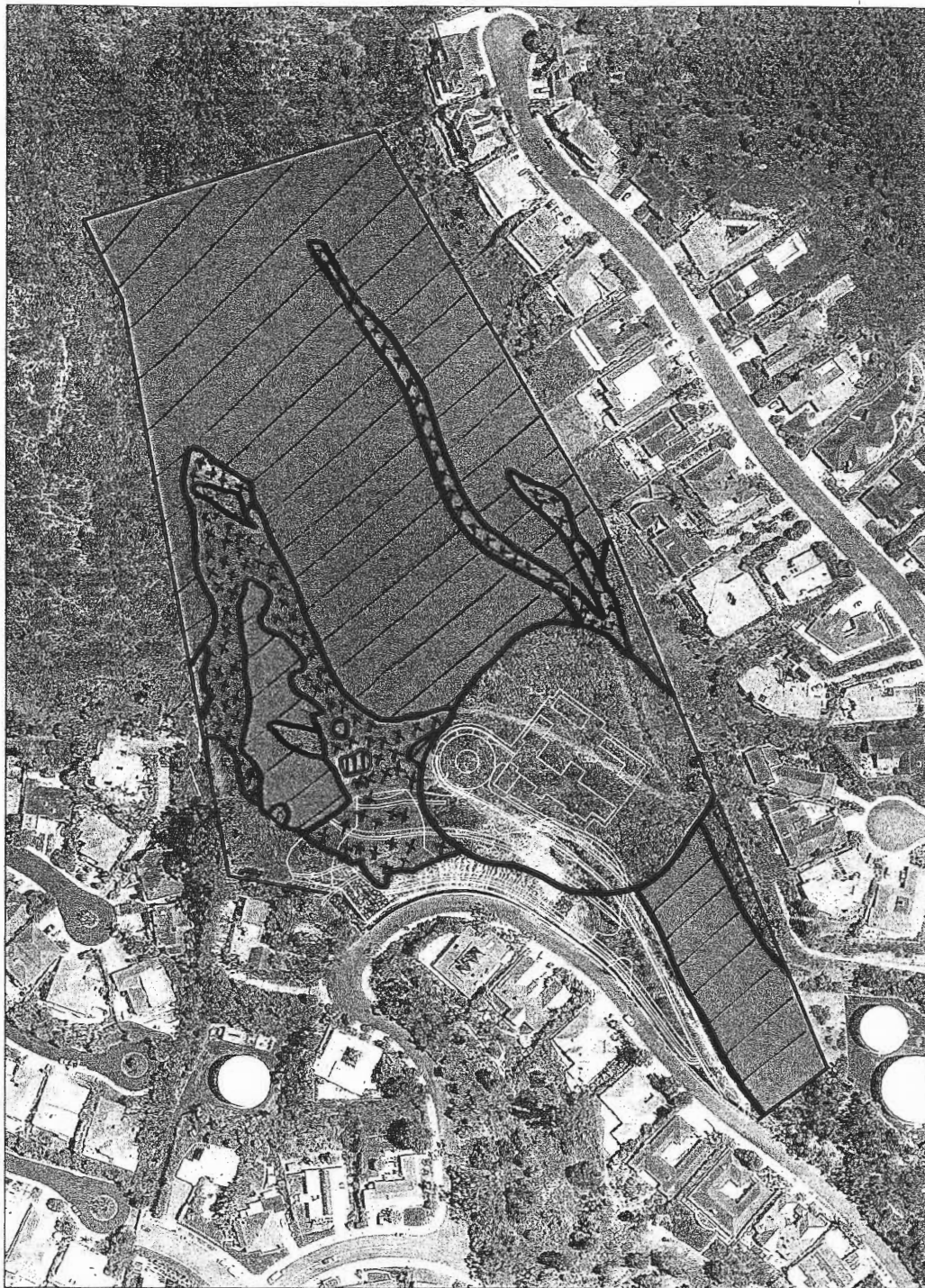
**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 2

29 Orchard  
Telephone: (949) 837-0404

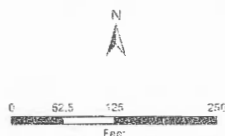
▪ Lake Forest

▪ California 92630-8300  
Facsimile: (949) 837-5834



# Legend

-  Project Boundary
-  Potential Restoration - 1.90 ac.
-  Preservation - 8.64 ac.
-  Wetland Restoration - 0.02 ac.



