

CITY OF DANA POINT

CITY COUNCIL REGULAR MEETING



**TUESDAY
JUNE 17, 2008
5:00 P.M.**

AGENDA

Location: City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point, California 92629

Next City Council Ordinance No. 08-08

CALL TO ORDER

ROLL CALL OF CITY COUNCIL MEMBERS:

Joel Bishop, Mayor
Lisa A. Bartlett, Mayor Pro Tem
Lara Anderson, Council Member
Diane L. Harkey, Council Member
Steven H. Weinberg, Council Member

CLOSED SESSION

There are no Closed Session items.

RECESS OF CITY COUNCIL MEETING UNTIL 6:00 P.M.

RECONVENE CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS AND PROCLAMATIONS

Business of the Month – Pacific Asian Enterprises, Inc.

CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and all will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the City Council, the public, or staff request specific items be removed from the Consent Calendar for separate action.

At this time, the City Clerk will read the title(s) of the ordinance(s) listed on the agenda.

1. WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY

RECOMMENDED ACTION: That the City Council approve the reading by title only of all ordinances on the Consent Calendar and that further reading of such ordinances be waived.

2. REGULAR MEETING MINUTES, JUNE 3, 2008

RECOMMENDED ACTION: That the City Council approve the minutes.

3. PLANNING COMMISSION MEETING MINUTES, MAY 27, 2008

RECOMMENDED ACTION: That the City Council receive and file.

4. PLANNING COMMISSION ACTIONS, MEETING OF JUNE 10, 2008

RECOMMENDED ACTION: That the City Council receive and file.

5. YOUTH BOARD MEETING MINUTES, MAY 15, 2008

RECOMMENDED ACTION: That the City Council receive and file.

6. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECOMMENDED ACTION: That the City Council receive and file.

7. CLAIMS AND DEMANDS

RECOMMENDED ACTION: That the City Council receive and file the Claims and Demands.

8. TERMINATION OF FIRE PROTECTION IMPACT FEE

RECOMMENDED ACTION: That the City Council adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RESCINDING THE FIRE PROTECTION FACILITIES IMPACT FEE FOR ALL DEVELOPMENT LOCATED WITHIN THE CITY OF DANA POINT.

9. APPROVAL OF A SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM AND AUTHORIZATION TO FORWARD MEASURE M ELIGIBILITY DOCUMENTATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY

RECOMMENDED ACTION: That the City Council 1) adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM FOR FY09 THROUGH FY15 AS REQUIRED BY OCTA MEASURE M GROWTH MANAGEMENT PROGRAM AND VERIFYING THE STATUS OF THE CIRCULATION ELEMENT FOR THE CITY OF DANA POINT; and

2) authorize the Director of Public Works and Engineering Services to forward the necessary Measure M eligibility documentation to the Orange County Transportation Authority.

10. SHIPS TO REEF

RECOMMENDED ACTION: That the City Council approve and adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IN SUPPORT OF THE CALIFORNIA SHIPS TO REEFS CONCEPT OF ESTABLISHING ARTIFICIAL REEFS IN THE WATERS OFF SHORE OF THE CITY OF DANA POINT.

11. CITY MANAGER HOUSING AGREEMENT – SECOND AMENDMENT

RECOMMENDED ACTION: That the City Council 1) adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SECOND AMENDMENT TO CITY MANAGER HOUSING ASSISTANCE AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE RELATED DOCUMENTS; and

2) authorize the Mayor to execute the attached amendment to the City Manager's Housing Agreement, and related documents as appropriate.

12. GREASE INTERCEPTOR REBATE PROGRAM EXTENSION, CITY OF DANA POINT

RECOMMENDED ACTION: That the City Council 1) approve the continuation of the Grease Interceptor Rebate Program, and 2) waive permit-related fees for applicants approved for this program.

13. ADOPTION OF A RESOLUTION ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2008/2009

RECOMMENDED ACTION: That the City Council That the City Council adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2008/2009.

14. ADOPTION OF RESOLUTION APPROVING FINAL TRACT MAP NO. 16769, THE REQUIRED LANDSCAPE AND MAINTENANCE AGREEMENT, AND THE ACCOMPANYING SUBDIVISION IMPROVEMENT AGREEMENT

RECOMMENDED ACTION: That the City Council adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING FINAL TRACT MAP NO. 16769, THE REQUIRED LANDSCAPE AND MAINTENANCE AGREEMENT, AND THE ACCOMPANYING SUBDIVISION IMPROVEMENT AGREEMENT.

15. **CALLING FOR A GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2008 TO FILL TWO CITY COUNCIL SEATS**

RECOMMENDED ACTION: That the City Council adopt the following Resolutions entitled:

- A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES; and
- B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE; and
- C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES' STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008.

16. **CITY COUNCIL POLICY ON REORGANIZATION**

RECOMMENDED ACTION: That the City Council adopt City Council Policy 117 on the annual appointment of the Mayor and Mayor Pro Tem.

17. **SECOND READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT TO INCLUDE MODIFICATIONS TO ZONE TEXT AMENDMENT ZTA06-04 AN ZC06-01 FOR THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX E OF THE ZONING CODE AND AUTHORIZING SUBMITTAL OF THE ORDINANCE TO THE CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION**

RECOMMENDED ACTION: That the City Council conduct a second reading and adopt the Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX "E" OF THE ZONING ORDINANCE AS PART OF LOCAL COASTAL PLAN AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

18. ADDENDUM TO JUNE 3, 2008 STAFF REPORT: HOTEL-RELATED INSURANCE RENEWAL FOR FY2008/2009

RECOMMENDED ACTION: That the City Council approve revisions to the FY 2008/2009 renewal of hotel-related insurance business interruption coverage obtained from Landmark American Insurance Company ("Landmark") for protection of Transient Occupancy Tax ("TOT") and other hotel-generated revenues for the policy period of June 17, 2008 to June 17, 2009.

19. OPPOSITION TO ASSEMBLY BILL 983 (Ma)

RECOMMENDED ACTION: That the City Council:

1. Oppose AB 983 (Ma) – Public Contracts: Plans and Specifications; and
2. Authorize the City Manager to send a letter to the appropriate officials opposing AB 983.

PUBLIC COMMENTS

Any person wishing to address the City Council during the Public Comments section or on an Agenda item is asked to complete a "Request to Speak" form available on the table at the side of the Council Chamber. The completed form is to be submitted to the City Clerk prior to the Agenda item being called by the Mayor and prior to the individual being heard by the City Council.

In order to conduct a timely meeting, there will be a three-minute time limit per person and an overall time limit of fifteen minutes for this Public Comments portion of the agenda. At the Mayor's discretion, the balance of public comments will be heard after the New Business portion of the agenda. All comments are to be directed to the City Council and shall not consist of any personal attacks. Members of the public are expected to maintain a professional, courteous decorum during their comments. State law prohibits the City Council from taking action on a specific item unless it appears on the posted Agenda.

If anyone has handouts to distribute to the City Council, please follow proper procedure and hand them to the City Clerk. The City Clerk will see that they are distributed.

PUBLIC HEARINGS

20. GENERAL PLAN AMENDMENT GPA07-02 AND LOCAL COASTAL PROGRAM AMENDMENT 07-02 TO REVIEW CALIFORNIA COASTAL COMMISSION RECOMMENDED MODIFICATIONS FOR THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN

RECOMMENDED ACTION: That the City Council conduct a Public Hearing and adopt the suggested modifications approved by the California Coastal Commission in its certification of the City of Dana Point Local Coastal Program Amendment LCPA07-02 with respect to the Headlands Development and Conservation Plan (HDCP) and forward the adopted suggested modifications to the Coastal Commission for final certification approving the following Resolutions:

1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 07-02, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT, URBAN DESIGN ELEMENT, CONSERVATION AND OPEN SPACE ELEMENT AS WELL AS VARIOUS TABLES AND FIGURES AND SUBMISSION OF GPA 07-02 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION; and
2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 AND REQUESTING FINAL CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

21. ZONING CODE UPDATE PROGRAM - ZONE TEXT AMENDMENT ZTA08-0004

RECOMMENDED ACTION: That the City Council conduct a Public Hearing and introduce an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA08-0004, REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES, AND PROVIDE CLARIFICATION TO EXISTING REGULATIONS GOVERNING "ALCOHOLIC BEVERAGE OUTLETS", AND CLARIFY REQUIRED LANDSCAPING STANDARDS FOR RESIDENTIAL DISTRICTS.

UNFINISHED BUSINESS

22. APPROVAL OF CONSULTANT SERVICES AGREEMENT WITH ROMA DESIGN GROUP FOR PACIFIC COAST HIGHWAY AND DEL PRADO STREET IMPROVEMENTS BETWEEN BLUE LANTERN AND COPPER LANTERN

RECOMMENDED ACTION: That the City Council 1) approve subject agreement including a contingency budget and 2) authorize the City Manager to execute the agreement.

NEW BUSINESS

There are no New Business items.

PUBLIC COMMENTS (Continued)

STAFF REPORTS

(City Manager Doug Chotkevys)

(City Attorney Patrick Muñoz)

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

The City Council may discuss, act upon or seek consensus on matters described under Council Reports only if: They are agendized with a complete written report included; or, if an item arose subsequent to the posting of the agenda and the Council determines that an emergency exists. Non-agendized items may be presented as informational only.

ADJOURNMENT

The next Regular Meeting of the City Council will be July 15, 2008, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

CERTIFICATION

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that a copy of the foregoing Agenda was posted at Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office and the Dana Point Library by Friday, June 13, 2008, at 5:00 p.m.

KATHY M. WARD, CITY CLERK

DATE

Subscriptions to receive City Council Agendas on a regular basis are available through the City Clerk's Office. Agendas are also available on the City's website at www.danapoint.org.

PURSUANT TO THE AMERICANS WITH DISABILITIES ACT, PERSONS WITH A DISABILITY WHO REQUIRE A DISABILITY-RELATED MODIFICATION OR ACCOMMODATION IN ORDER TO PARTICIPATE IN A MEETING, INCLUDING AUXILIARY AIDS OR SERVICES, MAY REQUEST SUCH MODIFICATION OR ACCOMMODATION FROM THE CITY CLERK AT (949) 248-3500 (TELEPHONE) OR (949) 248-9920 (FACSIMILE). NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ASSURE ACCESSIBILITY TO THE MEETING.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Bishop at 5:00 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor Joel Bishop
Mayor Pro Tem Lisa A. Bartlett
Council Member Lara Anderson (arrived at 5:02 p.m.)
Council Member Diane L. Harkey
Council Member Steven Weinberg

Absent: None

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Munoz, City Attorney; Mike Killebrew, Director of Administrative Services; Kathy Ward, City Clerk; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works/City Engineer; Mike Rose, Emergency Services Manager; Lt. Mark Levy, Chief of Police; Jackie Littler, Executive Secretary; John Tilton, City Architect; Kevin Evans, Director of Community Services & Parks; Christy Teague, Economic Development Manager; DyAnne Weamire, Administrative Secretary; Windy Robles, City Clerk Specialist; Sea Shelton, Management Analyst; Jennifer Anderson, Management Analyst; and Andrew Glass, Accounting Manager.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (b)(3)(c), (3 cases: AT&T; Scenic Drive; Clark)**
- B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (b)(3)(a), (one case)**

RECESS OF CITY COUNCIL MEETING UNTIL 6:00 P.M.

Mayor Bishop recessed the meeting into a Closed Session at 5:01 p.m. pursuant to Government Code Section 54956 *et. seq.*

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

RECONVENE CITY COUNCIL MEETING

Mayor Bishop reconvened the meeting at 6:00 p.m. All Council Members were present.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that there was no announcement.

PLEDGE OF ALLEGIANCE

The Pledge of the Allegiance was led by Richard Runge, Director of South Coast Water District.

INVOCATION

The Invocation was led by Seminary Intern Cate Luehr of Gloria Dei Lutheran Church.

PRESENTATIONS AND PROCLAMATIONSRecognition of Graduating Youth Board Members

Mayor Bishop along with Mayor Pro Tem Bartlett recognized graduating Youth Board members Alexandra de Peyster, Morgan Miyazono, and Kristina Spaur. They presented them with a Certificate of Recognition.

Recognition of Deputy Paul Martin, School Resource Officer

Mayor Bishop invited Lt. Levy to come up and to introduce Deputy Paul Martin. Lt. Levy thanked Deputy Paul Martin for doing a great job as the Dana Hills High School Resource Officer. Mayor Bishop along with Lt. Levy presented Deputy Martin with a Certificate of Recognition and a plaque.

5th Marine Regiment Presentation

Mayor Bishop introduced John Hicks on behalf of Pete Hammer. John Hicks is a member of the 5th Marine Regiment Support Group. He stated that the 5th Marine Regiment is based out of Camp Pendleton. He introduced Lt. Colonel Charles Burk who extended his appreciation to the Council and the City for the support of the 5th Marine Regiment. He presented the City Council Members with a plaque and a glass statuette for their support of the 5th Marines. He also gave a PowerPoint presentation showing the structure of the 5th Marine Regiment within the 1st Marine Expeditionary Force and the 1st Marine Division. He presented a flag that flew over Fallujah in Iraq under Lt. Colonel Dowling's command, along with a Certificate of Authenticity to the City Council.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
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CONSENT CALENDAR

Council Member Harkey removed Item No. 12 from the Consent Calendar for a separate vote.

IT WAS MOVED BY COUNCIL MEMBER DIANE L. HARKEY, SECONDED BY COUNCIL MEMBER LARA ANDERSON, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ITEMS LISTED ON CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NO. 12.

The motion carried by the following vote:

AYES: Mayor Joel Bishop, Mayor Pro Tem Lisa A. Bartlett, Council Member Lara Anderson, Council Member Diane L. Harkey, and Council Member Steven H. Weinberg

NOES: None

ABSENT: None

1. WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY

APPROVED THE READING BY TITLE ONLY OF ALL ORDINANCES ON THE CONSENT CALENDAR AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.

2. REGULAR MEETING MINUTES, MAY 20, 2008

RECEIVED AND FILED.

3. PLANNING COMMISSION MEETING MINUTES, MAY 13, 2008

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF MAY 27, 2008

RECEIVED AND FILED.

5. YOUTH BOARD MEETING MINUTES, MAY 1, 2008

RECEIVED AND FILED.

**CITY OF DANA POINT, CALIFORNIA
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6. TRAFFIC IMPROVEMENT COMMISSION MINUTES, APRIL 16, 2008

RECEIVED AND FILED.

7. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

8. CITY TREASURER'S REPORT, APRIL

RECEIVED AND FILED.

9. CLAIMS AND DEMANDS

RECEIVED AND FILED.

10. TRANSIENT OCCUPANCY TAX INSURANCE RENEWAL FOR FY 2008/2009

RATIFIED THE RENEWAL OF BUSINESS INTERRUPTION INSURANCE COVERAGE OBTAINED FROM LANDMARK AMERICAN INSURANCE COMPANY FOR PROTECTION OF TRANSIENT OCCUPANCY TAX ("TOT") REVENUE FOR THE POLICY PERIOD OF JUNE 17, 2008 TO JUNE 17, 2009.

11. 2008-2009 LAW ENFORCEMENT SERVICES AGREEMENT

APPROVED THE LAW ENFORCEMENT SERVICES AGREEMENT WITH THE COUNTY OF ORANGE FOR LAW ENFORCEMENT SERVICES FOR THE 2008-2009 FISCAL YEAR AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE AGREEMENT.

12. SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADDING ARTICLE 9 TO THE DANA POINT MUNICIPAL CODE INCLUDING SECTIONS 14.01.780 THROUGH 14.01.950, ENTITLED "CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS"

Council Member Harkey removed this item from the Consent Calendar for a separate vote.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY COUNCIL MEMBER STEVEN WEINBERG, TO ADOPT ORDINANCE **08-07** ENTITLED:

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING ARTICLE 9, INCLUDING SECTIONS 14.01.780 THROUGH 14.01.950, ENTITLED "CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS."

The motion carried by the following vote:

AYES: Mayor Joel Bishop, Mayor Pro Tem Lisa A. Bartlett, Council Member Lara Anderson, and Council Member Steven H. Weinberg
NOES: Council Member Diane L. Harkey
ABSENT: None

13. SECOND READING AND ADOPTION OF ZONING CODE UPDATE PROGRAM - ZONE TEXT AMENDMENTS ZTA08-0002 AND ZTA08-0003

Held second reading and adopted Ordinance **08-06** entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENTS ZTA08-0002 AND ZTA08-0003, REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES, CLARIFY EXISTING REGULATIONS, SIMPLIFY THE REVIEW PROCESS, UPDATE "NONCONFORMING USES AND STRUCTURES" CHAPTER, AND PROVIDE FOR AMENDMENTS TO PREVIOUSLY APPROVED DISCRETIONARY PERMITS.

PUBLIC COMMENTS

Richard Alonzo and Heidi Langefeld, American Cancer Society and Relay for Life, thanked the City Council and Police Services for all of their support. Heidi Langefeld stated that they had raised over \$54,000. They presented the City Council with a Certificate of Appreciation and a plaque and thanked them for their support during the 2008 American Cancer Society Relay for Life.

Ingrid McGuire, Dana Point, South Coast Water District, invited everyone to the Open House for the Ground Water Recovery Plant on Saturday, June 21 from 10:00 a.m. to 2:00 p.m.

Richard Dietmeier, Dana Point, South Coast Water District, he spoke about an article in the newspaper regarding water conservation.

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Wayne Rayfield, Dana Point, Orange County Vector Control District, thanked City staff for all of their work on the Grand Prix Bike Race. He spoke in regards to controlling mosquito breeding. He stated that it looks like there will be more mosquitoes this year.

Council Member Weinberg asked Mr. Rayfield about having mosquito-eating fish in abandoned pools.

Mr. Rayfield replied that they do use mosquito-eating fish in the abandoned pools.

PUBLIC HEARINGS

14. GENERAL PLAN AMENDMENT (GPA06-02), ZONE CHANGE (ZC06-01), ZONE TEXT AMENDMENT (ZTA06-04), AND LOCAL COASTAL PROGRAM AMENDMENT (LCPA06-05) TO REVIEW CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO THE CITY'S APPROVAL OF THE TOWN CENTER PLAN

Council Member Harkey recused herself from this item due to a possible conflict of interest and left the Council Chambers.

City Manager Chotkevys provided a staff report.

City Manager Chotkevys asked Community Development Director Butterwick to provide a summary of the key changes that were submitted and approved by the City Council versus what was approved by the Coastal Commission.

Director Butterwick provided a more in-depth staff report.

City Manager Chotkevys stated that if approved by Council this would go back to the Coastal Commission for final certification and a newsletter will go out to the community to explain what is next. He would also like to form a Town Center subcommittee to handle the implementation of the Town Center and the impacts on the community.

Council Member Weinberg stated that there are only two ways to vote to accept or not to accept the Coastal Commission recommendations, yes or no. He asked if the vote is to strictly accept the recommendation or not.

City Manager Chotkevys stated that was correct and City Attorney Munoz confirmed.

Council Member Weinberg stated that the Council will not have much discussion over this item because they have very little control over it. It is either a yes or no vote.