**SAFARI PROPERTY**  
Restoration Map

GLENN LUKOS ASSOCIATES

**COASTAL COMMISSION**

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March 5, 2012

EXHIBIT # 5  
PAGE 2 OF 2

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT  
700 "E" STREET, SUITE 200  
EUREKA, CA 95501  
(707) 445-7873

**MEMORANDUM**

FROM: John D. Dixon, Ph.D., Ecologist  
TO: Fernie Sy  
SUBJECT: 32354 Caribbean Drive, Dana Point  
DATE: March 7, 2012

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**Document reviewed:**

Bomkamp, T. (Glenn Lukos Associates). October 2, 2006. Letter to F. Sy (CCC) regarding: "Updated vegetation mapping for approximately 15-acre property at 32354 Caribbean Drive, Dana Point, Orange County, California."

Bomkamp, T. (Glenn Lukos Associates). February 9, 2012. Memorandum to J. Dixon (CCC) regarding "Safari Maritime Chaparral and Coastal Sage Scrub."

Dixon, J. (CCC). May 26, 2007. Memorandum to F. Sy (CCC) regarding: "32354 Caribbean Drive, Dana Point."

Dixon, J. (CCC). April 15, 2009. Memorandum to F. Sy (CCC) regarding: "32354 Caribbean Drive, Dana Point."

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In previous memoranda (Dixon 2007, 2009) I recommended that the habitat type identified and mapped by Glenn Lukos Associates (Bomkamp 2006) as "maritime chaparral (3.6)" and the adjacent and contiguous habitat "maritime chaparral-sage scrub (3.1.6)" be considered different expressions of southern maritime chaparral, a rare habitat that meets the definition of Environmentally Sensitive Habitat Area (ESHA) in the Coastal Act. The development proposed by the current owner of the property has been sited to avoid impacts to this ESHA and to provide a 100-foot setback. Recently, a new but related issue has emerged: to what extent did unpermitted grading that occurred between 1970 and 1981<sup>1</sup> impact ESHA and is the proposed development sited in historical ESHA that was converted to coastal sage scrub by the illegal grading?

Without confirmation from on-the-ground observations it is not possible to identify with certainty species and vegetation communities from patterns in aerial photographs. However, the general pattern of the vegetation in particular locations defined by slope

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<sup>1</sup> Based on an analysis of aerial photographs contained in Bomkamp (2012).

**COASTAL COMMISSION**

EXHIBIT #: 6  
PAGE 1 OF 6



and aspect is consistent within each of a series of aerial photographs from 1947 to the present, suggesting that the vegetation previously present was very similar to that known to be present in those areas today. It is also likely that the principal impacts of the grading were confined to the grading footprint and did not result in significant degradation of adjacent habitats except very near the edge of grading. Therefore, I think it is reasonable to conclude that what is observed today in areas that have not been directly disturbed by unpermitted development is very similar to what was present when the development took place.

Some disturbance in the form of trails had already taken place by 1970, prior to enactment of Proposition 20 or the Coastal Act (Figure 1). On the left side of the photograph there is a dark strip of vegetation following the canyon that drains this section of hillside. Based on the continuity with vegetation higher in the canyon that is still present, that vegetation was most likely what Bomkamp has described as southern maritime chaparral (3.6) and maritime chaparral/CSS (3.1.6). The maximum extent of habitat disturbance is apparent in a 1981 photograph that shows the effects of what must have been recent grading (Figure 2). Within the blue polygon, Bomkamp (2012) estimates that about 0.49 acre of southern maritime chaparral and 0.87 acre of maritime chaparral/CSS was removed. A road was also graded across the upper part of the hillside and in a curve into the canyon. Most of the habitat impacted by that road was no doubt maritime chaparral/CSS.

There appears to be a change in the aspect of the hillside that roughly corresponds with the trail that was already apparent in 1970. In any event, that trail marks the approximate boundary of the polygon identified as maritime chaparral/CSS with coastal sage scrub to the south and east (Figure 3). Based on the assumption that the undisturbed habitats currently present are similar to the habitats historically present, I recommend that the area north of the old trail (indicated on the photographs by a dark line) be identified as an Environmentally Sensitive Habitat Area (ESHA) at the time of development, and that the area south of the line be identified as not ESHA at that time (Figure 2).

Bomkamp (2012) questions whether the habitats identified as maritime chaparral/CSS should be considered an expression of southern maritime chaparral and therefore ESHA and questions whether bushrue should be considered diagnostic since it is also found in coastal sage scrub in some situations. I once again sought advice from Dr. Todd Keeler-Wolf, Senior Vegetation Ecologist with the California Department of Fish and Game and co-author of "California Vegetation," the standard reference for vegetation classification in California. Although he acknowledged that bushrue can be found in types of coastal sage scrub, he nevertheless considers bushrue to be a "differential species for maritime chaparral" where it occurs in sclerophyll vegetation close to the coast and pointed out that all such vegetation is now rare and localized in southern coastal California (personal communication February 11, 2012). I continue to recommend that the habitat designated 3.6 and the contiguous habitat designated 3.1.6 by Bomkamp (2006, 2012) be considered different expressions of southern maritime chaparral, rare in coastal California, and ESHA. I also continue to recommend that the

COASTAL COMMISSION

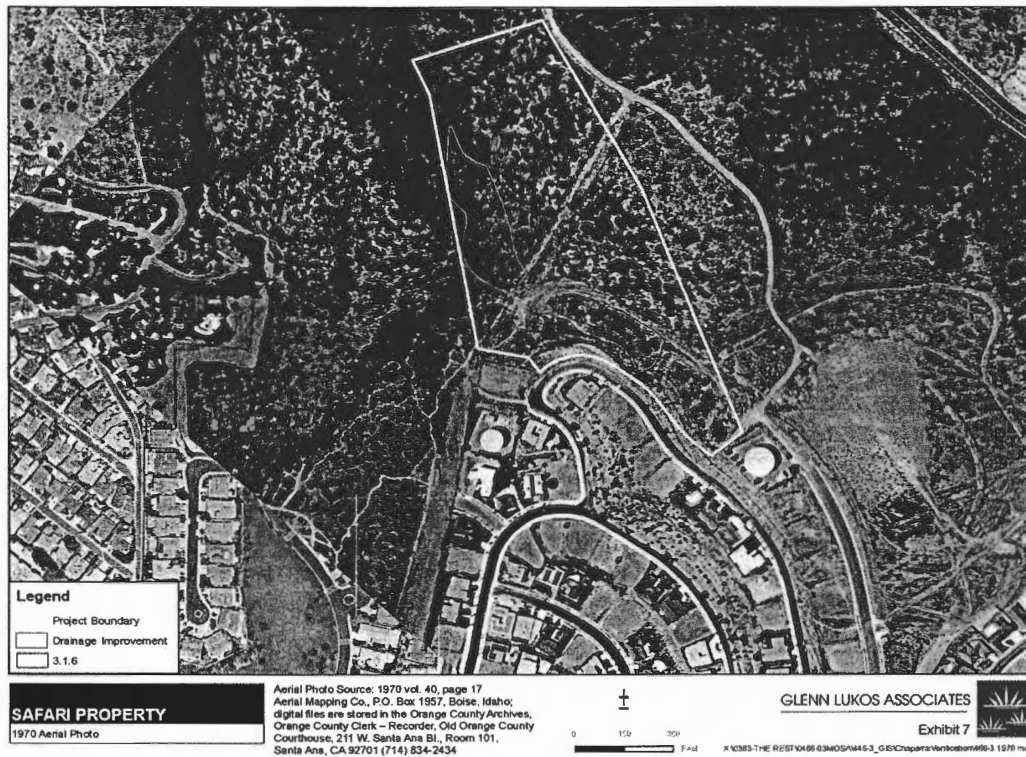
small insular patch of 3.1.6 sandwiched between two graded areas above Caribbean Drive not be considered ESHA.