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Mayor Pro Tem Bartlett stated that she was excited that the City actually has a Town Center Plan. She felt that the City now has a plan to move forward.

Mayor Bishop stated that the Coastal Commission came back with requirements for water quality, landscaping, and vegetation. He asked if those requirements would expand beyond Town Center to the rest of the Coastal Zone.

City Manager Chotkevys replied that there is a debate about who is responsible for water quality in the Coastal Zone, the Regional Boards or the Coastal Commission. The City's view is that water quality falls under the jurisdiction of the Regional Boards and State Water Quality Control Board. As a result the City has the National Pollutant Discharge Elimination System (NPDES) permit. There is a requirement that if anything is changed in the water quality aspect, then it would require a Local Coastal Program Amendment (LCPA) and it would have to be reviewed once again. If the City had to return to the Coastal Commission for a LCPA for the water quality permit, then the City would be out of compliance with the State Regional Boards because the review process with the California Coastal Commission can take up to 18 months. The Coastal Commission is looking at water quality in the Coastal Zone as coming from the Regional Boards permit.

Mayor Bishop opened the Public Hearing.

Wayne Rayfield, Dana Point, stated that he agrees with the staff and with the recommendations from the Coastal Commission. He would like to see the Council approve the plans for the Town Center.

Mayor Bishop closed the Public Hearing.

Council Member Anderson thanked all of the Subcommittee members for all of their hard work.

Council Member Weinberg stated that this has been a long process, but a great process. It shows what can be done when a City works together and lets everyone be heard.

Mayor Bishop thanked all of those that have been involved.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY MAYOR PRO TEM LISA A. BARTLETT, TO ADOPT **RESOLUTION 08-06-03-01** ENTITLED:

**CITY OF DANA POINT, CALIFORNIA
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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 06-02, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT, URBAN DESIGN ELEMENT, CIRCULATION ELEMENT, AND CONSERVATION/OPEN SPACE ELEMENT, TEXT, TABLES AND DIAGRAMS, AND SUBMISSION OF GPA 06-02 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA 06-05 FOR FINAL APPROVAL BY THE CITY COUNCIL.

INTRODUCE A FIRST READING OF AN ORDINANCE ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX "E" OF THE ZONING ORDINANCE AS PART OF LOCAL COASTAL PLAN AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

RESOLUTION 08-06-03-02 ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING LOCAL COASTAL PROGRAM AMENDMENT LCPA06-05 AND REQUESTING FINAL CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

The motion carried by the following vote:

AYES: Mayor Joel Bishop, Mayor Pro Tem Lisa A. Bartlett, Council Member Lara Anderson, and Council Member Steven H. Weinberg
NOES: None
ABSENT: Council Member Diane L. Harkey

UNFINISHED BUSINESS

15. AUTHORIZATION TO ISSUE CITY OF DANA POINT COMMUNITY FACILITIES DISTRICT NO. 2006-1 (CFD 2006-1), 2008 SPECIAL TAX BONDS AND ESTABLISH SPECIAL TAX FOR FISCAL YEAR 2008/2009

Mayor Bishop recused himself from this item due to a possible conflict of interest and left the Council Chambers.

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City Manager Chotkevys provided the staff report.

Director of Administrative Services Killebrew provided a PowerPoint presentation on the Community Facilities District 2006-1.

Council Member Harkey asked Bill Huck of Stone and Youngberg what the actual debt service was.

Bill Huck replied that the bond debt service is a function of the number of lots and taxes. The bonds will have an interest rate that will be applied in two weeks. They will work with the staff in sizing the bond issue and 110% would be the minimum. They would expect to size the bonds to raise as much money as they can based on the interest rate at the time and the cash flow revenue so 110% debt service coverage could be achieved.

Council Member Harkey asked if the bonds went below 110%, would they be in default.

Mr. Huck replied that the debt service coverage would be determined at the time the bonds were issued.

Council Member Harkey asked if there would be extra cushion beyond the 110%.

Mr. Huck replied that it has not yet been established.

Council Member Harkey stated that at the \$8,000,000 rate there should be a cushion.

Mr. Huck replied that they expect the bond issue to be at eight and a quarter million and the debt service coverage ratio would be at 110% at the minimum.

Council Member Harkey asked if they were allowing for extra cushion or not.

Mr. Huck replied that the plan was to raise as much money as they can based on the interest rates at the time of the sale. He stated that they would keep it right at 110% with no cushion.

Council Member Harkey asked Director of Administrative Services Killebrew if the Council is only being asked about the timing of the bond and the dollar amount.

He replied that was correct.

Council Member Harkey asked City Attorney Munoz if the Council is deciding the timing of the bond and the dollar amount that the Council will allocate.

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City Attorney Munoz replied that the decision to bond was made by the previous City Council. That Council committed future Councils to use their best good faith efforts to allow for bond financing for public improvements. This Council is making the decision to issue these bonds, but the underlying decision as to whether or not to use bonds was made a long time ago.

Council Member Anderson stated that the City is starting off with nine million and could possibly go to forty million in bonds. She asked when the City anticipated they would need to bond again.

City Manager Chotkevys replied that to ensure security, the City would need to do this in phases. The next time to bond would occur when the next sufficient number of houses sell.

Council Member Anderson asked Kevin Darnall from the Headlands Reserve when the Headlands would be starting their next phase of home sales.

Mr. Darnall stated that they were selling homes now.

City Attorney Munoz stated that the absorption study has a report on the forecast of the next sales.

Mr. Darnall stated that the study was done in the last 35 to 40 days.

IT WAS MOVED BY COUNCIL MEMBER STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER LARA ANDERSON, TO ADOPT **RESOLUTION 08-06-03-03** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT AUTHORIZING THE ISSUANCE OF ITS 2008 SPECIAL TAX BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED NINE MILLION DOLLARS (\$9,000,000) AND APPROVING CERTAIN DOCUMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH; and,

RESOLUTION 08-06-03-04 ENTITLED:

A RESOLUTION OF THE CITY OF DANA POINT COMMUNITY FACILITIES DISTRICT NO. 2006-1 ESTABLISHING ANNUAL SPECIAL TAX FOR FISCAL YEAR 2008/2009.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

The motion carried by the following vote:

AYES: Mayor Pro Tem Lisa A. Bartlett, Council Member Lara Anderson,
and Council Member Steven Weinberg.

NOES: None

ABSENT: Mayor Joel Bishop

NEW BUSINESS

There were no New Business items.

PUBLIC COMMENTS

There were no additional Public Comments.

STAFF REPORTS

There were no Staff Reports.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Anderson stated that she was out of town so she did not have anything to report.

Mayor Pro Tem Bartlett reported that she attended the following:

- Several TCA board meetings.
- May 21: Orange County Sheriff's Peace Officers Memorial Ceremony.
- May 26: Memorial Day services in Pines Park.
- May 30: Governmental Leaders Prayer Breakfast and the CUSD Ad Hoc meeting to discuss topics of mutual interest.

She reported the following upcoming events:

- June 9: SOSCA event at the Orange County Performing Arts Segerstrom Hall.
- June 11: Ribbon cutting ceremony at the new location for Jack Randall Photography.
- June 14: Build-a-Boat contest at the Ocean Institute. This event will be great fun for the whole family. Participants need to construct their own boat.

Council Member Harkey stated that she attended the same events as Mayor Pro Tem Bartlett. She reported the following upcoming events:

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

- June 22 - Capistrano Valley Symphony at the Mission.
- Concerts in the Park.

Council Member Harkey left the Council Chambers at 7:21 P.M.

Council Member Weinberg stated that he attended the Orange Fire Authority Board Meeting. He also commented on the Dana Point Grand Prix and thanked staff for all of their hard work on the event.

Mayor Bishop reported that on June 12th, South Coast Water District would hold their first meeting in the Council Chambers. He attended "Is Your Teen at Risk?" at Dana Hills High School on May 31st.

Mayor Bishop submitted other meetings that he attended and upcoming events in writing to the City Clerk (attached as [Exhibit 1](#)).

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Bishop declared the meeting adjourned at 7:23 p.m. and announced that the next Regular Meeting of the City Council will be June 17, 2008, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
June 3, 2008**

EXHIBIT 1

Meetings and Events Attended by Joel Bishop 05/22/08 – 06/01/08

05/22/08	Sunrise Rotary Student Awards
05/23/08	Office Hours
05/26/08	VFW Memorial Day Services in Pines Park
05/28/08	Historical Society honoring Susan Hinman
05/29/08	DP Boat Show
05/30/08	Office Hours
05/31/08	Is Your Teen at Risk Conference
06/01/08	DP Grand Prix

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES**

May 27, 2008
7:00 – 7:21 p.m.

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Chairman Denton called the meeting to order.

PLEDGE OF ALLEGIANCE – Vice-Chairwoman Brough led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Vice-Chairwoman Michelle Brough, Commissioner Ed Conway, Alternate Commissioner Michael Dec, Chairman Norman Denton, Commissioner Liz Anderson Fitzgerald, and Commissioner J. Scott Schoeffel

Staff Present: John Tilton (City Architect/Planning Manager), Jennifer Farrell (Assistant City Attorney), Saima Qureshy (Senior Planner), and Denise Jacobo (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of May 13, 2008.

ACTION: Motion made (Brough) and seconded (Fitzgerald) to approve the Minutes of the regular Planning Commission Meeting of May 13, 2008. Motion carried 5-0. (AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

D. PUBLIC HEARINGS**ITEM 2: Zoning Code Update Program – Zone Text Amendment ZTA08-0004**ApplicantOwner: City of Dana Point – Community Development DepartmentLocation: Citywide

Request: Request for Zone Text Amendment ZTA08-0004 to correct inconsistencies and provide clarification to existing regulations governing “Alcoholic Beverage Outlets”, and clarify and eliminate conflicting standards related to required landscaping/open space for Residential Zones.

Environmental: The proposed project is found not to have a significant effect on the environment and is therefore exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15305, Class 5 – Minor Alterations in Land Use Limitations. The proposed project involves minor amendments to the Zoning Ordinance.

Recommendation: That the Planning Commission approve the attached draft Resolution, recommending approval and adoption of the proposed Zone Text Amendment to the City Council.

Saima Qureshy (Senior Planner) reviewed the staff recommendation and provided details of the staff report for the Commissioners’ consideration.

There being no requests to speak on this item, Chairman Denton opened and closed the Public Hearing.

ACTION: Motion made (Conway) and seconded (Fitzgerald) to adopt Resolution No. 08-05-27-14 recommending to the City Council approval of Zone Text Amendment (ZTA08-0004) revising the City of Dana Point Zoning Ordinance to correct inconsistencies and provide clarification to existing regulations governing “Alcoholic Beverage Outlets”, and to clarify required landscaping standards for residential zones. Motion carried 5-0. (AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

E. NEW BUSINESS

There were no New Business items.

F. STAFF REPORTS

John Tilton (City Architect/Planning Manager) spoke of the California Coastal Commission's suggested modification for the Town Center Plan, scheduled to go before the City Council at their next regular meeting on June 3rd.

G. COMMISSIONER COMMENTS

Commissioner Schoeffel encouraged everyone to attend the Second Annual Dana Point Grand Prix of Cycling Race on Sunday, June 1, 2008; he also expressed that the event will be bigger and better than last year and he would like to see everyone there.

Chairman Denton indicated that he will not be attending the Grand Prix event because he is going fishing at the Lake of the Woods in Northern America.

Commissioner Conway stated that he ran the course of the Cycling Race on Sunday and found how challenging the relay is going to be.

H. ADJOURNMENT

Chairman Denton adjourned the meeting to the *next regular* meeting of the Planning Commission held on Tuesday, June 10, 2008, beginning at 7:00 p.m. (or as soon thereafter) in the Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 7:21 p.m.

Norman Denton, Chairman
Planning Commission

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING ACTION AGENDA**

June 10, 2008
7:00 – 7:18 p.m.

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Chairman Denton called the meeting to order.

PLEDGE OF ALLEGIANCE – Commissioner Schoeffel led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Vice-Chairwoman Michelle Brough, Commissioner Ed Conway, Alternate Commissioner Michael Dec, Chairman Norman Denton, Commissioner Liz Anderson Fitzgerald, and Commissioner J. Scott Schoeffel

Staff Present: Kyle Butterwick (Director of Community Development), Evan Langan (Associate Planner), and Denise Jacobo (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of May 27, 2008.

ACTION: Motion made (Fitzgerald) and seconded (Conway) to approve the Minutes of the regular Planning Commission Meeting of May 27, 2008.
Motion carried 5-0. (AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel
NOES: None ABSENT: None ABSTAIN: None)

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

D. PUBLIC HEARINGS

ITEM 2: Coastal Development Permit CDP08-0001, Minor Conditional Use Permit CUP08-0004(M) and Minor Site Development Permit SDP08-0005(M) to allow a 522 square foot addition to an existing, single-story, 5,187 square foot single-family residence; the construction of retaining walls in excess of 30 inches in height; as well as the construction of walls in excess of six feet in height at 318 Monarch Bay Drive

Applicant: David Kaech, AIA (David Kaech & Associates, Inc.)
Property Owner: Sonny King
Location: 318 Monarch Bay Drive (APNs 670-141-41 and 670-151-54)

Request: Request for Coastal Development Permit CDP08-0001, Minor Conditional Use Permit CUP08-0004(M) and Minor Site Development Permit SDP08-0005(M) to allow a 522 square foot addition to an existing, single-story, 5,187 square foot single-family residence; the construction of retaining walls in excess of 30 inches in height; as well as the construction of walls in excess of six feet in height at 318 Monarch Bay Drive. Per adopted City Zoning Maps, the subject properties are zoned as Residential Single-Family 4 (RSF-4), located within the Monarch Bay Terrace Homeowners Association, the Coastal Overlay District as well as the Appeal Jurisdiction of the California Coastal Commission.

Environmental: Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Community Development Department has analyzed the subject project, and finds the project Categorically Exempt per Section 15301 (e) (Class 1 – Existing Facilities).

Recommendation: Adopt Planning Commission Resolution No. 08-06-11-xx, approving Coastal Development Permit CDP08-0001, CUP08-0004(M) and SDP08-0005(M) for the referenced scope of work.

There was one (1) request to speak on this item.

ACTION: Motion made (Schoeffel) and seconded (Brough) to adopt Resolution No. 08-06-10-15 approving Coastal Development Permit CDP08-0001, Minor Conditional Use Permit CUP08-0004(M) and Minor Site Development Permit SDP08-0005(M). Motion carried 5-0. (AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

E. NEW BUSINESS

There were no New Business items.

F. STAFF REPORTS

Kyle Butterwick (Director of Community Development) gave an update on several City projects.

- The Town Center Plan (with modifications) was presented and approved by the City Council on June 3, 2008. Staff will return to the Coastal Commission for final certification.
- The City Council appreciated the work on updating the Zoning Code.
- The State Housing & Community Development Department is currently reviewing the draft Housing Element, prior to the City's final adoption of the document.

G. COMMISSIONER COMMENTS

Commissioner Conway reported that the Dana Point Grand Prix Bike Race on June 1st was a thoroughly ultimate experience.

Vice-Chairwoman Brough reported that she also attended the event and enjoyed the entertainment stating that the quality of the live music played was outstanding.

Chairman Denton stated that he did not attend the event but was glad to hear that it was a success.

Commissioner Schoeffel reported on the benefits of the Grand Prix Race event, and hopes that the event continues to grow.

H. ADJOURNMENT

Chairman Denton adjourned the meeting to the *next regular* meeting of the Planning Commission held on Tuesday, June 24, 2008, beginning at 7:00 p.m. (or as soon thereafter) in the Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 7:18 p.m.

**CITY OF DANA POINT, CALIFORNIA
YOUTH BOARD REGULAR MEETING MINUTES
May 15, 2008**

CALL TO ORDER

The Regular Meeting of the Youth Board of the City of Dana Point, California, was called to order by Board Member Barrett at 4:03 p.m. in the City of Dana Point , 33282 Golden Lantern, Dana Point.

ROLL CALL**PRESENT:**

Courtney Barrett
Corey Clippinger
Alex de Peyster
Kaylie Fernald
Jennifer Kupferman

ABSENT:

Jonathan Gossett
David Heredia
Morgan Miyazono
Matthew Myers
Kristina Spaur

STAFF PRESENT: Jennifer Anderson

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Board Member Barrett

PUBLIC COMMENTS

None

CONSENT CALENDAR

1. Regular Meeting Minutes – Meeting Minutes from the May 1, 2008 Youth Board meeting approved.

UNFINISHED BUSINESS

There was no unfinished business

**CITY OF DANA POINT, CALIFORNIA
YOUTH BOARD REGULAR MEETING MINUTES
May 15, 2008**

DISCUSSION ITEMS:

1. Dana Point Grand Prix: Sunday, June 1, 2008:

During the May 1, 2008 Youth Board meeting, the Youth Board members signed up for specific volunteer duties and time slots throughout the day at the Grand Prix. Due to time constraints and prior commitments, the Youth Board has signed up for the morning time slots. Volunteers from other sources will be utilized to assist with Litter Bug Patrol in the afternoon.

Greeters/Welcome Committee:

6:00 a.m. – 9:30 a.m.: Matt Myers, Jennifer Kupferman, Kaylie Fernald, Kristina Spaur, Courtney Barrett, and Jennifer Anderson

9:30 a.m. – 1:00 p.m.: Morgan Miyazono, Jonathan Gossett, Corey Clippinger, David Heredia and Jennifer Anderson

Litter Bug Patrol:

1:00 p.m. – 6:00 p.m. : Jennifer Anderson

Youth Board members received a copy of the Volunteer Map with their designated volunteer locations. Volunteer Maps will be mailed to the absent Youth Board members during the week of May 19, 2008. Youth Board members will all report to the Volunteer Booth prior to the beginning of their shifts to receive volunteer information and their volunteer T-shirts.

2. Youth Board Recruitment: 2008-2009

Staff Advisor Anderson shared that the recruitment for the 2008-2009 Youth Board is in full swing. Board Members Fernald and Barrett submitted their Youth Board applications for consideration. Board Members Kupferman and Clippinger will be submitting their applications in the upcoming week. The deadline for Youth Board applications will be Friday, June 20, 2008.

LIAISON REPORTS:

STAFF COMMENTS:

Staff Advisor Anderson shared with Board Member de Peyster that the Mayor and City Council would like to invite her, Board Member Spaur and Chairperson Miyazono to the Tuesday, June 3, 2008 Council Meeting. The Mayor and the City Council would like to recognize and thank the graduating seniors from the Youth Board for their effort and hard work that they put into the Youth Board. Staff Advisor Anderson will be in contact with the absent Senior Youth Board Members to inform them of the invitation as well.

**CITY OF DANA POINT, CALIFORNIA
YOUTH BOARD REGULAR MEETING MINUTES
May 15, 2008**

BOARD COMMENTS:

None

BOARD REPORTS:

The Youth Board may discuss and act upon matters described under Board Reports; however, items which are not described will be limited to Board reports, announcements or requests for clarification, or factual information, or to placement of matters on the Agenda for a future meeting.