COASTAL COMMISSION

EXHIBIT # 6  
PAGE 3 OF 6



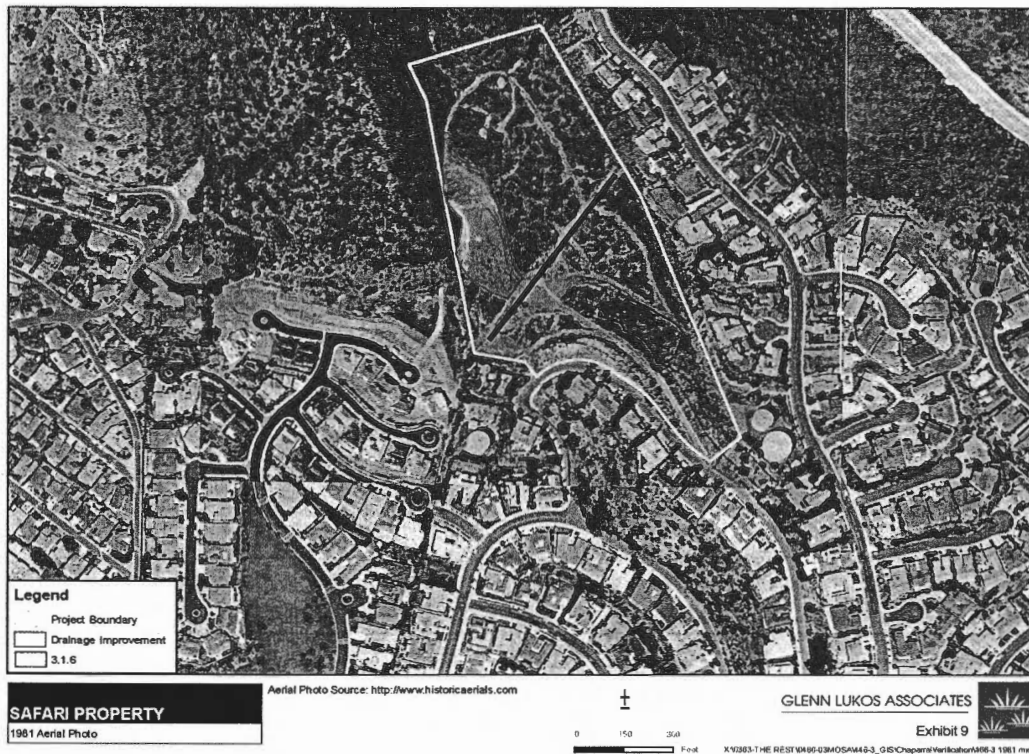
Figure 1. 1970 aerial photograph in Glenn Lukos Associates (Bomkamp 2012) Exhibit 7.



COASTAL COMMISSION

EXHIBIT #: 6  
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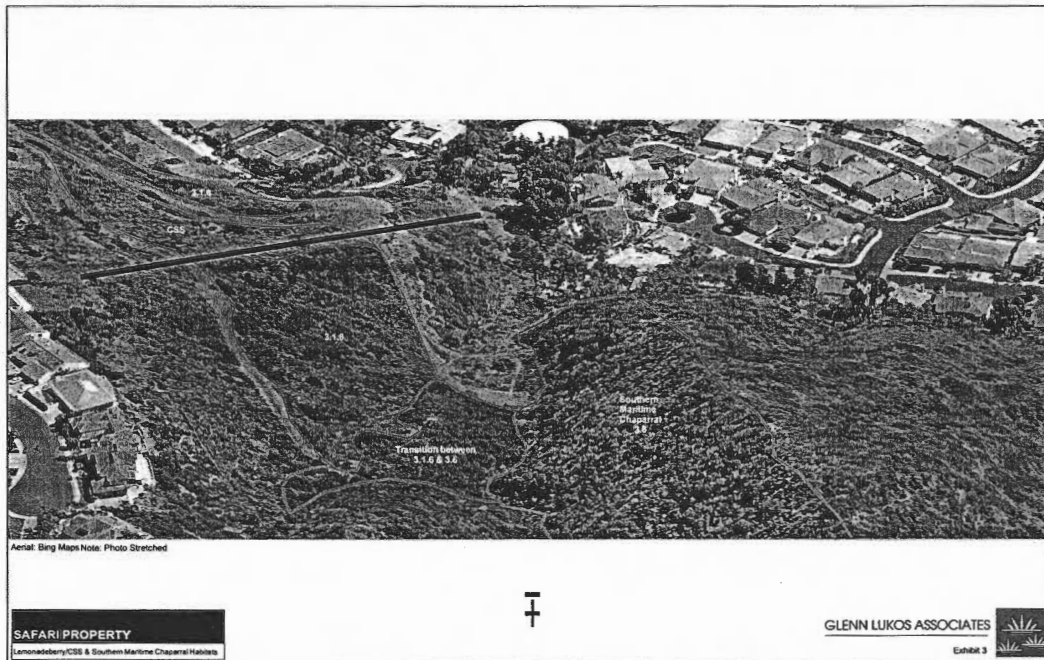
Figure 2. 1981 aerial photograph in Glenn Lukos Associates (Bomkamp 2012) Exhibit 9. The dark line follows the path up the hillside that was already apparent in 1970 (Figure 1). The disturbance apparent in this photograph appears relatively recent and is of the greatest extent apparent in any of the available historical aerial photographs.



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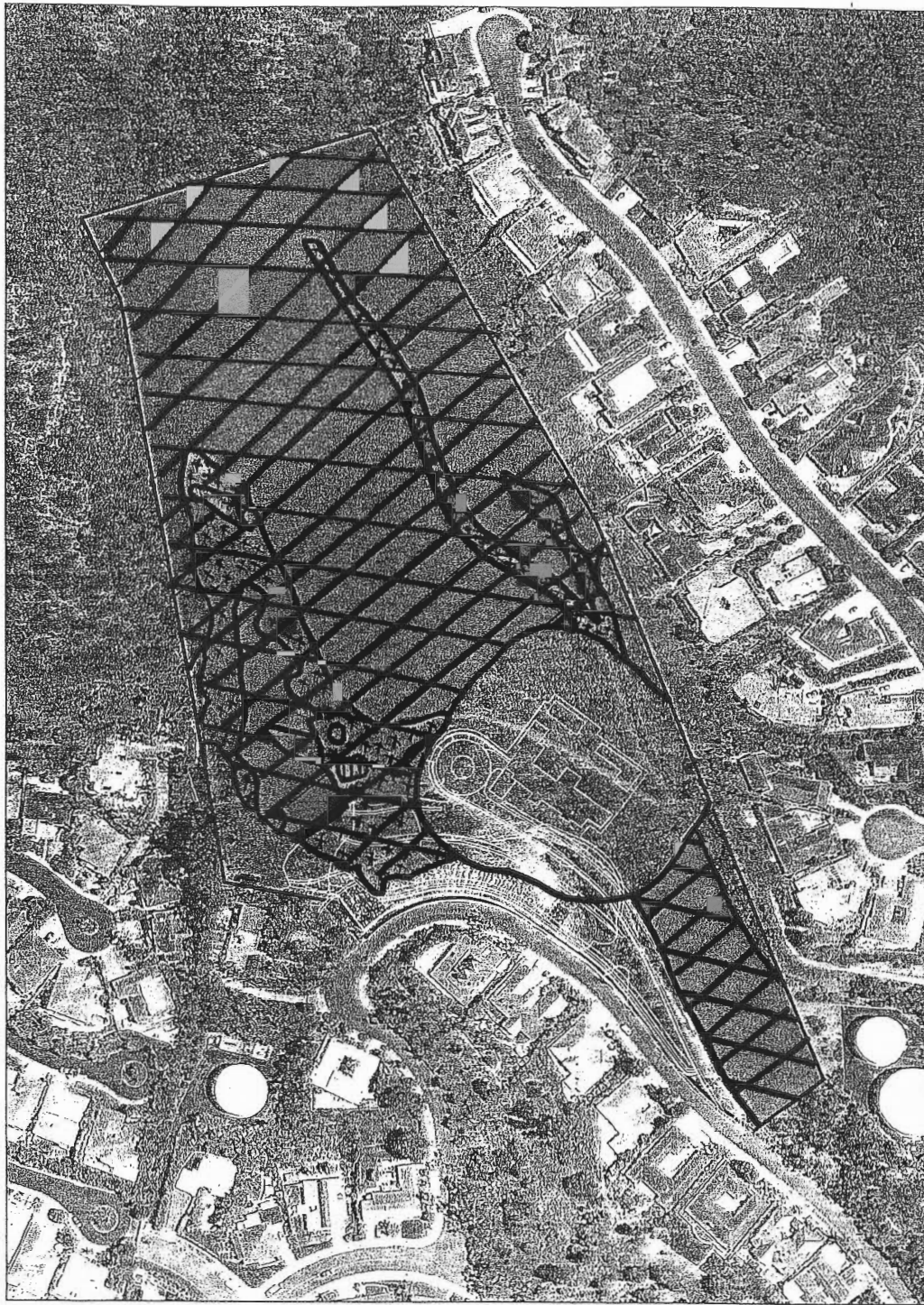
EXHIBIT # 6  
PAGE 5 OF 6