- A. BOARD MEMBER BARRETT**
Pass
- B. BOARD MEMBER CLIPPINGER**
Pass
- C. BOARD MEMBER FERNALD**
Pass
- D. BOARD MEMBER GOSSETT**
Absent
- E. BOARD MEMBER HEREDIA**
Absent
- F. BOARD MEMBER KUPFERMAN**
Pass
- G. BOARD MEMBER MYERS**
Absent
- H. BOARD MEMBER SPAUR**
Absent
- I. VICE-CHAIRPERSON DE PEYSTER**
Pass
- J. CHAIRPERSON MIYAZONO**
Absent

**CITY OF DANA POINT, CALIFORNIA
YOUTH BOARD REGULAR MEETING MINUTES
May 15, 2008**

ADJOURNMENT

There being no further business before the Youth Board at this session, the meeting adjourned at 4:36 p.m.

The next Regular Meeting of the Youth Board will be Thursday, June 5, 2008 at 4:00 p.m. in the Council Chambers, located at 33282 Golden Lantern, Dana Point, California.

APPROVED: June 5, 2008



City of Dana Point Event Calendar

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
25 Dana Point Fine Arts Show	26 Memorial Day - City Hall Offices Are Closed	27 7:00 PM Planning Commission Meeting	28	29 Dana Point Boat Show	30 Dana Point Boat Show	31 Dana Point Boat Show 8:00 AM Teen Safety Conference 9:00 AM Farmer's Market
1 Dana Point Boat Show Dana Point Grand Prix of Cycling	2	3 Statewide Primary Election 6:00 PM City Council Meeting	4	5 4:00 PM Youth Board Meeting	6	7 9:00 AM Farmer's Market
8	9	10 3:00 PM Ocean Water Quality Meeting 7:00 PM Planning Commission Meeting	11	12	13	14 Dana Point Fine Arts Show Dewey Weber Longboard Surf Contest 8:00 AM SURF-A-RAMA 9:00 AM Farmer's Market 2:00 PM 5th Annual Build-A-Boat Challenge
15 Dana Point Fine Arts Show Dewey Weber Longboard Surf Contest 8:00 AM SURF-A-RAMA	16	17 6:00 PM City Council Meeting	18	19 5:30 PM Dana Point Chamber of Commerce Mixer	20	21 9:00 AM Farmer's Market 10:00 AM SCWD Community Open House
22 3:00 PM Summer Concerts In The Park	23	24 7:00 PM Planning Commission Meeting	25	26 11:45 AM Lunch & Learn with Orange County District Attorney Tony Rackauckas 5:00 PM Doubletree Guest Suites Doheny Beach Ribbon Cutting	27	28 DLA's Menehune Surf Contest 9:00 AM Farmer's Market
29 4:30 PM Summer Concerts In the Park	30	1 OCTA Bicycle Plan Survey for 6/4/08 - 7/11/08	2	3	4 Independence Day - City Hall Offices Closed 9:00 PM Independence Day Fireworks Extravaganza	5 Independence Day Aftermath Park and Beach Cleanup 9:00 AM Farmer's Market

CITY OF DANA POINT

REGISTER OF DEMANDS

	EXPENSES	PREPAIDS	TOTAL
GENERAL FUND	\$978,977.64	\$114,629.98	\$1,093,607.62
TRUST/AGENCY FUND	20,100.00	2,444.86	22,544.86
CAPITAL IMPROVEMENTS FUND	195,313.24	458.19	195,771.43
SUPP. LAW ENFORCEMENT SER.	910.68	0.00	910.68
LOCAL LAW ENF. BLOCK GRANT	0.00	0.00	0.00
AB2766 FUND	0.00	0.00	0.00
PARK DEVELOPMENT	0.00	0.00	0.00
FACILITIES IMPROVEMENT FUND	19,108.26	0.00	19,108.26
TOTAL	\$1,214,409.82	\$117,533.03	\$1,331,942.85

CHECKS: 66091 through 66244

Received and filed by the City Council at its Regular Meeting on June 17, 2008.

City Clerk

City Manager

Mayor

mk The following demands will be held pending approval by appropriate departments:

None

Agenda Item No. 7

June 17, 2008 ①

LEGEND

THE REGISTER OF DEMANDS INCLUDES CODING TO IDENTIFY THE DEPARTMENT THAT IS GENERATING EACH CHECK. EACH CODE WILL APPEAR UNDER THE DESCRIPTION COLUMN. A LIST OF CODES AND THE CORRESPONDING DEPARTMENTS FOLLOWS.

BL - 42 BUILDING
CA - 71 CITY ATTORNEY
CC - 01 CITY COUNCIL
CE - 43 CODE ENFORCEMENT
CD - 41 COMMUNITY DEVELOPMENT
CK - 31 CITY CLERK
CM - 11 CITY MANAGER
CS - 81 COMMUNITY SERVICES
ED - 44 ECONOMIC DEVELOPMENT
EM - 12 EMERGENCY SERVICES
ES - 56 ENGINEERING SERVICES
FA - 21 ADMINISTRATIVE SERVICES
FC - 95 FACILITIES
ND - 99 NON-DEPARTMENTAL
PA - 55 PARKS
PS - 61 POLICE SERVICES
PW - 51 PUBLIC WORKS
RM - 97 RISK MANAGEMENT
SW - 54 SOLID WASTE
SM - 52 STREET MAINTENANCE
TE - 53 TRAFFIC ENGINEERING
VP - 62 VIPS
WQ - 57 WATER QUALITY

Agenda Item No. 7

6/17/08

(2)

ALL Data

Check Register

Arranged by:
Check Number

Direct	Check Number	Check Date	Vendor ID	Vendor Name	Amount
Dep.	Invoice	Invoice Date	PO Number	PO Date Description	
Checks Printed					
Bank Account :A - Bank Of America					
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	138867		00007632	ALL AMERICAN ASPHALT CIP INSTALL CURB SERVICES	57,191.47
				Check Total	57,191.47
	00066092	05/29/2008	ASSTDLAB	ASSOCIATED LABORATORIES	
	366834		00007472	07/12/2007 WQ MONITORING SERVICES	264.00
				Check Total	264.00
	00066093	05/29/2008	ATHLETIC	February 5, 2008	
	2051		00007679	ATHLETIC FIELD SPECIALISTS, INC. CIP LANDSCAPE IMPROVEMENT	15,275.00
	2052		00007678	CIP LANDSCAPE IMPROVEMENT	16,850.00
	2053		00007677	CIP LANDSCAPE IMPROVEMENT	7,600.00
				Check Total	39,725.00
	00066094	05/29/2008	BANKAMER	April - May 2008	
	05122008			BANK OF AMERICA VARIOUS CONFERENCES, MTG.	6,658.64
				Check Total	6,658.64
	00066095	05/29/2008	BEACON	BEACON PRINTING	
	369			05/28/2008 CD BUSINESS CARD	258.60
	370A		00007407	02/07/2008 PW PRINTING SERVICES	247.83
				Check Total	506.43
	00066096	05/29/2008	BEE MAN	THE BEE MAN, INC.	
	47097		00007332	07/11/2007 PA CITYWIDE BEE SERVICES	95.00
				Check Total	95.00
	00066097	05/29/2008	BENEFITADM	BENEFIT ADMINISTRATION CORPORATION	
	05282008			05/29/2008 FSA ADMINISTRATION FEE	80.00
				Check Total	80.00
	00066098	05/29/2008	CALIP	CALIFORNIA INTERIOR PLANTS, INC.	
	35294		00007383	01/03/2008 ND PLANT MAINTENANCE SERVICE	295.00
				Check Total	295.00
	00066099	05/29/2008	CITYFSA	CITY OF DANA POINT FSA ACCOUNT	
	PP#10&11			05/29/2008 FLEX 125 ACCOUNT	2,706.06
				Check Total	2,706.06
	00066100	05/29/2008	CITYOFSA	CITY OF SAN JUAN CAPISTRANO	
	05142008		00007330	07/11/2007 PA PARKS/WATER	65.47
	05142008A		00007330	07/11/2007 PA PARKS/WATER	1,884.54
	05142008B		00007330	07/11/2007 PA PARKS/WATER	60.54
				Check Total	2,010.55
	00066101	05/29/2008	CONSOL	CONSOLIDATED REPROGRAPHICS	
	821117		00007409	07/12/2007 PW PHOTOCOPIES/BUEPRINTS	54.83
	822758			05/28/2008 PRINTING OF PLANS	608.26
	823483		00007555	02/21/2008 CIP COPYING & BLUEPRINTING	48.58

City of Dana Point

05/29/2008 11:51:35 AM

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Agenda Item No.

7

6/17/08

(3)

ALL Data

Check Register

Arranged by:
Check Number

Direct

Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name Description	Amount
				Check Total	711.67
	00066102	05/29/2008	CORPEXP	CORPORATE EXPRESS	
	87219279			05/28/2008 AS SUPPLIES	176.53
	87219281			05/28/2008 AS SUPPLIES	30.77
	87282675		00007410	04/30/2008 PW OFFICE SUPPLIES	84.41
	87356598		00007402	01/24/2008 ND KITCHEN SUPPLIES	37.97
	87356600		00007402	01/24/2008 ND KITCHEN SUPPLIES	131.14
	87356601		00007402	01/24/2008 ND KITCHEN SUPPLIES	39.77
	87356602		00007402	01/24/2008 ND KITCHEN SUPPLIES	77.01
	87356603		00007402	01/24/2008 ND KITCHEN SUPPLIES	45.27
	87356606		00007402	01/24/2008 ND KITCHEN SUPPLIES	112.22
	87498137		00007547	10/04/2007 FAC FACILITIES SUPPLIES	91.95
				May 2008	
				Check Total	827.04
	00066103	05/29/2008	COUNTY	COUNTY OF ORANGE	
	SH20695		00007485	07/12/2007 PS LAW ENFORCEMENT SERVICES	717,666.55
				Check Total	717,666.55
				April 15 - May 15, 2008	
	00066104	05/29/2008	DBNEISH	D.B. NEISH, INC.	
	04152008			05/28/2008 CD PROFESSIONAL SERVICES	9,179.01
				Check Total	9,179.01
				May 15, 2008	
	00066105	05/29/2008	DELL	DELL MARKETING, L.P.	
	XCN35TM22		00007680	05/14/2008 ND DESKTOP COMPUTER	2,446.22
	XCN545497		00007680	05/14/2008 ND DESKTOP COMPUTER	21,972.25
				Check Total	24,418.47
	00066106	05/29/2008	DEPTOFJU	DEPARTMENT OF JUSTICE	
	679635			05/28/2008 FINGERPRINT APPS	288.00
				Check Total	288.00
	00066107	05/29/2008	DOGGIEWA	DOGGIE WALK BAGS, INC.	
	200804131		00007320	07/11/2007 PA BAGS & DISPENSERS	4,040.63
				Check Total	4,040.63
				June 1, 2008	
	00066108	05/29/2008	DPGRAND	DANA POINT GRAND PRIX	
	2			05/29/2008 CS SPONSORSHIP	10,000.00
				Check Total	10,000.00
	00066109	05/29/2008	DPHARDW	DANA POINT HARDWARE	
	410473		00007323	07/11/2007 PA MISCELLANEOUS SUPPLIES	126.09
				Check Total	126.09
	00066110	05/29/2008	GANAHL	GANAHL LUMBER COMPANY	
	B393502		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	40.89
	B394462		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	66.00
	B394613		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	2.68
	B395493		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	26.27
	B395494		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	22.50

Agenda Item No. 7

6/17/08

(4)

ALL Data

Check Register

Arranged by:
Check Number

Direct	Check Number	Check Date	Vendor ID	Vendor Name	Amount
Dep.	Invoice	Invoice Date	PO Number	PO Date Description	
Checks Printed					
	00066110	05/29/2008	GANAHL	GANAHL LUMBER COMPANY	
	B396320		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	58.85
	B398452		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	12.92
	B399721		00007087	07/01/2007 FAC MAINTENANCE SUPPLIES	89.39
	B399789		00007087	07/01/2007 FAC MAINTENANCE SUPPLIES	46.33
	B399791		00007087	07/01/2007 FAC MAINTENANCE SUPPLIES	18.32
	B400070		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	79.76
	B400484		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	35.51
	B400629		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	60.16
	LP24676		00007319	03/13/2008 PA SUPPLIES/EQUIPMENT	5.67
				Check Total	565.25
	00066111	05/29/2008	GMUGEO	GMU GEOTECHNICAL, INC.	
	37077		00007639	02/21/2008 CIP CONSTRUCTION OBSER. SVC	960.00
				Check Total	960.00
	00066112	05/29/2008	GOLDENST	GOLDEN STATE OVERNIGHT	
	1614381		00007577	02/07/2008 BL PROFESSIONAL SERVICES	60.73
				Check Total	60.73
	00066113	05/29/2008	HF&H	HF&H CONSULTANTS, LLC	
	9708562		00007684	05/22/2008 SW PERFORMANCE AUDIT	1,302.50
				Check Total	1,302.50
	00066114	05/29/2008	HYDROSCA	HYDRO-SCAPE PRODUCTS, INC.	
	5480528		00007316	07/11/2007 PA IRRIGATION SUPPLIES	28.15
	5489947		00007316	07/11/2007 PA IRRIGATION SUPPLIES	11.68
				Check Total	39.83
	00066115	05/29/2008	INFRASTRUC	INFRASTRUCTURE ENGINEERING CORP.	
	3586		00007646	03/05/2008 CIP CONS. ADMIN. SUPPORT	2,625.00
				Check Total	2,625.00
	00066116	05/29/2008	JIMTHOMAS	JIM THOMAS ROOFING	
	47528			05/29/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066117	05/29/2008	JOHNDEE	JOHN DEERE LANDSCAPES	
	21085567		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	9.02
	21145613		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	754.72
	21215760		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	179.47
	21215761		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	2,392.82
	21234550		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	61.41
	21271042		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	339.92
	21271043		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	53.04
	21318191		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	5.71
	21337385		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	284.88
	21373286		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	65.30
	21373287		00007315	04/16/2008 PA LANDSCAPE SUPPLIES	256.84

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Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name PO Date Description	Amount
Checks Printed					
	00066117 21433790	05/29/2008	JOHNDEE 00007315	JOHN DEERE LANDSCAPES 04/16/2008 PA LANDSCAPE SUPPLIES	20.99
				Check Total	4,424.12
	00066118 05222008	05/29/2008	KEETON 00007595	KEETON KREITZER CONSULTING 01/03/2008 CD CONSULTING SERVICES	4,323.60
				Check Total	4,323.60
	00066119 14883	05/29/2008	KENNE 00007394	KENNEDY COMMUNICATIONS, INC. 07/12/2007 ND INSTALLATION/REPAIR SVSC	514.66
				Check Total	514.66
	00066120 29295	05/29/2008	MONOGRAM 05/28/2008	MONOGRAM MAGIC CD/BL UNIFORM	206.13
				Check Total	206.13
	00066121 707278 804687 806953	05/29/2008	OFFICEMAX 00007411 00007411 00007411	OFFICE MAX INCORPORATED 01/24/2008 PW OFFICE SUPPLIES 01/24/2008 PW OFFICE SUPPLIES 01/24/2008 PW OFFICE SUPPLIES	161.61 347.25 59.50
				Check Total	568.36
	00066122 44157	05/29/2008	PENNA 05/29/2008	PENNA CONSTRUCTION, INC. PW C&D REFUND	7,500.00
				Check Total	7,500.00
	00066123 3247	05/29/2008	PORT 05/28/2008	PORT SUPPLY FAC SUPPLIES	181.01
				Check Total	181.01
				February - March 2008	
	00066124 1005852	05/29/2008	POWELLPB 00007624	PBS&J 01/31/2008 CIP CONSTRUCTION MGMT. SVC.	18,308.00
				Check Total	18,308.00
	00066125 44681	05/29/2008	PSOMAS 00007648	PSOMAS 03/05/2008 CIP CONSTRUCTION ENG. SVC.	937.50
				Check Total	937.50
	00066126 4940	05/29/2008	PURPOSE 00007416	PURPOSE MEDIA 07/12/2007 SM STREET SWEEPING SCHEDULE	120.00
				Check Total	120.00
	00066127 03012008	05/29/2008	REGISTER 00007307	ORANGE COUNTY REGISTER 10/25/2007 CK LEGAL ADVERTISING	677.88
				Check Total	677.88
	00066128 7149	05/29/2008	REPUBLIC 00007452	REPUBLIC ITS 05/28/2008 TE EXTRAORDINARY SERVICES	2,282.50
				Check Total	2,282.50

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Dep.	Invoice	Invoice Date	PO Number	PO Date Description	
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	00066129	05/29/2008	RJMDESIG	RJM DESIGN GROUP, INC.	
	21639		00007618	01/24/2008 PW SEA TERRACE PARK	3,331.27
				May 2008	
				Check Total	3,331.27
	00066130	05/29/2008	ROCKMAINT	ROCK MAINTENANCE AND JANITORIAL	
	08PKS		00007546	10/04/2007 FAC CUSTODIAL SERVICES	1,950.00
	CTY08		00007546	10/04/2007 FAC CUSTODIAL SERVICES	6,741.05
				Check Total	8,691.05
	00066131	05/29/2008	SAM	SAM'S SHOE & REPAIR	
	04032008			05/29/2008 PA SAFETY EQUIPMENT	177.79
				Check Total	177.79
	00066132	05/29/2008	SDG&E	SAN DIEGO GAS & ELECTRIC	
	05212008		00007441	07/12/2007 TE TRAFFIC SIGNALS	27.23
	05212008A		00007441	07/12/2007 TE TRAFFIC SIGNALS	64.43
	05212008B		00007441	07/12/2007 TE TRAFFIC SIGNALS	14.29
				Check Total	105.95
	00066133	05/29/2008	SIMPLEX	SIMPLEX GRINNELL LP	
	05222008			05/28/2008 AS/CK ANNUAL MAINTENANCE	150.00
				Check Total	150.00
	00066134	05/29/2008	SMART	SMART & FINAL	
	03312008		00007403	07/12/2007 ND KITCHEN SUPPLIES	8.49
	179993			05/28/2008 ND SUPPLIES	265.41
				Check Total	273.90
	00066135	05/29/2008	SOCALGAS	THE GAS COMPANY	
	05142008		00007381	07/12/2007 FAC COMMUNITY CENTER	195.73
				Check Total	195.73
	00066136	05/29/2008	SOUTHWES	SOUTHWEST SERVICE SOLUTIONS	
	14764			05/28/2008 TYPEWRITER MAINTENANCE	346.74
				Check Total	346.74
	00066137	05/29/2008	STANCHECK	GAY STANCHECK	
	47634			05/29/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066138	05/29/2008	STAND	STANDARD INSURANCE COMPANY	
	05282008			05/29/2008 LIFE & DISABILITY INSURANCE	4,731.58
				Check Total	4,731.58
	00066139	05/29/2008	TAJIK	MASSOUD TAJIK	
	41098			05/29/2008 PW C&D REFUND	100.00
				Check Total	100.00
	00066140	05/29/2008	THEARD	CHRISTINE THEARD	
	41240			05/29/2008 PW C&D REFUND	490.00

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Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name PO Date Description	Amount
				May 2008	Check Total 490.00
	00066141	05/29/2008	TRUGREEN	TRUGREEN LANDCARE	
	6174981		00007336	07/11/2007 PA MEDIANS & R-O-W'S	32,252.00
	6174990		00007353	07/12/2007 PA MAINTENANCE: CITY PARKS	37,805.00
				Check Total	70,057.00
	00066142	05/29/2008	UNITEDRE	UNITED RENTALS, INC.	
	59474829-002		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	-257.56
	59474829-002A		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	167.18
	59474829-003		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	-473.55
	73055831-001		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	579.54
	73428496-001		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	193.18
	73454410-001		00007313	04/02/2008 PA EQUIPMENT RENTAL SERVICE	354.58
				Check Total	563.37
	00066143	05/29/2008	VERIZONW	VERIZON WIRELESS	
	653016576			05/28/2008 BL PHONE SERVICE	96.00
	653016577			05/28/2008 BL PHONE SERVICE	142.68
				Check Total	238.68
	00066144	05/29/2008	VL SYSTE	VL SYSTEMS, INC.	
	69467		00007393	07/12/2007 ND TECHNICAL SUPPORT	3,062.50
				Check Total	3,062.50
	00066145	05/29/2008	VLASIC	PETER VLASIC	
	39978			05/28/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066146	05/29/2008	WESTHIGH	WESTERN HIGHWAY PRODUCTS, INC.	
	629087		00007356	07/12/2007 PA SIGN FABRICATION SERVICES	1,451.59
				Check Total	1,451.59
	00066147	05/29/2008	WHITECAPC	WHITE CAP CONSTRUCTION SUPPLY	
	5018223		00007314	07/11/2007 PA CONSTRUCTION SUPPLIES	181.37
				Check Total	181.37
	00066148	05/29/2008	WILEY	WEBSTER WILEY	
	41346			05/29/2008 PW C&D REFUND	320.00
				Check Total	320.00
	00066149	05/29/2008	WYNN	WYNN ENGINEERING, INC.	
	04012008		00007578	01/31/2008 BL PROFESSIONAL SERVICES	890.00
				Check Total	890.00
Total of Checks Printed:					1,019,245.20

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Bank Account :A - Bank Of America					
	00066151	06/06/2008	ANDJEN1	JENNIFER ANDERSON	
	06062008			06/06/2008 REIMBURSEMENT	133.55
				Check Total	133.55
	00066152	06/06/2008	ASSTDLAB	ASSOCIATED LABORATORIES	
	367251		00007471	07/12/2007 WQ WATER SAMPLING SERVICES	264.00
				Check Total	264.00
	00066153	06/06/2008	AT&T4	AT&T	
	51908250			06/05/2008 CE ADVERTISING	59.90
				Check Total	59.90
	00066154	06/06/2008	BEACON	BEACON PRINTING	
	391			06/05/2008 CD STAMP	43.10
				Check Total	43.10
	00066155	06/06/2008	BOONE	RANDALL M. BOONE	
	05292008			06/05/2008 PA REMOVED TRASH SVC.	450.00
				Check Total	450.00
	00066156	06/06/2008	BRICE	BRUCE LEONARD BEAL, BUSINESS LAWYER	
	05052008			06/05/2008 CS GRAND PRIX OF CYCLING	205.00
				Check Total	205.00
	00066157	06/06/2008	CALIFMU	CALIFORNIA MUNICIPAL STATISTICS	
	08052301			06/05/2008 TE 2008 SPECIAL TAX BONDS	450.00
				Check Total	450.00
	00066158	06/06/2008	CAPO	CAPISTRANO LOCK & SAFE	
	42475		00007372	07/12/2007 FAC LOCK & KEY SERVICES	48.27
				Check Total	48.27
				May 1-31, 2008	
	00066159	06/06/2008	CASA	COASTAL ANIMAL SERVICES AUTHORITY	
	05212008		00007390	07/12/2007 ND ANIMAL CONTROL SERVICES	23,833.33
				Check Total	23,833.33
	00066160	06/06/2008	CASTATEDIS	CALIFORNIA STATE DISBURSEMENT UNIT	
	PP12-2008			06/06/2008 CD GARNISHMENT	1,051.15
				Check Total	1,051.15
	00066161	06/06/2008	CAYA	RON CAYA	
	05202008			06/05/2008 CS RECREATION CLASS INSTRUCTOR	288.00
				Check Total	288.00
	00066162	06/06/2008	COASTRO	COAST ROOFING	
	47493			06/06/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066163	06/06/2008	CONSOL	CONSOLIDATED REPROGRAPHICS	

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Checks Printed					
	00066163	06/06/2008	CONSOL	CONSOLIDATED REPROGRAPHICS	
	824715		00007308	11/08/2007 CD BLUEPRINTS/PHOTOCOPIES	35.28
	826530		00007555	02/21/2008 CIP COPYING & BLUEPRINTING	84.58
	830814		00007555	02/21/2008 CIP COPYING & BLUEPRINTING	52.53
				Check Total	172.39
	00066164	06/06/2008	CORPEXP	CORPORATE EXPRESS	
	87408422		00007399	10/18/2007 FA OFFICE SUPPLIES	242.55
	87466633		00007402	03/27/2008 ND OPERATING SUPPLIES	19.52
	87466634		00007402	03/27/2008 ND OPERATING SUPPLIES	23.96
	87498136		00007547	10/04/2007 FAC FACILITIES SUPPLIES	685.10
	87556190		00007301	07/11/2007 CK OFFICE SUPPLIES	1,022.58
	87556191		00007402	03/27/2008 ND OPERATING SUPPLIES	82.40
	87615993		00007385	07/12/2007 ND PHOTOCOPY PAPER	304.39
	87615994		00007385	07/12/2007 ND PHOTOCOPY PAPER	24.35
	87680530		00007385	07/12/2007 ND PHOTOCOPY PAPER	24.83
				Check Total	2,429.68
	00066165	06/06/2008	COSTCO	COSTCO WHOLESALE	
	05272008			06/05/2008 CS OPERATING SUPPLIES	965.61
	05292008			06/05/2008 ND OPERATING SUPPLIES	269.98
				Check Total	1,235.59
	00066166	06/06/2008	CROCKETT	DAVID CROCKETT	
	06032008			06/05/2008 CS RECREATION CLASS INSTRUCTOR	1,298.00
				Check Total	1,298.50
	00066167	06/06/2008	DANKA	DANKA OFFICE IMAGING CO.	
	706078136		00007384	07/12/2007 PS/ND COPIER MAINTENANCE	518.67
	706087155		00007384	07/12/2007 PS/ND COPIER MAINTENANCE	275.63
				Check Total	794.30
	00066168	06/06/2008	DDLTRAFFIC	DDL TRAFFIC, INC.	
	424		00007448	07/12/2007 TE PREEMPTION DEVICES	250.00
				Check Total	250.00
	00066169	06/06/2008	DPCOASTA	DANA POINT COASTAL ARTS	
	05292008			06/05/2008 CS SUPPLIES FOR ART FESTIVAL	283.54
				Check Total	283.54
	00066170	06/06/2008	DPEA	DANA POINT EMPLOYEE ASSOCIATION	
	PP12-2008			06/06/2008 UNION DUES	244.50
				Check Total	244.50
	00066171	06/06/2008	DPHARDW	DANA POINT HARDWARE	
	410451		00007323	05/22/2008 PA MISCELLANEOUS SUPPLIES	93.40
	410459		00007323	05/22/2008 PA MISCELLANEOUS SUPPLIES	42.27
	410469		00007323	05/22/2008 PA MISCELLANEOUS SUPPLIES	55.35

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Direct Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name PO Date Description	Amount
				Check Total	191.02
	00066172 2077025756	06/06/2008	DUNN 00007376	DUNN-EDWARDS CORP 07/12/2007 FAC PAINT/MISC. SUPPLIES	98.98
				Check Total	98.98
	00066173 06022008	06/06/2008	FRENCH	ROBERT FRENCH 06/06/2008 SM REIMBURSEMENT	57.86
				Check Total	57.86
	00066174 06042008	06/06/2008	FTB	FRANCHISE TAX BOARD 06/06/2008 CASE # 510464522 - GARNISHMENT	85.42
				Check Total	85.42
	00066175 B371020 B402231 B402802	06/06/2008	GANAHL 00007319 00007415 00007415	GANAHL LUMBER COMPANY 05/22/2008 PA SUPPLIES/EQUIPMENT 07/12/2007 SM MISCELLANEOUS SUPPLIES 07/12/2007 SM MISCELLANEOUS SUPPLIES	603.24 67.17 62.24
				Check Total	732.65
	00066176 37135	06/06/2008	GMUGFO 00007619	GMU GEOTECHNICAL, INC. 01/24/2008 PW SEA TERRACE PARK	272.50
				Check Total	272.50
	00066177 MN00019742	06/06/2008	HARRIS	HARRIS 06/05/2008 AS MAINTENANCE	1,177.00
				Check Total	1,177.00
	00066178 05292008	06/06/2008	HARTJENN	JENNIFER HART 06/05/2008 CS SENIOR LUNCHEON	150.00
				Check Total	150.00
	00066179 44178887 44208247	06/06/2008	HEWLETT 00007666 00007666	HEWLETT PACKARD CORP. 04/10/2008 FILE SERVER REPLACEMENT 04/10/2008 FILE SERVER REPLACEMENT	176.71 96.98
				Check Total	273.69
	00066180 303196-PP12-20 083	06/06/2008	ICM	May 2008 ICMA RETIREMENT TRUST-457 06/06/2008 EE/ER CONTRIBUTION	12,715.45
				Check Total	12,715.45
	00066181 110543366	06/06/2008	INSIGHT 00007392	May 22, 2008 INSIGHT 07/12/2007 ND SOFTWARE UPGRADES	7,789.51
				Check Total	7,789.51
	00066182 40359	06/06/2008	JARVIS	JARVIS RESTORATION 06/06/2008 PW C&D REFUND	600.00
				Check Total	600.00
	00066183	06/06/2008	JERVIS	JERVIS BROS. MOBILE CAR WASH	

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Checks Printed					
	00066183	06/06/2008	JERVIS	JERVIS BROS. MOBILE CAR WASH	
	06042008		00007565	11/01/2007 SM DETAIL SERVICE	50.00
				Check Total	50.00
	00066184	06/06/2008	JOBS	JOBS AVAILABLE	
	812022			06/05/2008 AS ADVERTISEMENT	245.00
				Check Total	245.00
	00066185	06/06/2008	JOHNDEE	JOHN DEERE LANDSCAPES	
	21493830		00007315	05/22/2008 PA LANDSCAPE SUPPLIES	43.96
	21512879		00007315	05/22/2008 PA LANDSCAPE SUPPLIES	75.14
	21531358		00007315	05/22/2008 PA LANDSCAPE SUPPLIES	97.08
	21531359		00007315	05/22/2008 PA LANDSCAPE SUPPLIES	367.31
				Check Total	583.49
May 14, 2008					
	00066186	06/06/2008	JRP	JRP CONSTRUCTION	
	14			06/06/2008 CD RENOVATION	17,321.45
				Check Total	17,321.45
	00066187	06/06/2008	KENNE	KENNEDY COMMUNICATIONS, INC.	
	14890			06/05/2008 FAC MAINTENANCE	360.00
				Check Total	360.00
	00066188	06/06/2008	LEED	DANIEL LEE	
	06022008			06/05/2008 BL REIMBURSEMENT	450
				Check Total	450.00
	00066189	06/06/2008	LIFETREN	THE LIFETRENDS GROUP, INC.	
	553-08		3PY4553X	07/01/2007 Nd AED/CPR TRAINING/CERT	578.62
				Check Total	578.62
	00066190	06/06/2008	LINDSEYL	LAURA LINDSEY	
	4292			06/06/2008 CS PARK RENTAL REFUND	60.00
				Check Total	60.00
	00066191	06/06/2008	LINSCOTT	LINSCOTT, LAW & GREENSPAN, INC.	
	2290900110		00007446	04/10/2008 TE TRAFFIC ENGINEERING SVCS	7,115.75
				Check Total	7,115.75
June - August 2008					
	00066192	06/06/2008	MARKWOOD	MARK WOOD ENTERTAINMENT, INC.	
	05292008			06/05/2008 CS SUMMER CONCERT/DEPOSIT	1,400.00
	05292008A			06/05/2008 CS SUMMER CONCERT	1,050.00
	05292008B			06/05/2008 CS SUMMER CONCERT	975.00
	05292008C			06/05/2008 CS SUMMER CONCERT	2,900.00
	05292008D			06/05/2008 CS SUMMER CONCERT	4,650.00
	05302008			06/05/2008 CS SUMMER CONCERT	2,900.00
				Check Total	13,875.00
	00066193	06/06/2008	MILLERJONE	GREGORY MILLER-JONES	
	44131			06/06/2008 PW C&D REFUND	500

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Direct Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name PO Date Description	Amount
				Check Total	85
	00066205 4281	06/06/2008	PERRY	LORI PERRY 06/06/2008 CS PARK RENTAL REFUND	65.00
				June 2008	Check Total 65.00
	00066206 H2008061559000 H2008067460000	06/06/2008	PERSINS1	PERS 06/06/2008 MEDICAL PREMIUMS - JUNE 2008 06/06/2008 MEDICAL PREMIUMS - JUNE 2008	34,848.10 1,164.05
				May 16 - 30, 2008	Check Total 36,012.15
	00066207 05-2008-5	06/06/2008	PERSRTMNT	PERS 06/06/2008 RETIREMENT BENEFIT	35,922.80
				Check Total	35,922.80
	00066208 10163	06/06/2008	PINNACLER	PINNACLE RADIO INC. 06/05/2008 EM SUPPLIES	651.67
				Check Total	651.67
	00066209 41503	06/06/2008	PLANCENT 00006883	THE PLANNING CENTER 07/01/2007 CD CONSULTANT SERVICES	1,729.63
				April - May 2008	Check Total 1,729.63
	00066210 1005849 1008013 1008018 1008023	06/06/2008	POWELLPB 00007637 00007624 00007640 00007637	PBS&J 02/21/2008 CIP CONSTRUCTION INSP. SVC. 01/31/2008 CIP CONSTRUCTION MGMT. SVC. 02/21/2008 CIP CONSTRUCTION INSP. SVC. 02/21/2008 CIP CONSTRUCTION INSP. SVC.	114.00 9,476.85 22,348.85 15,505.50
				March - April 2008	Check Total 47,446.75
	00066211 44675 45520	06/06/2008	PSOMAS 00007641 00007641	PSOMAS 02/21/2008 CIP CONSTRUCTION ENG. SVC. 02/21/2008 CIP CONSTRUCTION ENG. SVC.	6,039.77 8,578.64
				May 1 - 31, 2008	Check Total 14,618.41
	00066212 06022008	06/06/2008	QUANTUMO 00007476	QUANTUM OZONE, INC. 07/12/2007 WQ MAINTENANCE SERVICES	6,300.00
				Check Total	6,300.00
	00066213 04022008	06/06/2008	REGISTER	ORANGE COUNTY REGISTER 06/05/2008 CS ADVERTISING	782.58
				Check Total	782.58
	00066214 111	06/06/2008	RENEGADE	RENEGADE RACING 06/06/2008 SM PROFESSIONAL SERVICE	500.00
				Check Total	500.00
	00066215 7147	06/06/2008	REPUBLIC 00007452	REPUBLIC ITS 05/28/2008 TE EXTRAORDINARY SERVICES	2,001.33
				Check Total	2,001.33

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Arranged by:
Check Number

Direct	Check Number	Check Date	Vendor ID	Vendor Name	Amount
Dep.	Invoice	Invoice Date	PO Number	PO Date Description	
				Check Total	500.00
	00066194	06/06/2008	MIRANDA	ROBERT MIRANDA	
	47852			06/06/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066195	06/06/2008	MONOGRAM	MONOGRAM MAGIC	
	29297			06/06/2008 UNIFORM	561.24
	29324			06/06/2008 UNIFORM	349.44
	29368			06/05/2008 ED STAFF UNIFORM	274.26
				Check Total	1,184.94
	00066196	06/06/2008	NEWMAN	ASHLYN NEWMAN	
	4295			06/06/2008 PARK RENTAL REFUND	50.00
				Check Total	50.00
	00066197	06/06/2008	NGUYEN	TAM NGUYEN	
	05292008			06/05/2008 CS RECREATION CLASS INSTRUCTOR	818.80
				Check Total	818.80
	00066198	06/06/2008	NICHOLSON	NICHOLSON CONSTRUCTION	
	44361			06/06/2008 PW C&D REFUND	500.00
	45035			06/06/2008 PW C&D REFUND	5,000.00
				Check Total	5,500.00
	00066199	06/06/2008	OCAPA	ORANGE COUNTY AMERICAN PLANNING ASSOC.	
	06032008			06/05/2008 CD SEMINAR REGISTRATION	110.00
				Check Total	110.00
	00066200	06/06/2008	OCLOCC	ORANGE COUNTY DIVISION	
	1587			06/05/2008 CM GENERAL MEETING	171.00
				Check Total	171.00
	00066201	06/06/2008	OFFICEMAX	OFFICE MAX INCORPORATED	
	491331		00007509	03/13/2008 CD OFFICE SUPPLIES	7.31
	826929		00007411	01/24/2008 PW OFFICE SUPPLIES	17.88
				Check Total	25.19
	00066202	06/06/2008	OZONE	OZONE ROOFING	
	43227			06/06/2008 PW C&D REFUND	500.00
				Check Total	500.00
	00066203	06/06/2008	PACSIGN	PACIFIC SIGN CENTER	
	4224			06/05/2008 CS SIGNS	129.30
	4250			06/05/2008 CS SIGNS	969.75
	4253			06/05/2008 CS SIGNS FOR GRAND PRIX	1,163.70
	4286			06/05/2008 CS DECALS	32.33
				Check Total	2,295.08
	00066204	06/06/2008	PAGEL	CHRISTY PAGEL	
	4044			06/06/2008 CS CLASS REFUND	89.00

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Check Number

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Dep.	Invoice	Invoice Date	PO Number	PO Date Description	
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	00066216	06/06/2008	SAVINGS	SAVINGS EXPRESS	
	1191		00007662	04/02/2008 ES PROFESSIONAL SERVICES	1,473.42
				Check Total	1,473.42
	00066217	06/06/2008	SBC	AT&T LONG DISTANCE	
	854901212-8		00007400	07/12/2007 ND LONG DISTANCE SERVICE	70.44
				Check Total	70.44
	00066218	06/06/2008	SCAG	SOUTHERN CALIFORNIA ASSOC. OF GOVERNMENTS	
	0800-265			06/05/2008 ND MEMBERSHIP DUES	3,371.00
				Check Total	3,371.00
	00066219	06/06/2008	SCRENTAL	SC RENTALS	
	21336			06/05/2008 CS SUPPLIES	95.48
	21415			06/05/2008 CS CANOPIES FOR GRAND PRIX	1,075.17
	71426			06/05/2008 CS CANOPIES FOR ART FESTIVAL	625.61
				Check Total	1,796.26
April - May 2008					
	00066220	06/06/2008	SDG&E	SAN DIEGO GAS & ELECTRIC	
	05142008J		00007328	07/11/2007 PA MEDIANS	18.35
	05152008C		00007328	07/11/2007 PA MEDIANS	8.71
	05192008		00007328	07/11/2007 PA MEDIANS	339.48
	05202008		00007328	07/11/2007 PA MEDIANS	9.38
	05212008C		00007328	07/11/2007 PA MEDIANS	9.35
	05212008D		00007328	07/11/2007 PA MEDIANS	112.29
	05232008		00007379	07/12/2007 FAC CITY FACILITIES	5,514.17
	05232008C		00007441	07/12/2007 TE TRAFFIC SIGNALS	931.06
				Check Total	6,942.79
	00066221	06/06/2008	SEACREST	SEACREST DEVELOPERS INC.	
	46705			06/06/2008 PW C&D REFUND	2,000.00
				Check Total	2,000.00
	00066222	06/06/2008	SMARTALA	SMART ALARM	
	19137			06/06/2008 FAC MONITORING SERVICES	256.28
				Check Total	256.28
	00066223	06/06/2008	SOCSTFIR	SOUTH COAST FIRE PROTECTION, INC.	
	DL30837		00007344	04/16/2008 PA BACKFLOW TESTING SERVICES	1,044.42
				Check Total	1,044.42
	00066224	06/06/2008	SOCSTWD	SOUTH COAST WATER DISTRICT	
	05152008		00007380	07/12/2007 FAC CITY FACILITIES	511.74
	06022008		00007380	07/12/2007 FAC CITY FACILITIES	731.47
	06022008A		00007380	07/12/2007 FAC CITY FACILITIES	34.00
				Check Total	1,277.21
	00066225	06/06/2008	STAPLETON	JANENE STAPLETON	
	4046			06/06/2008 CS CLASS REFUND	89.00

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Arranged by:
Check Number

Direct Dep.	Check Number Invoice	Check Date Invoice Date	Vendor ID PO Number	Vendor Name PO Date Description	Amount
				Check Total	86
	00066226 4286	06/06/2008	STEVENS	CATHY STEVENS 06/06/2008 CS PARK RENTAL REFUND	80.00
				Check Total	80.00
	00066227 37298	06/06/2008	TANNER	ROBERT JEFFREY TANNER 06/06/2008 PW C&D REFUND	110.86
				Check Total	110.86
	00066228 05282008	06/06/2008	TODDA	ANDREW TODD 06/05/2008 CS RECREATION CLASS INSTRUCTOR	1,132.70
				Check Total	1,132.70
	00066229 0508	06/06/2008	TOPE 00007296	MICHAEL TOPE 07/11/2007 CM CONSULTANT SERVICES	4,000.00
				Check Total	4,000.00
	00066230 4289	06/06/2008	TOWNSEND	BONNIE TOWNSEND 06/06/2008 CS PARK RENTAL REFUND	65.00
				Check Total	65.00
	00066231 6106263	06/06/2008	TRUGREEN	February 2008 TRUGREEN LANDCARE 06/05/2008 CIP MEDIAN IMPROVEMENT	6,000.00
				Check Total	6,000.00
	00066232 I-802506	06/06/2008	UNITEDS	UNITED SITE SERVICES OF CA, INC. 06/05/2008 FAC PORTABLE TOILETS RENTAL	223.03
				Check Total	223.03
	00066233 PP12-2008	06/06/2008	UNITEDWAY	O.C. UNITED WAY 06/06/2008 CONTRIBUTION	65.00
				Check Total	65.00
	00066234 05202008	06/06/2008	USTREA	UNITED STATES TREASURY 06/06/2008 GARNISHMENT	1,178.55
				Check Total	1,178.55
	00066235 47194	06/06/2008	VALLES	ROBIN VALLES 06/06/2008 PW C&D REFUND	420.00
				Check Total	420.00
	00066236 05162008	06/06/2008	VERIZONW	VERIZON WIRELESS 06/05/2008 PHONE SERVICE	309.75
				Check Total	309.75
	00066237 05292008	06/06/2008	VISION	VISION SERVICE PLAN - (CA) 06/06/2008 PREMIUM FOR VISION	973.02
				Check Total	973.02
	00066238	06/06/2008	VISIONINT	VISION INTERNET PROVIDERS, INC.	

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				May 30, 2008	
	00066238	06/06/2008	VISIONINT	VISION INTERNET PROVIDERS, INC.	
	13882		00007621	PIO CITY WEBSITE REDESIGN	14,251.00
				Check Total	14,251.00
	00066239	06/06/2008	WATABE	HARUKO WATABE	
	05282008			06/05/2008 CS RECREATION CLASS INSTRUCTOR	360.00
				Check Total	360.00
	00066240	06/06/2008	WEAMIRE	DYANNE WEAMIRE	
	06042008			06/05/2008 ND REIMBURSEMENT	152.65
				Check Total	152.65
	00066241	06/06/2008	WILLSONIII	JOHN F. WILSON III	
	47009			06/06/2008 PW C&D REFUND	750.00
				Check Total	750.00
				March 2008	
	00066242	06/06/2008	WYNN	WYNN ENGINEERING, INC.	
	03312008		00007578	03/19/2008 BL PROFESSIONAL SERVICES	5,351.25
				Check Total	5,351.25
	00066243	06/06/2008	XEROX	XEROX CORPORATION	
	32514668		00007464	07/12/2007 ES MAINTENANCE AGREEMENT	52.50
	32514669		00007464	07/12/2007 ES MAINTENANCE AGREEMENT	50.00
				Check Total	102.50
	00066244	06/06/2008	ZEI	ZEISER KLING CONSULTANTS, INC.	
	23247		00007612	04/23/2008 CD GEOTECHNICAL REVIEW	483.75
	28741		00007466	07/12/2007 ES GEOTECHNICAL ENG. REVIEW	756.25
	28743		00007612	04/23/2008 CD GEOTECHNICAL REVIEW	168.75
	28744		00007612	04/23/2008 CD GEOTECHNICAL REVIEW	135.00
	28745		00007612	04/23/2008 CD GEOTECHNICAL REVIEW	616.25
				Check Total	2,160.00
				Total of Checks Printed:	312,598.65
Manual Checks					
Bank Account :A - Bank Of America					
	00066150	06/04/2008	CSMFO 91	CSMFO	
	05272008	05/27/2008	CSMFO	06/06/2008 SEMINAR REGISTRATION	99.00
				Check Total	99.00
				Total of Manual Checks:	99.00
				Report Total:	312,697.65

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

**FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT
MARK I. SUTTON, BUILDING OFFICIAL**

SUBJECT: TERMINATION OF FIRE PROTECTION FACILITIES IMPACT FEE

RECOMMENDED ACTION:

That the City Council adopts the following resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RESCINDING THE FIRE PROTECTION FACILITIES IMPACT FEE FOR ALL DEVELOPMENT LOCATED WITHIN THE CITY OF DANA POINT.

BACKGROUND/DISCUSSION:

In December 1991, the City Council enacted a Development Impact Fee program to help finance certain fire protection facilities. This fee helped to create necessary infrastructure and allow new development to pay its prorated share of the cost of this infrastructure. This fee became effective in February 1992 and has been reviewed by the City Council on various occasions since 1993. Funds collected under the Fire Protection Facilities Impact Fee program were targeted to assist in paying for the building of the new Fire Station #29, located at 26111 Victoria Boulevard, in the Doheny Village area, along with traffic signal preemption devices.

Permits were issued on June 7, 2005 to demolish the existing Fire Station #29 and replace it with a new 6,556 square foot building with a 2,456 square foot attached garage area. The construction of the new Fire Station #29 was completed on February 1, 2007.

The new facility has added an improved level of service to our community and provides the Fire Service with the latest equipment available to respond to our community's emergencies.

With the facility now completed, there is no longer a need to collect the Fire Protection Facilities Impact Fee and staff is recommending the termination of this impact fee.

FISCAL IMPACT:

All the monies generated by the Fee were remitted to the Orange County Fire Authority for use in constructing Fire Station #29. Therefore, elimination of the Fire Protection Facilities Impact Fee has no fiscal impact on the City.

ALTERNATIVE ACTIONS:

As determined by Council.

ACTION DOCUMENTS:**PAGE NO.**

A. [Resolution](#) No. 08-06-17-XX 3

SUPPORTING DOCUMENTS:

None.

ACTION DOCUMENT A**RESOLUTION NO. 08-06-17-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RESCINDING THE FIRE PROTECTION FACILITIES IMPACT FEE FOR ALL DEVELOPMENT LOCATED WITHIN THE CITY OF DANA POINT.**

WHEREAS, new development, including residential, commercial and industrial development, is creating increased demand for various types of public facilities within the City of Dana Point; and

WHEREAS, the City of Dana Point does not have the financial resources to adequately fund the acquisition and construction of the additional public facilities required to accommodate this new development; and

WHEREAS, on December 10, 1991, the City of Dana Point adopted various development impact fees on new development, based upon the "City of Dana Point Impact Fee Study" prepared by David M. Griffith & Associates, Ltd. (DMG) in September 1991, in order to fund the acquisition and construction of public facilities required to accommodate new development, and these fees became effective on February 8, 1992; and

WHEREAS, the Fire Protection Facilities Impact Fees were used to build Fire Station #29 located at 26111 Victoria Boulevard; and

WHEREAS, the new Fire Station #29 began construction in June of 2006; and

WHEREAS, the new fire station #29 was completed on February 1, 2007; and

WHEREAS, the City of Dana Point no longer has a need to collect the Fire Protection Facilities Impact Fee due to the completion of Fire Station #29:

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Dana Point, California, does hereby rescind any portion of any prior City legislative action that established a Fire Protection Facilities Impact Fee.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008

JOEL BISHOP, MAYOR

ATTEST:

KATHY WARD, CITY CLERK

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

I, KATHY WARD, City Clerk of the City of Dana Point, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No.
08-06-17-XX adopted by the City Council of the City of Dana Point, California, at a
regular meeting thereof, held on the 17th day of June, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY WARD, CITY CLERK

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM: BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: APPROVAL OF A SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM AND AUTHORIZATION TO FORWARD MEASURE M ELIGIBILITY DOCUMENTATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY

RECOMMENDED ACTION:

1. That the City Council adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM FOR FY09 THROUGH FY15 AS REQUIRED BY THE OCTA MEASURE M GROWTH MANAGEMENT PROGRAM AND VERIFYING THE STATUS OF THE CIRCULATION ELEMENT FOR THE CITY OF DANA POINT; and

2. That the City Council authorize the Director of Public Works and Engineering Services to forward the necessary Measure M eligibility documentation to the Orange County Transportation Authority.

DISCUSSION:

The City is required to adopt a Seven Year Capital Improvement Program (CIP) and submit Measure M eligibility documentation in order to receive annual Measure M turnback funds and remain eligible for competitive funds. The Measure M program is administered by the Orange County Transportation Authority (OCTA). The City of Dana Point will receive approximately \$458,747 in Measure M funds for FY09. The funds are budgeted for the Annual Residential Roadway Resurfacing Project which is scheduled to begin construction in early fall 2008.

City Council adopted a two year operating and CIP budget on June 19, 2007 for FY08 and FY09. A Seven Year CIP was also approved to fulfill OCTA requirements at the same time. The Seven Year CIP for FY09 through FY15 has

been updated to include an additional year of funding to meet OCTA requirements. The current two year CIP budget includes transportation projects such as the PCH Congestion Relief Project, the Annual Residential Roadway Resurfacing Project, Pacific Coast Highway Median Improvements, Annual Minor Drainage, Annual Slurry Seal Program, Annual Arterial Roadway Repair, Annual System Sidewalk Repair, Annual Traffic Safety Improvements, PCH Del Prado Improvement, and Beach Road at Coast Highway Quiet Zone Train Noise Reduction Project. Each of these projects is described in detail in the attached Seven Year CIP.

In order to be eligible for Measure M funding, the City must adopt Action Document A Resolution. Adoption of the Seven Year CIP (Supporting Document B) does not commit the City to fund these projects. It simply identifies potential projects for consideration and their cost estimates.

NOTIFICATION/FOLLOW-UP:

Orange County Transportation Authority

STRATEGIC PLAN IMPLEMENTATION

In compliance with the Strategic Plan Initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods.

FISCAL IMPACT:

The City will receive approximately \$458,747 in Measure M funding for FY09.

ALTERNATIVE ACTIONS:

1. Do not approve the Seven Year CIP. Failure to approve a Seven Year CIP, which may result in the loss of Measure M funds.
2. Other action as determined by the City Council.

ACTION DOCUMENTS:

Page

- A. [MPAH Resolution](#)..... 3

SUPPORTING DOCUMENTS:

- B. [Seven Year CIP for FY09 through FY15](#) 5

ACTION DOCUMENT A: Resolution**RESOLUTION NO. 08-06-17-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM FOR FY09 THROUGH FY15 AS REQUIRED BY THE OCTA MEASURE M GROWTH MANAGEMENT PROGRAM AND VERIFYING THE STATUS OF THE CIRCULATION ELEMENT FOR THE CITY OF DANA POINT**

WHEREAS, the City of Dana Point is required to adopt a Seven Year Capital Improvement Program for FY09 through FY15 in compliance with the Orange County Transportation Authority Measure M requirements; and

WHEREAS, the City of Dana Point desires to maintain and improve the streets within its jurisdiction, including those arterials contained in the Master Plan of Arterial Highways; and

WHEREAS, the City of Dana Point has endorsed a definition of and a purpose for, determining consistency of the City's Traffic Circulation Plan with the MPAH, and

WHEREAS, the City has adopted a General Plan Circulation Element which does not preclude implementation of the MPAH within its jurisdiction; and

WHEREAS, the City has adopted a resolution informing the Orange County Transportation Authority that the City's Circulation Element is in conformance with the Master Plan of Arterial Highways and whether any changes to any arterial highways of said Circulation Element have been adopted by the City during FY07 and FY 08

WHEREAS, the City is required to send annually to the OCTA all recommended changes to the City Circulation Element and the County Master Plan of Arterial Highways for the purpose of re-qualifying for participation in Measure M Streets and Road Programs.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the arterial highway portion of the City Circulation Element of the City is in conformance with the County Master Plan of Arterial Highways.

Section 2. That the City attests that no unilateral reduction in through lanes has been made on any MPAH arterials during FY07 and FY08.

Section 3. That the City has adopted a uniform setback ordinance providing for the preservation of right-of-way consistent with the MPAH arterial highway classification.

Section 4. That the City has adopted provisions for the limitation of access to arterial highways in order to protect the integrity of the system.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

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

I, KATHY M. WARD, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. _____ adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008 by the following vote:

AYES:

NOES:

ABSENT:

KATHY M. WARD, CITY CLERK

SUPPORTING DOCUMENT B: Seven Year CIP for FY09 through FY15

03-Jun-08

Measure M Growth Management Program
Congestion Management Program
Seven Year Capital Improvement Program (Sorted by Name)
Fiscal Years 2008/2009 through 2014/2015

Agency : Delta Point												
Project Number :	n/a											
Project Name :	#10 Annual Residential Roadway Resurfacing											
Project Limits/Loc :	Various residential roadways citywide											
Type Of Work :	Road Maintenance											
Additional TOW :	rehabilitation of roadway											
Project Description:	This project involves the rehabilitation of residential/collector streets on an annual basis. The City bases these projects on a Pavement Management Plan generated by the County of Orange. This funding may also be used for Town Center sidewalk repairs.											
Project Cost :		08/09	09/10	10/11	11/12	12/13	13/14	14/15				
	C	0	2,000,000	2,000,000	3,500,000	2,500,000	3,000,000	3,000,000	16,000,000			
	E	100,000	100,000	100,000	100,000	100,000	100,000	100,000	700,000			
		\$100,000	\$2,100,000	\$2,100,000	\$3,600,000	\$2,600,000	\$3,100,000	\$3,100,000	\$16,700,000			

Agency : Delta Point												
Project Number :	60-DPNT-41P-3069											
Project Name :	#1111 Pacific Coast Highway Traffic Congestion Relief Improvements											
Project Limits/Loc :	Pacific Coast Highway from San Juan Creek to Copper Lantern											
Type Of Work :	Intersection											
Additional TOW:	add bus turnouts											
Project Description:	The project includes the construction of a pedestrian accessway across PCH east of Del Obispo Street, the addition of bus turnouts, and one traffic lane addition to each side of the highway, within the project limits.											
Project Cost :		08/09	09/10	10/11	11/12	12/13	13/14	14/15				
	C	6,700,000	0	0	0	0	0	0	6,700,000			
	E	0	0	0	0	0	0	0	0			
		\$6,700,000	\$0	\$0	\$0	\$0	\$0	\$0	\$6,700,000			

Measure M: Yes

2

Measure M Growth Management Program

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15
General	66.00%	3,850,775	3,850,775	3,850,775			
Turnback	28.00%	1,633,662	1,633,662	1,633,662			
Prop 42	6.00%	350,070	350,070	350,070			
	100.00%	\$5,834,507	\$5,834,507	\$5,834,507			

Agency : Dana Point

Project Number : n/a

Project Name : #1194 Annual Roadway Resurfacing

Project Limits/Loc : Residential Streets City-wide

Type Of Work : Road Maintenance

Additional TOW : rehabilitation of roadway

Project Description: This project provides funding to rehabilitate non-arterial streets including residential, residential collector, and collector streets. Streets are selected for rehabilitation using the City's Pavement Management Plan. Prop 42 funding is for FY09.

Project Cost :

Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	\$5,834,507	0	0	0	0	0	0
	\$5,834,507	\$0	\$0	\$0	\$0	\$0	\$5,834,507

Agency : Dana Point

Project Number : n/a

Project Name : #1223 PCH/Del Prado Improvement Project- Phase I

Project Limits/Loc : Town Center area in Dana Point

Type Of Work : Other

Additional TOW : other

Project Description: The project includes design for complete road rehabilitation and reconstruction of Del Prado between Blue Lantern and Copper Lantern. The construction budget has been initially estimated at \$30 million. See Phase 1 and Phase 2 construction projects.

Project Cost :

Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15
E	\$2,300,000	0	0	0	0	0	0
	\$2,300,000	\$0	\$0	\$0	\$0	\$0	\$2,300,000

Total for Dana Point

\$19,109,470	\$18,210,000	\$12,170,000	\$11,230,000	\$7,790,000	\$14,550,000	\$19,210,000	\$102,269,470
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Measure M: Yes

03-Jun-08

Measure M Growth Management Program**Congestion Management Program**

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Unfunded	100.00%	1,000,000	1,000,000	Priority Two Project
Unfunded	100.00%	\$1,000,000	\$1,000,000	

Agency : Dana Point

Project Number : n/a

Project Name : #10B Bicycles and Trails Masterplan

Project Limits/Loc : Citywide

Type Of Work : Administration

Additional TOW: consultant support for design of project

Project Description: Develop a citywide masterplan for bicycle lanes and other recreational trails.

Project Cost :

08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	0	0	200,000	200,000	400,000	0
	\$0	\$0	\$200,000	\$200,000	\$400,000	\$0
						\$1,000,000
						\$1,000,000

Agency : Dana Point

Project Number : n/a

Project Name : #11B PCH Medians Phase 2

Project Limits/Loc : Pacific Coast Highway within Dana Point

Type Of Work : Aesthetics

Additional TOW: landscaping of roadway

Project Description: Construct additional medians along Pacific Coast Highway for the purposes of safety and beautification.

Project Cost :

08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	0	3,000,000	0	0	0	0
	\$0	\$3,000,000	\$0	\$0	\$0	\$0
						\$3,000,000
						\$3,000,000

Measure M: No

03-Jun-08

Measure M Growth Management Program

2

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)
Fiscal Years 2008/2009 through 2014/2015

Agency : Dana Point

Project Number : n/a

Project Name : #1203 PCH Redesign/Impr

Project Limits/Location : Pacific Coast Highway within City limits

Type of Work : Road Maintenance

Additional TOV : rehabilitation of roadway

Project Description: The project was established by City Council for maintenance and repair activities on Pacific Coast Highway following the rededication of the road from the State of California to the City of Dana Point. This funding could be used for TownCenter.

Project Cost :

Project Cost	08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	523,963	1,500,000	1,500,000	0	0	0	0
	5523,963	\$1,500,000	\$1,500,000	\$0	\$0	\$0	\$0
						\$3,523,963	\$3,523,963

Agency : Dana Point

Project Number : n/a

Project Name : #1207 PCH Median

Project Limits/Location : Pacific Coast Highway from between Niguel Road and Crown Valley Parkway

Type of Work : Aesthetics

Additional TOV : landscaping for project location

Project Description: Beautification of five existing medians on PCH between Niguel Road and Crown Valley Parkway. The project scope includes irrigation, palms, and landscaping in the medians. Also, PCH street improvements in curbs, sidewalks, and bicycle lane striping.

Project Cost :

Project Cost	08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	1,276,000	0	0	0	0	0	0
	\$1,276,000	\$0	\$0	\$0	\$0	\$0	\$0
						\$1,276,000	\$1,276,000

Measure M: No

3

Measure M Growth Management Program

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Agency	Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15	Project Cost
General	50.00%	462,500	462,500	462,500	462,500	462,500	462,500	462,500	OCTA competitive funding
Other	50.00%	462,500	462,500	462,500	462,500	462,500	462,500	462,500	

100.00% \$925,000 \$925,000

Agency : Dana Point

Project Number : n/a

Project Name : #1215 Arterial Roadway Resurficing

Project Limits/Loc : Stonehill Drive

Type Of Work : Road Maintenance

Additional TOW : rehabilitation of roadway

Project Description: Rehabilitation of arterial streets, including asphalt pavement on Stonehill Drive, pending additional grant funding from OCTA.

Project Cost :

Agency	Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15	Project Cost
C		125,000	800,000	0	0	0	0	0	925,000
		\$125,000	\$800,000	\$0	\$0	\$0	\$0	\$0	\$925,000

Agency : Dana Point

Project Number : n/a

Project Name : #1216 Annual Minor Drainage/Diversion Repair 08 & 09

Project Limits/Loc : Various locations citywide

Type Of Work : Safety

Additional TOW : Improve roadway drainage

Project Description: This annual program was established to fund minor drainage improvement projects to better capture and control storm flows in the public R-O-W.

Project Cost :

Agency	Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15	Project Cost
C		240,000	160,000	170,000	180,000	190,000	200,000	210,000	1,350,000
		\$240,000	\$160,000	\$170,000	\$180,000	\$190,000	\$200,000	\$210,000	\$1,350,000

Measure M: No

03-Jun-08

Measure M Growth Management Program

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Project Name	Fiscal Year	Funding	Funding	Funding	Funding	Funding	Funding	Funding	Funding
General	100.00%	1,010,000	1,010,000	1,010,000	1,010,000	1,010,000	1,010,000	1,010,000	1,010,000
	100.00%	51,010,000	51,010,000	51,010,000	51,010,000	51,010,000	51,010,000	51,010,000	51,010,000

Agency : Davis Point

Project Number : n/a

Project Name : #1217 Annual Slurry Seal Program 08 & 09

Project Limits/Location : Citywide

Type Of Work : Road Maintenance

Additional TOW : slurry seal of roadway

Project Description : This project provides funding for slurry seal to extend the life of existing pavements in various locations citywide.

Project Cost :

Project Name	Fiscal Year	Funding	Funding	Funding	Funding	Funding	Funding	Funding	Funding
C	08/09	200,000	110,000	120,000	130,000	140,000	150,000	160,000	1,010,000
		200,000	110,000	120,000	130,000	140,000	150,000	160,000	1,010,000

Agency : Davis Point

Project Number : n/a

Project Name : #1218 Annual Arterial Roadway Repair 08 & 09

Project Limits/Location : Citywide

Type Of Work : Road Maintenance

Additional TOW : rehabilitation of roadway

Project Description : Rehabilitation of arterial streets, including asphalt pavement on Del Prado between Golden Lantern and Cooper Lantern in FY10.

Project Cost :

Project Name	Fiscal Year	Funding	Funding	Funding	Funding	Funding	Funding	Funding	Funding
C	08/09	0	2,500,000	0	2,700,000	0	3,000,000	0	8,200,000
E		200,000	210,000	220,000	230,000	240,000	250,000	260,000	1,610,000
		200,000	210,000	220,000	230,000	240,000	250,000	260,000	1,610,000

Measure M : No

03-Jun-08

Measure M Growth Management Program

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Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Agency : Dana Point									
Project Number : n/a									
Project Name : #1219 Annual Sidewalk System Repair Improvements									
08 & 09									
Project Limits/Loc : Citywide									
Type Of Work : Pedestrian									
Additional TOW: reconstruction or rehabilitation of sidewalk									
Project Description: Replace deficient concrete improvements including sidewalk, curb, curb and gutter, and cross gutters, and add new sidewalks where necessary.									
Project Cost :									
Fiscal Year									
	08/09	09/10	10/11	11/12	12/13	13/14	14/15		
C	200,000	110,000	120,000	130,000	140,000	150,000	160,000	1,010,000	1,010,000
	\$200,000	\$110,000	\$120,000	\$130,000	\$140,000	\$150,000	\$160,000	\$1,010,000	\$1,010,000

Agency : Dana Point									
Project Number : n/a									
Project Name : #1220 Annual Sidewalk and Park ADA Improvements									
08 & 09									
Project Limits/Loc : Citywide									
Type Of Work : Pedestrian									
Additional TOW: reconstruction or rehabilitation of sidewalk									
Project Description: Implement improvements along City sidewalks to provide better access for Americans with disabilities.									
Project Cost :									
Fiscal Year									
	08/09	09/10	10/11	11/12	12/13	13/14	14/15		
C	150,000	110,000	120,000	130,000	140,000	150,000	160,000	960,000	960,000
	\$150,000	\$110,000	\$120,000	\$130,000	\$140,000	\$150,000	\$160,000	\$960,000	\$960,000

Measure M: No

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Measure M Growth Management Program

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Project Name	Percent	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Total
General	100.00%		970,000						970,000
	100.00%		970,000						970,000

Agency : Dana Point

Project Number : n/a

Project Name : #1221 Annual Traffic Safety Repairs Improvements 08 & 09

Project Limits/Loc : Citywide

Type Of Work : Traffic Signals

Additional TOW : replace and upgrade traffic signals and equipment

Project Description : Traffic safety improvements including signing, striping, turning lanes, signal modifications, median modifications, and installation of medians and lighting.

Project Name	Percent	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Total
C		160,000	110,000	120,000	130,000	140,000	150,000	160,000	970,000
		160,000	110,000	120,000	130,000	140,000	150,000	160,000	970,000

Agency : Dana Point

Project Number : n/a

Project Name : #1226 Quiet Zone Train Noise Reduction

Project Limits/Loc : Railroad crossing at Beach Road and Coast Highway

Type Of Work : Other

Additional TOW : other

Project Description : Grade Crossing Enhancement Program has been formed by OCTA to reduce train noise at major train crossings near residential communities. The project would include installing stronger crossing arms that would prevent the flow of traffic across the tracks.

Project Name	Percent	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Total
C		1,100,000	0	0	0	0	0	0	1,100,000
		1,100,000	0	0	0	0	0	0	1,100,000

Measure M: No

03-Jun-08

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Measure M Growth Management Program**Congestion Management Program**

Seven Year Capital Improvement Program (Sorted By Name)

Fiscal Years 2008/2009 through 2014/2015

Project Name	08/09	09/10	10/11	11/12	12/13	13/14	14/15	Priority Two Project
Unfunded				100.00%	4,000,000	4,000,000	4,000,000	Priority Two Project
				100.00%	\$4,000,000	\$4,000,000	\$4,000,000	

Agency: Dana Point

Project Number: n/a

Project Name: #153 Selva Medians

Project Limits/Loc: Selva Road from Golden Lantern to Stoneshill Drive

Type Of Work: Aesthetics

Additional TOW: Landscaping of roadway

Project Description: Construct medians on Selva Road between Golden Lantern and Stoneshill Drive for purposes of safety and beautification.

Project Cost:

08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	0	0	0	0	4,000,000	0
	\$0	\$0	\$0	\$0	\$4,000,000	\$0
					\$4,000,000	\$4,000,000

Agency: Dana Point

Project Number: n/a

Project Name: #5B PCH/Del Prado Improvements-Phase 2

Project Limits/Loc: Pacific Coast Highway and Del Prado in the Town Center Area

Type Of Work: Road Maintenance

Additional TOW: reconstruction of roadway

Project Description: The City is currently completing a specific plan for this area. Phase I improvements would include modifications to both Del Prado and PCH. The City Council is currently studying the full extent of the planned work.

Project Cost:

08/09	09/10	10/11	11/12	12/13	13/14	14/15
C	0	7,500,000	7,500,000	0	0	0
	\$0	\$7,500,000	\$7,500,000	\$0	\$0	\$0
					\$15,000,000	\$15,000,000

Measure M: No

Measure M Growth Management Program

Congestion Management Program

Seven Year Capital Improvement Program (Sorted by Name)

Fiscal Years 2008/2009 through 2014/2015

Project Name	Percent	Estimated Cost	Project Cost	Priority
Unfunded	100.00%	4,000,000	4,000,000	Priority Two Project
	100.00%	\$4,000,000	\$4,000,000	

Agency: Dana Point

Project Number : n/a

Project Name: #8B Stonehill Medians

Project Limits/Loc : Storehill Drive from Del Obispo to Golden Lantern Street

Type Of Work : Aesthetics

Additional TOW: landscaping of roadway

Project Description: Construct median along Stonehill Drive from Del Obispo to Golden Lantern Street for the purposes of safety and beautification.

Project Cost:

	08/09	09/10	10/11	11/12	12/13	13/14	14/15	
C	0	0	0	0	4,000,000	0	0	
	\$0	\$0	\$0	\$0	\$4,000,000	\$0	\$0	\$4,000,000

Agency: Dana Point

Project Number : n/a

Project Name : #9B Blue Lantern Medians

Project Limits/Loc: Blue Lantern from Pacific Coast Highway to La Cresta

Type Of Work : Aesthetics

Additional TOW: landscaping of roadway

Project Description: Reconstruct medians along Blue Lantern from PCH to La Cresta for the purposes of safety and beautification.

Project Cost :

	08/09	09/10	10/11	11/12	12/13	13/14	14/15	
C	0	0	0	\$800,000	0	0	0	\$800,000
	\$0	\$0	\$0	\$800,000	\$0	\$0	\$0	\$800,000

Measure M: No

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:

DH	<u>X</u>
CM	<u>X</u>
CA	_____

DATE: JUNE 17, 2008**TO: CITY COUNCIL****FROM: DOUG CHOTKEVYS, CITY MANAGER
CHRISTY TEAGUE, ECONOMIC DEVELOPMENT MANAGER****SUBJECT: SHIPS TO REEFS****RECOMMENDED ACTION:**

That the City Council approve and adopt a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IN SUPPORT OF THE CALIFORNIA SHIPS TO REEFS CONCEPT OF ESTABLISHING ARTIFICIAL REEFS IN THE WATERS OFF SHORE OF THE CITY OF DANA POINT

ISSUES:

The issue before the City Council is whether to support the concept of creating an artificial reef utilizing a surplus federal ship off shore of Dana Point.

BACKGROUND:

A community meeting was held in the City Council Chambers on October 17, 2007, to introduce the topic of Ships to Reefs projects in nearby ocean waters. The concept of utilizing surplus federal ships as artificial reefs is an alternative to traditional scrapping methods used to remove retired ships from inventory. Surplus ships have been placed as artificial reefs along the coasts of San Diego, Florida, and Texas. The Rand Corporation, under contract with the Department of Defense, published an in-depth study of the various alternatives for removing retired ships from inventory and showed reefing as the best alternative. This is more fully described in the California Ships to Reefs issue paper, attached as Supporting Document 1.

DISCUSSION:

California Ships to Reefs, a 501(c)(3) nonprofit organization, has been active in working to create support for creating artificial reefs using surplus federal ships on a statewide

basis. Several communities have already supported this concept, including: San Diego, San Luis Obispo, Palos Verdes, Morro Bay, San Francisco and Monterey.

The California Ships to Reef organization will be holding an informational event at the Ocean Institute on Thursday, June 19th from 6:00 – 10:00 p.m. to share information with the public and to identify community members interested in pursuing a local Ships to Reef project.

CONCLUSION:

Staff will return with periodic updates to the Council on this matter.

FISCAL IMPACT:

None.

ACTION DOCUMENTS:

Page No.

A. [Resolution](#).....3

SUPPORTING DOCUMENTS:

B. [California Ships to Reefs Issue Paper](#)5

ACTION DOCUMENT A**RESOLUTION NO 08-06-17-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IN SUPPORT OF THE CALIFORNIA SHIPS TO REEFS CONCEPT OF ESTABLISHING ARTIFICIAL REEFS IN THE WATERS OFF SHORE OF THE CITY OF DANA POINT**

WHEREAS, the City of Dana Point includes the Dana Point Harbor and the waters three geographical miles from the mean high tide line; and,

WHEREAS, the City of Dana Point desires coastal dependent, coastal related, and visitor serving opportunities within the City; and,

WHEREAS, the City of Dana Point has been approached with the concept of creating reefs in the sandy bottom habitat by sinking cleaned and diver-rigged surplus or derelict vessels in waters off shore of Dana Point; and,

WHEREAS, when completely cleaned and rigged, the vessels to be sunk will provide a new recreation diving site destination that will be proximate to Dana Point and Dana Point Harbor and will support additional coastal dependent, coastal related and visitor serving uses; and

WHEREAS, the Ships to Reefs organization is working together with the public and federal, state, and local agencies to determine exact siting, permitting requirements and timing for future sinking of vessels for artificial reef purposes in Orange County; and,

WHEREAS, the Ships to Reefs organization seeks funding for the project through federal or private funds for the disposal of surplus federal ships.

NOW, THEREFORE BE IT RESOLVED that the City of Dana Point does hereby support the concept of creation of artificial reefs in Orange County off shore from Dana Point, provided the project is a benefit to the environment, the local economy and coastal related and visitor serving uses.

PASSED, APPROVED AND ADOPTED THIS 17TH DAY OF June 2008

JOEL BISHOP, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

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

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-06-17-XX adopted by the City Council of the City of Dana Point, California, at a regulation meeting thereof held on the 17th day of June, 2008, by the following vote:

AYES:

NOES:

ABSENT:

(SEAL)

KATHY M. WARD, CITY CLERK

SUPPORTING DOCUMENT B



California Ships to Reefs (CS2R) is a 501(c)(3) nonprofit public benefit corporation consisting of a coalition of affiliated 501(c)(3) nonprofit public benefit corporations, each of which comprises a regional "Sink Group". Members of the Sink Groups are divers, business people, professionals, scientists and a multitude of other professions, with the primary purpose of carrying out the CS2R vision. A member of each Sink Group sits on the Board of Directors of CS2R. The core group instrumental in forming CS2R reefed the former Canadian frigate *HMCS Yukon* in San Diego in 2000.

California Ships to Reefs Vision:

- Establish a regional system of environmentally cleaned and strategically reefed ships along the California coast accomplished via a statewide coalition of Sink Groups
- Establish California as an international dive destination
- Enhance the tourism industry centered on fishing and diving
- Enhance California ground fish populations

Why Reef Surplus Ships?

In 2001, the Rand Corporation, under contract to the Department of Defense, published an in-depth study of the various alternatives for removing retired ships from inventory. This study looked at four alternatives and clearly showed reefing as the best alternative:

Long Term (100 years) Storage. Cost: \$4.9 Billion

Requires periodic maintenance, is expensive, leaves hazardous materials aboard ships where they are subject to spillage, and at the end of 100 years, you still have just as many ships to dispose of as you started with.

Domestic Scrapping (Recycling). Cost: \$1.9 Billion

Domestic scrap prices are too volatile to make scrapping economically attractive. Labor and safety costs do not allow for sufficient profit. There are only two shipyards which will engage in scrapping and there are none on the West Coast.

Overseas Scrapping. Cost: \$170 Million (if it were allowed)

Towing to such places as India or Pakistan for scrapping is expensive. What makes overseas scrapping cheap is the fact that labor costs are low, safety costs are non-existent and there are no pollution controls. Toxic wastes are allowed to run off into the sea from the beaches where the ships are broken. Federal law now prohibits the export of such toxics as PCBs or asbestos, so the ships have to be cleaned here in any case, negating the savings.

Reefing. Cost: \$500 Million

Sinking surplus ships as dive sites is cost effective. The Federal Government cleans them of toxics, as they have to do in any event. Private groups such as CS2R or local or state governments, such as along the Atlantic and Gulf coasts, then "diverize" them by cutting diver access openings into them and remove such things as overhead cables for safety. They are then sunk in selected locations to provide dive tourism attractions. An incidental benefit is that they provide structure and hiding places where marine plants and animals can attach, or hide, to feed and breed. RAND determined that the cost of reefing a ship can be recovered within 12 years of its sinking through taxes on dive tourism alone. Since 2000, Yukon has proved to be even better for the local economy of San Diego than the RAND report projected. In fact, as documented in a subsequent Rand study published in 2005, Yukon has injected approximately \$4.5 million **per year** into the local economy.

REGIONAL OFFICES:

Central Valley: P.O. Box 958, Wheatland, CA 95692 Telephone 530-633-4858 Fax 530-633-0365
 Los Angeles: 335 North Third Street, Burbank, CA 91502 Telephone 818-276-1000 Fax 818-283-9116
 San Francisco: 1391 Woodside Road, Suite 200, Redwood City, CA 94061 Telephone 650-400-9887 Fax 650-851-1562

The Local Economy

California's historic fishing ports are in dire economic straits. Catches of most inshore species and several migratory species have fallen off drastically in recent years. While several initiatives have been undertaken to address these issues, the problem of how to sustain the ports, and the vessels which call them home, has not been solved.

Artificial reefs provide a large influx of SCUBA divers and their families to the ports which are near them. Many fishing vessels can be converted on a seasonal basis for diving, and some boat owners/captains may choose to go exclusively into the dive tourism business. In San Diego, 26,800 dives per year are made on the *HMCS Yukon*, 60% of these dives are made by divers from out of the area.

A significant number of jobs will be created to carry out the process of environmentally cleaning the ships, preparing them for reefing, and sinking.

A reefed ship attracts several types of recreational tourists. Hook and line fishermen are attracted to the reef for the obvious reason, more and bigger fish. Divers are attracted by the opportunity to dive on a "new" wreck. Those who have no intention of ever exploring the inside of a wreck (a penetration dive) will come to the site to view and take photos and video of the life which will colonize the new reef. And they will keep returning as the wreck matures and changes over time. The influx of these tourists creates income for:

Hotels	Restaurants	Airlines	Car-Rental Agencies
Gas Stations	Dive Boat Operators	Dive Shops	Fishing Boat Operators

And numerous other shops and attractions in the area.

In a report by the Bulletin of Marine Science, dated 2006, the sinking of the *Spiegel Grove* in Florida resulted in a direct increase of expenditures (net increase \$4.5MM), Sales/Output (net increase \$5.2MM) and income (net increase \$1.9MM) and the net addition of 137 jobs to local employment.

A study commissioned by the San Diego Oceans Foundation found that expenditures related to the *Yukon* have contributed \$4.5MM to the local economy and supported 225 full time jobs with more than \$700,000 in wages. *The local economy has benefited each year by more than three times (\$4.5MM) the initial investment of \$1.2MM.*

Commercial fishermen will benefit from the reef. Although they will avoid fishing on the wreck site itself due to the possibility of fouling their gear, commercial fishermen will benefit from the nursery/habitat area created as populations of larger fish are established in the area and move away from the reef.

The Local and State Tax Base

All of this additional local spending generates a corresponding increase in state and local sales tax revenue. By selling dive permits, the local Sink Groups will provide for maintenance of mooring buoys, navigation aids, etc.

Education

The public is fascinated by ships and things that involve them. As the people watched the transformation of the *HMCS Yukon*, from a combatant vessel into a clean and diver prepared reef-to-be, they also learned about the part this new reef would play in the ecology of their ocean. As this process is replicated, more and more members of the public will have this opportunity to learn about the current condition of their oceans, the ecological benefits of reefing and the economic benefits and redirection of their harbors and nearby areas.

During pre-sink baseline surveys and post-sinking studies of the new life accumulating on the reef, along with comparisons of the artificial reef and any natural reefs nearby, both the general public and the academic/science community can learn and benefit. Several communities along our coast have interest in creating marine studies centers with strategically placed video cameras on the ships to demonstrate the power of the ocean to rapidly grow a flourishing reef. A ship-based artificial reef can become a focal point for ongoing education, study and research as it evolves and changes from a ship into a living reef.

The Ocean Environment

Reefing a ship provides a hard substrate to which plants and invertebrate animals may attach themselves. These, in turn, provide food resources for larger sedentary and free swimming animals, and the complex nooks and crannies of a ship's superstructure provide hideouts and nursery areas for fish and other animals.

While most of the information on increased fish populations in anecdotal, there are studies which confirm this. One is a study conducted by the Reef Environmental Education Foundation (REEF) on the Spiegel Grove, sunk off the Florida coast in 2002. This study indicated a 3-fold increase in fish numbers and a doubling of species in the year following its sinking. A study of the Yukon, sunk off of San Diego and commissioned by the San Diego Oceans Foundation, found that within the first year three species were using the *Yukon* as breeding habitat. Two of these species are depleted over their range.

Some opponents of reefing argue that marine life merely moves from other areas to the new reef, with no increase in population, merely an in-migration of existing population. They content that the animal life is thus merely concentrated in a "killing zone". It has been shown, however, that there is no corresponding decrease of population in the surrounding waters as there would have to be if this was only an in-migration. There is no science to support the contention that reefed ships are merely Fish Attraction Devices (FADs).

Reefed ships also have another benefit for natural reefs and other dive sites. As a dive destination, a reefed ship takes some pressure off of the other local diving sites which can be "loved to death" by visits from too many divers. Touch a reef with a hand or a dangling gauge and you can damage or destroy a small piece. Hundreds of hands can cause a lot of damage. While all divers strive to secure their equipment and avoid any touching of sea bottom or structures, some contact cannot be avoided. Having reefed ships as additional dive sites eases the visitor pressure on natural sites.

Going Forward

Over the next 10 years, CS2R intends to sink 10-20 surplus ships along the California coastline to create artificial reef systems. In doing so we will create premiere dive sites which will boost the economies of the local harbor communities, provide alternative sustainable income to boat owner/operators, and promote millions of dollars in business for the local economies. The State of Florida alone has reefed over 250 vessels. The State and local governments recognize the huge economic benefit of cultured reefs and have recently enacted legislation to create a \$12MM matching fund trust to procure and sink these vessels.

In addition, these cultured reefs, as has been well documented, stimulate fish pro-creation and provide habitat for many species which are now depleted.

The net result of this activity, reconfirmed in California by the recent Rand Report, is that our state can reap broad economic and ecological benefits that far outweigh the modest investment.

**CITY OF DANA POINT
AGENDA REPORT****Reviewed By:**

DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JUNE 17, 2008**TO: THE HONORABLE MAYOR AND CITY COUNCIL****FROM: A. PATRICK MUNOZ, CITY ATTORNEY****SUBJECT: CITY MANAGER HOUSING AGREEMENT – SECOND AMENDMENT**

RECOMMENDED ACTION:

That the City Council 1) adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SECOND AMENDMENT TO CITY MANAGER HOUSING ASSISTANCE AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE RELATED DOCUMENTS; and

2) authorize the Mayor to execute the attached amendment to the City Manager's Housing Agreement, and related documents as appropriate.

BACKGROUND AND DISCUSSION:

On May 28, 2002, the Dana Point City Council approved a Housing Assistance Agreement with the City Manager as part of his compensation package for serving as the City Manager. The primary consideration for such housing assistance is that the Manager is responsible for the performance of essential services for the City, including but not limited to police, fire, disaster response relating to the City's proximity to the San Onofre Nuclear Generating Station and other public safety and general welfare services. Because the City Manager is on call to respond to serious emergencies at times outside normal business hours, and is on this status for a substantial amount of his personal time, there is a great benefit to the City to have Manager reside as near as possible to the City's offices and the scene of possible future emergencies.

In order to assist the City Manager with relocating to the City due to the prevailing cost of property in Dana Point, the City Council provided a housing assistance agreement to allow for the timely relocation of the City Manager and his family to Dana Point. That agreement was treated as an interest free home loan for tax purposes as well as a benefit when evaluating his salary and benefit package in comparison to other City Managers. In addition to paying Federal and State taxes on the income that was reported as part of the interest free loan that the City provided, the City Manager paid all of the annual property

taxes on the full assessed value of the subject property, as well as insurance and ongoing maintenance costs of the subject property.

On April 28, 2004, the Dana Point City Council amended the Housing Agreement to address concerns relating to liability exposures relating to the subject property, and matters relating to Federal and State income tax reporting resulting from this Housing Agreement being considered an interest free loan with the City Manager being taxed on the annual interest expense that would otherwise be paid for an interest bearing loan from the City. Due to an exam of various employee records and practices by the IRS, staff held off on implementing the provisions of the First Amendment to the Housing Agreement and used the time to have the examining agent confirm the proper tax treatment of the transaction.

The Mayor has requested that I prepare a second amendment to the City Manager's Housing Agreement which is attached. The purpose of the amendment is to present the City Manager with an opportunity to repay the full amount of the City's interest loan that has been provided as a result of the Housing Assistance Agreement, thereby allowing him to purchase the City's cash interest in the property. In essence, the proposed amendment would accelerate the repayment of funds to the City contemplated by the original terms of the Housing Agreement and negate the need for a deed of trust and other similar documentation contemplated by the First Amendment to the Housing Agreement.

The attached amendment provides the City Manager with the right, but not the obligation, to purchase the City's cash interest in the Subject Property. The City's cash interest in the Subject Property will be the summation of the City's purchase price (\$249,500) plus the total amount of any capital improvements funded by the City. The aforementioned amount is the amount that is the base by which the annual income that is reported to the Internal Revenue Service (IRS) is calculated for income reporting purposes. The IRS recently reviewed the Housing Agreement and concurs with this method of calculation for the City Manager's taxable income associated with the Housing Agreement.

In connection with the aforementioned, and if the proposed amendment is approved by the Council, the City Manager has indicated a desire to refinance the subject property in the near future to repay the City and to terminate the Housing Agreement. The attached resolution would authorize the Mayor to sign any appropriate documents on behalf of the City such as a quit claim deed, escrow instructions, a termination notice, and the amendment to the Housing Agreement.

FISCAL IMPACT:

Upon approval of this amendment and its execution, the City's cash interest in the subject property will be repaid. That amount will be equal to the City's purchase price (\$249,500) plus the total amount of any capital improvements funded by the City, and would be deposited into the City's General Fund. Presumably, this will result in a repayment

sooner than would otherwise occur, but the amount of the repayment will not change from that originally contemplated in the Housing Agreement.

ACTION DOCUMENTS:**Page No.**

1. [Resolution Approving Second Amendment to Housing Agreement and Authorizing Mayor to Execute Related Documents](#)..... 4
2. [Second Amendment to the City Manager's Housing Assistance Agreement](#)..... 6

ACTION DOCUMENT A**RESOLUTION NO. 08-06-17-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SECOND AMENDMENT TO CITY MANAGER HOUSING ASSISTANCE AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE RELATED DOCUMENTS**

WHEREAS, the City of Dana Point ("City") approved a Housing Assistance Agreement with Doug Chotkevys ("Chotkevys") in his capacity as City Manager as part of his compensation package for serving as the City Manager of the CITY; and

WHEREAS, on April 28, 2004, the Dana Point City Council amended the Housing Assistance Agreement to address concerns relating to liability exposures relating to the subject property and matters relating to income tax reporting resulting from the City and Chotkevys' treatment of the Housing Agreement being as interest free loan; and

WHEREAS, Chotkevys has paid all of the annual property taxes on the full assessed value of the subject property as well as insurance and ongoing maintenance costs of the subject property; and

WHEREAS, the Dana Point City Council would like to authorize the Chotkevys to purchase the balance of the City's cash interest in the subject property to eliminate the need for the Housing Assistance Agreement by approving the accompanying Second Amendment to that Agreement; and

WHEREAS, the City Council desires to authorize the Mayor to execute a quit claim deed, and such other documents as may be necessary to carry out the intent of the City and Chotkevys with regard to this Resolution and the Second Amendment to the Housing Assistance Agreement.

NOW, THEREFORE, the City Council of the City of Dana Point hereby resolves and certifies as follows:

1. The accompanying Second Amendment to the Housing Assistance Agreement between City and Chotkevys is hereby approved, and the Mayor is authorized to execute that agreement on behalf of the City.
2. The Mayor is hereby authorized to execute a quit claim deed, a termination of agreement, and any other similar documents which are deemed necessary to implement the terms of this Resolution and the accompanying Second Amendment to the City Manager's Housing Assistance Agreement.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

Kathy M. Ward, City Clerk

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

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-06-17-XX adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008 by the following vote:

AYES:

NOES:

ABSENT:

Kathy M. Ward, City Clerk

ACTION DOCUMENT B**SECOND AMENDMENT TO THE CITY MANAGER'S HOUSING
ASSISTANCE AGREEMENT**

This Second Amendment to the City Manager Housing Agreement between the City of Dana Point ("CITY") and Douglas C. Chotkevys ("CHOTKEVYS") is made and entered into so as to be effective on June 17, 2008 ("AMENDMENT NO. 2").

RECITALS

WHEREAS, at the time of the City Manager's appointment on January 29, 2002, the CITY acknowledged that housing prices in Orange County, particularly those areas that are proximately located near the coast such as the City of Dana Point, were among the highest in the State of California.

WHEREAS, on May 28, 2002, the Dana Point City Council approved a Housing Assistance Agreement with CHOTKEVYS as part of CHOTKEVYS' compensation package for serving as the City Manager of the CITY. The primary consideration for such housing assistance is that Manager is responsible for the performance of essential services for the CITY, including but not limited to police, fire, disaster response relating to the CITY's proximity to the San Onofre Nuclear Generating Station and other public safety and general welfare services. Because the City Manager is on call to respond to serious emergencies at times outside normal business hours, and is on this status for a substantial amount of his personal time, there is a great benefit to the CITY to have Manager reside as near as possible to the CITY's offices and the scene of possible future emergencies.

WHEREAS, on April 28, 2004, the Dana Point City Council amended the Housing Agreement to address concerns relating to liability exposures relating to the subject property and matters relating to income tax reporting resulting from this Housing Agreement being an interest free loan with CHOTKEVYS being taxed on the annual interest expense that would otherwise be paid for an interest bearing loan from the CITY.

WHEREAS, CHOTKEVYS has paid all of the annual property taxes on the full assessed value of the subject property as well as insurance and ongoing maintenance costs of the subject property.

WHEREAS, the Dana Point City Council would like to provide a way for CHOTKEVYS to purchase the CITY's cash interest in the subject property to eliminate the need for this Housing Agreement.

WHEREAS, this Second Amendment is made for the purposes of modifying the Housing Agreement as set forth herein.

NOW, THEREFORE, CITY AND CHOTKEVYS, in consideration of the mutual covenants and agreements herein contained, agree as follows:

COVENANTS

Section 1: Manager's Right to Purchase Interest of CITY.

Upon the adoption of this Amendment No. 2 and during the term of the Housing Agreement, CHOTKEVYS shall have the right, but not the obligation, at any time to purchase the entire balance of the CITY's cash interest in the Subject Property. The CITY's cash interest in the Subject Property will be the summation of the CITY's purchase price (\$249,500) plus the total amount of any capital improvements funded by the CITY less any reduction in the City's percentage interest as a result of any repayments of the initial cash interest made by CHOTKEVYS as contemplated by the Housing Agreement. In addition, contemporaneously with CHOTKEVYS' exercise of the option set forth herein, the parties shall cause the vested interests of the parties to be amended by recording a quitclaim deed, executing a notice of termination of the Housing Agreement, and executing and recording any other applicable documents either party deems necessary to reflect any changes in the ownership interests of CHOTKEVYS and the CITY consistent herewith. In order to exercise the option set forth herein, CHOTKEVYS shall provide a release on behalf of the CITY of any mortgage encumbering the property and/or payoff the indebtedness associated therewith. CHOTKEVYS will be responsible for paying the costs associated with transferring the CITY's interest in the property as part of the aforementioned transaction.

Should CHOTKEVYS choose to purchase the balance of the CITY's cash interest in the subject property as contemplated herein, he will be required to pay for the appropriate income tax (if any) on the taxable portion of the interest free loan that he has enjoyed from January 1st of the year that the transaction takes place to the day of the transfer of property from the CITY to CHOTKEVYS.

Section 2: Execution of Documents

The Parties shall take all actions, and execute all documents necessary to implement the provisions of this Second Amendment, and the Mayor is authorized to execute any such documents on behalf of the CITY.

Section 3: Effects of Amendments

Except as modified by the provisions set forth herein, the terms and conditions of the agreement shall remain in full force and effect.

[Signatures on the following page.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first set forth above.

By: _____
Joel Bishop, Mayor

By: _____
Douglas Chotkevys, City Manager

By: _____
Susan Chotkevys

ATTEST:

Kathy M. Ward, City Clerk

APPROVED TO FORM:

A. Patrick Munoz, City Attorney

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

**FROM: OCEAN WATER QUALITY SUBCOMMITTEE AND
BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING
SERVICES**

**SUBJECT: GREASE INTERCEPTOR REBATE PROGRAM EXTENSION, CITY OF
DANA POINT**

RECOMMENDED ACTION:

That the City Council (1) approve the continuation of the Grease Interceptor Rebate Program, and (2) waive permit-related fees for applicants approved for this program.

BACKGROUND:

The City's Ocean Water Quality Subcommittee previously recommended a grease interceptor installation rebate program jointly with South Coast Water District (SCWD) which was approved by City Council in December 2005. This pilot program was authorized for two fiscal years (FY06-07 and FY07-08) requiring an evaluation as to whether or not the program should be continued after the first two years.

Grease interceptors help to prevent sewer spills that result from grease blockages and reduce additional maintenance activities that are required due to the presence of grease in the sewer lines. To date, two (2) businesses have taken advantage of this program. In addition, there are four (4) additional businesses in the planning, permitting and/or construction process that have applied for this program.

This financial incentive program helps existing Food Service Establishments (FSEs) that currently do not have grease interceptors and are not required to install them. New, remodel or transfer of ownership FSEs are required to install grease interceptors and are not currently eligible for this program.

The Ocean Water Quality Subcommittee and South Coast Water District found this program to be effective and gaining momentum and recommend continuation of the program. Therefore, staff is seeking approval to continue this program so that these and other grease interceptors can be installed.

Priority for the financial incentive has been given to high risk facilities (i.e. those that have had a history of spills or are in the vicinity of “hotspot” sewer line grease buildup areas). Upon approval, eligible participants are granted a rebate of 50% of the total cost of the grease interceptor installation project and a waiver of City and SCWD permit-related fees. The City and SCWD split the 50% rebate for grease interceptor installation costs (therefore the City funds 25% and SCWD funds 25%). Total costs for these installations have ranged from: \$23,000-\$27,000. The City of Dana Point has taken the lead in program administration and works closely with the SCWD.

DISCUSSION:

A program brochure and application were prepared under the pilot program and it is proposed that the same materials, with minor corrections, be utilized to continue the program (See Supporting Documents). The program is implemented on a first-come–first-served basis. Should continuation of the program be approved, another mailing will be sent to the high priority facilities and a second tier list of facilities to readvertise the program. The program would apply beyond the highest priority facilities with this extension.

NOTIFICATION/FOLLOW-UP:

SCWD

High risk priority and second-tier Food Service Establishments (FSEs)
City Building Department – Permit-related Fee Waiver

STRATEGIC PLAN IMPLEMENTATION:

This action is in compliance with the Strategic Plan Initiative to restore and maintain the integrity of our ocean waters and beaches.

FISCAL IMPACT:

Funding for continuation of this program would again require an annual contribution of \$25,000 each, from both the City of Dana Point and the South Coast Water District, along with approximately \$2,000 annually to offset lost permit fee revenue. \$25,000 for this program has already been budgeted and approved in the budget for FY08-09.

ALTERNATIVE ACTIONS:

1. Other actions as determined by City Council.

ACTION DOCUMENTS:

None

SUPPORTING DOCUMENTS:**PAGE NO.**

A. Program Brochure	4
B. Program Application & Agreement	6

Supporting Document B – Program Brochure

How To Apply for the Rebate

Call the City of Dana Point at 949-248-3584 for information about the ***Grease Interceptor Rebate Program*** and to get an application. You must complete the application and submit it to the ***City of Dana Point, which is the Program Administrator***. You can mail or deliver it to City Hall, 33282 Golden Lantern, Dana Point, CA 92629, Attention: Lisa Zawaski.

Applications will be reviewed in the order received and qualifying establishments will be notified. If you qualify for program:

1. You must develop a plan for the design, materials and installation of the grease interceptor and ***get 2-3 cost estimates***. We can supply you with a resource list of grease interceptor suppliers and licensed plumbers who can install interceptors.
2. You must submit your ***plan and estimates to the City***, which will coordinate review with South Coast Water District and notify you if approved.
3. South Coast Water District will estimate your ***annual savings in sewer charges*** to help you assess the payback period for your direct costs. (Reduced sewer rates assume full implementation of Kitchen Best Management Practices and proper maintenance of the grease interceptor.)

This program is a cooperative effort of the City of Dana Point & South Coast Water District, which have a vested interest in protecting and improving the water quality of our creeks, beaches and ocean. For information or application, call: 949-248-3584

Printed on Recycled Paper

City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

City of Dana Point Water Quality ↔ Clean Beaches—Clean Ocean
South Coast Water District ↔ Partnering With The Community



Got Grease?

**Remember:
The Drain Is Not A Dump.**

The City of Dana Point & South Coast Water District GREASE INTERCEPTOR REBATE PROGRAM for Food Service Establishments

If you qualify for the rebate and install an approved grease interceptor, you can:

- Get up to 50% cash back on installation costs.
- Avoid installation permit fees.
- Qualify for lower sewer rates.
- Avoid sewer back-ups, business down-time and potential fines.
- Save on cleaning and operating costs.
- Help keep ocean water clean.

Apply Today!



Program Goals

The *Grease Interceptor Rebate Program* offers qualifying food service establishments in the City of Dana Point — which are served by South Coast Water District — the opportunity to get *cash rebates up to 50%* of the cost of installing a grease interceptor.

The program goals are to:

- *Prevent untreated sewage from backing up into your facility*, potentially closing your business, inconveniencing customers or causing a public health hazard.
- *Prevent wastewater from overflowing into the street* and down storm drains that lead to the ocean.
- *Prevent beach closures* and protect ocean water quality.
- *Prevent sewer lines from being blocked* by fats, oils and grease — thereby reducing the chance of sewer spills.



Grease Floating in Sewer Line

Program Eligibility

The City of Dana Point and South Coast Water District will provide qualifying food service establishments with rebates up to 50% for the cost to design, purchase and install approved grease interceptors. Funds are available now.

To be eligible, your establishment must:

- Be located in the City of Dana Point and served by South Coast Water District.
- Have an undersized grease interceptor or none at all.
- Qualify as a priority program candidate.
 - ✓ Contributed to a grease-related sewer spill.
 - ✓ Located in an area where the District must clean excessive grease in the sewer system at least four times a year.
- Be able to install the interceptor on private property or possibly in a right of way, subject to site constraints and City review.
- Complete the rebate application and, if approved, commit to:
 - ✓ Fund the balance of installation costs.
 - ✓ Implement Kitchen Best Management Practices.
 - ✓ Install and properly maintain the interceptor.

Applications will be considered on a first come-first served basis . . . so apply now!



Grease Build Up In Sewer Line

Program Benefits to your Business

- Dramatically *reduce out-of-pocket costs* to install a grease interceptor.
- *Prevent sewer spills* that can negatively impact your business.
- Protect the environment and *avoid potential state and federal fines* for causing a sewer spill.
- *Waive City permit fees* for installation of an approved interceptor.
- *Qualify for reduced South Coast Water District sewer rates* by implementing Kitchen Best Management Practices and maintaining a properly-sized grease interceptor. The reduced rates provide long-term savings to your business.



Supporting Document B – Program Application & Agreement

Print Form



**CITY OF DANA POINT &
SOUTH COAST WATER DISTRICT
GREASE INTERCEPTOR REBATE PROGRAM
APPLICATION & AGREEMENT**



**South Coast
Water District**
Providing Quality Water and Wastewater
Services to the Coastal Communities

GENERAL INFORMATION

Business Name: _____

Business Address: _____

Contact: _____ Title or Position: _____

Phone: _____ Fax: _____ Email: _____

TYPE OF ESTABLISHMENT

- ☐ Fast Food: ☐ Restaurant:
☐ Food Processing: ☐ Other (specify): _____

PREREQUISITES

Please check the following boxes to certify that you meet program requirements. If you have any questions, please call 949-248-3584.

- ☐ Your facility is a priority candidate for this program, that is, you have received an "Invitation to Apply" letter from the City and South Coast Water District (SCWD).
☐ Your establishment is located in the City of Dana Point (not in the Harbor) and served by SCWD. (Note: Harbor establishments may be eligible under a separate County program.)
☐ Your establishment does not currently have a grease interceptor or has an undersized grease control device.
☐ Your establishment is not mandated by City or SCWD ordinance to install a grease interceptor (i.e., you are an existing facility, not new, changing ownership or undergoing a major remodel).
☐ You can install a grease interceptor on private property (not in a right-of-way). If not, please contact the City to determine other options, if available.

CURRENT GREASE HANDLING & DISPOSAL

1. Grease Interceptor: Yes ☐ No ☐ Size in gallons: _____
 2. Grease Trap: Yes ☐ No ☐ Size in gallons: _____

PROGRAM TERMS & CONDITIONS

By submitting this application, and if approved for the cash rebate, the applicant agrees, to:

1. Comply with the wastewater discharge requirements under South Coast Water District's Ordinance 201 and your General Waste Discharge Permit, which requires: (a) implementation of kitchen best management practices and (b) proper maintenance of grease interceptors.
2. Construct a properly designed mop/mat washing area that prevents washwater from entering municipal storm drain system. Existing systems may be approved, if appropriate.
3. Properly store used yellow grease containers. Internal self-contained systems are encouraged and may be required.

4. Comply with the requirements of the Grease Interceptor Rebate Program:
- Develop a plan for the design, materials and installation of the grease interceptor and provide a minimum of two cost estimates for the interceptor to the City for review by the City and SCWD. Applicant to identify preferred contractor when submitted cost estimates.
 - Once contractor is selected and approved by the City, submit plans to the City and SCWD for review and approval. Permit fees will be waived. Please note that applicant is responsible to pay up front costs for the installation and receive rebate after final inspection and approval.
 - Once plans are approved and permit is issued, install the grease interceptor per approved plans.
 - Once project has been inspected and finalized by SCWD and City Building Inspectors, provide invoice(s) for costs associated with the design, materials and installation of the grease interceptor to secure the rebate.

TO BE COMPLETED AND SIGNED BY APPLICANT

The applicant attests that the submitted information is true, accurate and complete. Should the applicant receive a cash rebate under the Grease Interceptor Rebate Program, the applicant agrees to the terms and conditions outlined above. The applicant understands that cash rebate amounts are subject to final determination by the City of Dana Point and the South Coast Water District and the submittal of this application in no way obligates the City to issue a cash rebate, nor does it obligate the applicant to install a grease interceptor. However, if the applicant receives money from the City and/or SCWD pursuant to the Rebate Program, the money shall serve to reimburse 50% of the costs of installing the grease interceptor.

Signature-Facility Authorized Representative

Printed Name-Authorized Representative

Representative Title

Date

Send or fax your completed, signed Grease Interceptor Rebate Program Application to:

City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
Attn: Lisa Zawaski

Fax #: 949-234-2826
Phone: 949-248-3584
Email: lzawaski@danapoint.org

If you would like an estimate of annual cost savings in sewer usage charges to help you assess the payback period for your direct costs, contact Ron Cestari at South Coast Water District at 949-499-4555 ext. 3136 or at rcestari@scwd.org. Reduced sewer rates assume full implementation of Kitchen Best Management Practices and proper maintenance of the grease interceptor.

TO BE COMPLETED BY CITY OF DANA POINT & SOUTH COAST WATER DISTRICT

Food service establishment has submitted a plan and at least two cost estimates for design, materials, and installation of a grease interceptor? Yes ☐ Date: _____
Final Plan approved by City: Yes ☐ Date: _____
Final Plan approved by SCWD: Yes ☐ Date: _____

Grease Interceptor Rebate

- Total cost of project (per approved plans): \$ _____
- Up to 50% of total cost to be rebated to the establishment (25% from City; 25% from SCWD): \$ _____
- Direct cost to establishment for grease interceptor: \$ _____

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> X </u>

DATE: JUNE 17, 2008

TO: CITY MANAGER/HONORABLE MAYOR & CITY COUNCIL

**FROM: MIKE KILLEBREW, DIRECTOR OF ADMINISTRATIVE SERVICES
ANDREW S. GLASS, ACCOUNTING MANAGER**

**SUBJECT: ADOPTION OF A RESOLUTION ESTABLISHING THE APPROPRIATIONS
LIMIT FOR FISCAL YEAR 2008/2009**

RECOMMENDED ACTION:

That the City Council adopt a Resolution entitled:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR
2008/2009**

DISCUSSION:

Voters approved the Gann Spending-Limitation Initiative in November 1979, adding an Article to the State of California's Constitution to establish and define annual Appropriations Limits on state and local governmental entities. Implementation of this Article is achieved by defining various terms used in this article and prescribing procedures to be used in implementing specific provisions of the Article, including the annual establishment of an Appropriations Limit by each local jurisdiction, in our case by Council Resolution (Action Document A).

Essentially, the Gann Initiative limits the amount of tax revenue a City may raise, and by limiting revenue the amount the City may spend is thereby restricted.

At the date Dana Point incorporated, LAFCO established the City's initial Appropriations Limit. By State law this amount has been adjusted each year based upon a prescribed factor derived from changes in the City's population plus an inflation factor. These two factors are both provided to the City by the California Department of Finance.

The annual action that the City is required to take involves recalculating the Appropriations Limit by using the adjustment factors provided by the State.

Recalculating the Appropriations Limit

The annual adjustment is derived using population and per-capita personal income inflation factors provided by the State of California's Department of Finance. The prior year's Appropriations Limit is multiplied by this component to arrive at the current year's Appropriations Limit. This calculation is shown in Supporting Document B. For FY 2008/2009, the Appropriations Limit has been calculated to be \$70,316,726.

Determining City Compliance with Appropriations Limit

As described earlier, the Appropriations Limit establishes the amount of tax revenue the City may receive for a given year. As has been discussed in past years, Dana Point's Appropriations Limit vastly exceeds the tax revenue the City is likely to generate for years to come, if ever. In the case of the FY2008/2009 Appropriations Limit, total City revenue (both tax *and* non-tax) under the adopted FY 2008/2009 budget are only \$33,588,812, which is well under the Appropriations Limit.

STRATEGIC PLAN IMPLEMENTATION:

Achieve total excellence in municipal services and City administration/planning with excellent customer service and cost-effectiveness.

FISCAL IMPACT:

None.

ACTION DOCUMENTS:**Page No.**

- A. [Resolution Adopting the Appropriations Limit for FY 2008/2009](#).....3

SUPPORTING DOCUMENTS:

- B. [Calculation of FY 2008/2009 Appropriations Limit](#)..... 5

ACTION DOCUMENT A**RESOLUTION NO. 08-06-17-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2008/2009.**

WHEREAS, the voters approved the Gann Spending-Limitation Initiative (Proposition 4) on November 6, 1979, adding Article XIII B to the Constitution of the State of California to establish and define annual appropriation limits on state and local governmental entities; and

WHEREAS, SB 1352 provides for the implementation of Article XIII B by defining various terms used in this article and prescribing procedures to be used in implementing specific provisions of the article, including the establishment by resolution each year by the governing body of each local jurisdiction of its appropriations limit; and

WHEREAS, the required computations to determine the Appropriations Limit for Fiscal Year 2008/2009 have been performed by the Department of Administrative Services and are on file with the Office of the City Clerk, and available for public review; and

WHEREAS, these computations are provided in Supporting Document B which is herein incorporated by reference and attached hereto.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The Appropriations Limit for the City of Dana Point for Fiscal Year 2008/2009 is \$70,316,726.

Section 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Dana Point at its regular meeting held on the 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

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

I, KATHY M. WARD, City Clerk of the City of Dana Point, California do hereby certify that the foregoing Resolution No. 08-06-17-xx was duly adopted and passed at a regular meeting of the City Council on the 17th day of June, 2008, by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY M. WARD, CITY CLERK

SUPPORTING DOCUMENT B

**CITY OF DANA POINT
APPROPRIATIONS LIMIT CALCULATION
FISCAL YEAR 2008/2009**

A. Prior Year's Adopted Limit (FY 2007/2008)	\$67,042,376
FY 2008/2009 adjustment Factors:	
1. Population %	.57
2. Inflation %	4.29
3. Population converted to a ratio	1.0057
4. Inflation converted to a ratio	1.0429
B. Total Adjustment Factor (= A3 x A4)	<u>1.04884</u>
C. FY 2008/2009 Limit (= A x B)	\$70,316,726

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM: BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: ADOPTION OF RESOLUTION APPROVING FINAL TRACT MAP NO. 16769, THE REQUIRED LANDSCAPE AND MAINTENANCE AGREEMENT, AND THE ACCOMPANYING SUBDIVISION IMPROVEMENT AGREEMENT

RECOMMENDED ACTION:

That the City Council (1) adopt a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING FINAL TRACT MAP NO. 16769, THE REQUIRED LANDSCAPE AND MAINTENANCE AGREEMENT, AND THE ACCOMPANYING SUBDIVISION IMPROVEMENT AGREEMENT.

ISSUES:

The issue before the City Council is the Staff recommended approval of Final Tract Map No. 16769, which has been prepared by the subdivider and verified to be in substantial conformance with the conditionally approved Tentative Tract Map 16769 in Monarch Beach, adjacent to the St. Regis Hotel. Staff is also recommending approval of the required Landscape and Maintenance Agreement, and the accompanying Subdivision Improvement Agreement. The proposed resolution is attached as Action Document A.

BACKGROUND:

On February 25, 1992, the Dana Point City Council adopted the Monarch Beach Resort Specific Plan. The Specific Plan, which refined land use designations and established zoning regulations, called for the subject site to be developed with a residential use (7 to 14 dwelling units per acre).

On May 19, 1992, the Planning Commission approved SDP91-07/VTTM 14589 for the development of a 400 key hotel and 86 residential dwelling units.

On April 20, 2005, the Planning Commission approved TTM 16769, amending a portion of the previously approved Final Map 14589 for Hotel Residential South in the Monarch Beach Resort specific plan area. The approval allows for the development of 28 attached dwelling units and associated improvements on Hotel Residential South.

On June 8, 2005, the City Council denied an appeal and upheld the Planning Commission's approval of Tentative Tract Map 16769 and Site Development Permit SDP91-07(III).

A request for a one (1) year extension for the project was approved by the Community Development Department that extended the expiration date of the Tentative Map to June 8, 2008. The Final Map has been under review and processing for some time, and as such, Subdivision Map Section 66452.6 allows a map to remain valid. The Section reads as follows:

Subdivision Map Act Section 66452.6 (d) states that *"Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section."*

The City Attorney has confirmed that the entitlements are still valid in this case, and the Final Map should be processed and approved.

A copy of the Planning Commission staff report for the consideration of TTM 16769 is included as Supporting Document B. A location map is included as Supporting Document C.

DISCUSSION:

The Subdivision Map Act (Map Act), Section 66410 – 66499.58 of the California Government Code, provides for the subdivision of property and vests the regulation and control of the design and improvement of subdivisions in the legislative body of the local agency (the City). Included as Supporting Document D are pertinent sections from the Subdivision Map Act (Sections 66410-66499.58), and a detailed assessment of compliance with each section, by the applicant.

Additionally, the Subdivision Map Act requires that, if the Final Map conforms to the Tentative Map and all requirements of the Subdivision Map Act, a Final Map must be approved by the legislative body. The local agency shall only disapprove the Final Map if it does not conform.

All pertinent Conditions of Approval have been satisfied as described in Supporting Document E. The City's assessment of the status of compliance with all pertinent Sections of the Dana Point Municipal Code is included in Supporting Document F. Also, the County Surveyor has certified the Final Map to be technically correct per the letter included as Supporting Document G.

The Conditions of Approval for TTM 16769 required the Applicant to prepare, execute and submit a Landscape and Maintenance Agreement. The Applicant has submitted the document (Attachment A to Action Document A-Resolution), and Staff recommends approval. Furthermore, Section 66462 of the Subdivision Map Act requires a developer to enter into a Subdivision Improvement Agreement to obligate the construction of required public and private improvements, if the improvements are not completed. The Applicant has prepared, executed, and submitted the required agreement (Attachment B to Action Document A-Resolution), and Staff recommends approval. The Applicant has also submitted a current Title Report, Supporting Document H, that demonstrate no development liens exist on the property.

Based on these facts and Staff's review of the Final Map, the Final Map has been prepared by the subdivider and verified to be in substantial conformance with the conditionally approved Tentative Tract Map 16769. Further, the Final Map was submitted to the City in advance of the expiration of the Tentative Tract Map in compliance with State law. It is, therefore, recommended that the City Council adopt the attached resolution (Action Document A) approving the Final Map and the accompanying agreements. A copy of the Final Map is included herein as Supporting Document I.

STRATEGIC PLAN IMPLEMENTATION:

The project is in compliance with the Strategic Planning Initiative to maintain, modernize and beautify the City's infrastructure.

FISCAL IMPACT:

None

ALTERNATIVE ACTIONS:

None.

ACTION DOCUMENTS:

PAGE #:

A. [Resolution](#)..... 5

SUPPORTING DOCUMENTS:**PAGE #:**

B.	Planning Commission Staff Report	29
C.	Location Map	36
D.	Subdivision Map Act Sections, Pertinent Sections	37
E.	Tract Map 16769 Conditions of Approval	49
F.	City of Dana Point Municipal Code	69
G.	Letter of Survey Certification from the County of Orange	82
H.	Title Report	84
I.	Final Map	107

ACTION DOCUMENT A - Resolution**RESOLUTION NO. 08-06-17-xx****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING FINAL TRACT MAP NO. 15924**

WHEREAS, on June 8, 2005, the City of Dana Point City Council approved Tentative Tract map No. 16769, Site Development Permit No. SDP91-07(III).

WHEREAS, the applicant has complied with all other Conditions of Approval required prior to Final Map approval for Tentative Tract Map No. 16769; and

WHEREAS, the City Engineer has reviewed the Final Tract Map No. 16769 and find it to be in substantial conformance with the Tentative Tract Map and to be technically correct.

WHEREAS, the applicant has filed a complete application of a Final Map within the allowable time periods to the Director of Public Works and Engineering Services; and

WHEREAS, the applicant has executed and submitted for City Council approval a Landscape and Maintenance Agreement per the Conditions of Approval which is included herein as Attachment A.

WHEREAS, the applicant has executed and submitted a Subdivision Improvement Agreement for City Council approval per Section 66462 of the Subdivision Map Act which is included herein as Attachment B.

THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. That the City Council does hereby approve the Final Tract Map No. 16769 pursuant to Section 66458 of the Subdivision Map Act.

Section 2. That the City Council does hereby direct staff to issue permits only when all Conditions of Approval are addressed as listed in City Council Resolution No. 05-06-08-04.

Section 3. That the City Council does hereby approve the Landscape and Maintenance Agreement, included as Attachment A of this resolution, per the conditions of approval for Tract No. 16769.

Section 4. That the City Council does hereby approve the Subdivision Improvement Agreement, included in Attachment B to this resolution, per Section 664652 of the Subdivision Map Act.

Section 5. That the City Clerk shall certify the adoption of this Resolution and so note on the