Figure 3. Recent undated "bird's eye view" aerial photograph from BING Maps in Glenn Lukos Associates (Bomkamp 2012) Exhibit 3. Approximate location of mapped habitat types has been overlaid on the photograph. Dark line shows approximate location of path present in 1970.







COASTAL COMMISSION

EXHIBIT # 6  
PAGE 6 OF 6



**Legend**

-  Project Boundary
-  Potential Restoration - 1.90 ac.
-  Preservation - 8.64 ac.
-  Wetland Restoration - 0.02 ac.



**OPEN SPACE**



0 62.5 125 250  
Feet

**SAFARI PROPERTY**

Restoration Map

GLENN LUKOS ASSOCIATES

**COASTAL COMMISSION**





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March 5, 2012

EXHIBIT # 7  
PAGE 1 OF 1





### Caribbean property - Dana Point

-  Project Boundary
-  Restoration Area per HRMP 1.90 ac
-  Additional preservation area 8.64 ac
-  Impacted Area



All Locations Approximate.  
For Illustrative Purposes Only.  
Sources: NAIP 2007





### Caribbean property - Dana Point

- Project Boundary
- Restoration Area per Expanded HMRP
- Additional preservation area 8.64 ac



## CALIFORNIA COASTAL COMMISSION

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



## MEMORANDUM

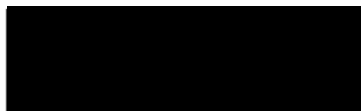
## COASTAL COMMISSION

FROM: John Dixon, Ph.D.  
Ecologist

TO: Fernie Sy

SUBJECT: 32354 Caribbean Drive, Dana Point

DATE: May 26, 2007



## Documents reviewed:

Bomkamp, T. (Glenn Lukos Associates). November 18, 2004. Letter to F. Joiner regarding: Revised report of 2002 biological surveys at Simpson property, Dana Point, CA.

Bomkamp, T. (Glenn Lukos Associates). October 2, 2006. Letter to F. Sy (CCC) regarding: "Updated vegetation mapping for approximately 15-acre property at 32354 Caribbean Drive, Dana Point, Orange County, California."

Gray, J. and D. Bramlet. May 1992. Habitat classification system, A report prepared for the Environmental Management Agency, County of Orange, California.

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

Merkle & Associates. February 1, 1996. Binion Estates Property, City of Laguna Niguel, Maritime Chaparral Mitigation Program (FEIR 90-01). A report prepared for Bettencourt & Associates and the City of Laguna Niguel.

Watchtel, J. September 1978. Soil Survey of Orange County and Western Part of Riverside County, California. United States Department of Agriculture (Soil Conservation Service and Forest Service) in cooperation with University of California Agricultural Experiment Station.

Southern maritime chaparral is recognized as a rare plant community by the California Department of Fish and Game Natural Diversity Data Base. This unique chaparral occupies a distinct microhabitat. It occurs on well-drained, relatively infertile soils derived from sandstones and conglomerates that are located on coastal hillsides that receive summer fog. It is currently patchily distributed from Laguna Beach to Baja California. There are three distinctive types of southern maritime chaparral, which are



centered on Laguna Beach in Orange County, Del Mar in San Diego County, and La Jolla in Baja California, Mexico. In Orange County, southern maritime chaparral occurs on coastal hillsides from San Clemente Canyon to Crown Valley Parkway and is defined by the presence of bushrue (*Cneoridium dumosum*) and an unusual form of big-pod ceanothus (*Ceanothus megacarpus*), which may be a distinct subspecies. The presence of Nuttall's scrub oak (*Quercus dumosa*), big-leaved crownbeard (*Verbissina dissita*), or Laguna Beach dudleya (*Dudleya stolonifera*) is also diagnostic of the Laguna form of southern maritime chaparral. Soils are typically Soper gravelly loams, which formed in weakly consolidated sandstone and conglomerate.

The subject site is about 0.5 mile west of Crown Valley Parkway and 0.5 mile inland from the coast. Much of the site is on the relatively steep, more-or-less ocean-facing slopes of a roughly north-south oriented ridge line. The soils are principally Soper gravelly loams. The northeastern portion of the site supports a dense cover of big-pod ceanothus and scattered bushrue. Although this area was mapped as southern maritime chaparral, the vegetation report (Bomkamp 2006) nevertheless asserts that, "GLA does not concur that southern maritime chaparral occurs on the site. As described above, at best, limited portions of the site are more appropriately characterized as 'transitional' southern maritime chaparral." Despite this disclaimer, the area mapped as southern maritime chaparral clearly meets the definition.

Based on an examination of aerial photographs from Google Earth and the California Coastal Records Project, the rest of the site appears to have been disturbed sometime in the past by grading roads, terracing, ground clearing, and the placement of sandbags to control erosion. Vegetation clearing and thinning adjacent to the existing residences on the top of the slope to the east is probably ongoing for fire safety. In 1979, the vegetation on the site appears relatively homogeneous and mostly undisturbed, although at least one road had already been cut across the hillside. The whole site was probably southern maritime chaparral. The various ruderal and coastal sage scrub vegetation types that currently dominate much of the site are probably successional to maritime chaparral. This is a common pattern in Laguna Beach following disturbance. It should be determined whether a coastal development permit was issued for the vegetation clearing and ground form alterations.

The area immediately adjacent to the maritime chaparral is mapped as "maritime chaparral-sage scrub." This area does not currently support big-pod ceanothus, although bushrue is present. However, it is contiguous with the mapped maritime chaparral, it has the same type of soil, the same microclimate, and similar slope and aspect. The physical environment, the adjacency to mapped maritime chaparral, and the presence of bushrue all suggest that this habitat is also southern maritime chaparral (Dr. T. Keeler-Wolf, Senior Vegetation Ecologist, Natural Heritage Program, CDFG personal communication to J. Dixon on March 15, 2007).

I recommend that both the habitat mapped as "southern maritime chaparral" and the immediately adjacent habitat mapped as "maritime chaparral-sage scrub" be considered southern maritime chaparral and, as such, an Environmentally Sensitive Habitat Area under the Coastal Act because it is a rare habitat and it is easily disturbed by human activities.

COASTAL MISSION







**Legend**

- |   |                                      |
|---|--------------------------------------|
| Annual grassland, 4.1                           | Maritime chaparral-Sage scrub, 3.1.6 |
| Black sage scrub, 2.3.4                         | Mixed sage scrub, 2.3.10             |
| Buckwheat scrub, 2.3.7                          | Parks and ornamental plantings, 15.5 |
| Cactus Grassland, 2.8.6                         | Sagebrush scrub, 2.3.6               |
| Coastal goldenbush-Grassland/Ruderal, 2.8.3/4.6 | Sagebrush-Black sage scrub, 2.3.8    |
| Deerweed Scrub, 2.3.13                          | Southern maritime chaparral, 3.6     |
| Disturbed/Developed, D/D                        | Toyon-Sumac chaparral, 3.1.2         |
| Freshwater seep, 5.3                            |                                      |



0 75 150 300 Feet

**CARIBBEAN PROPERTY**

**Vegetation Map**

GLENN LUKOS ASSOCIATES

Exhibit 3

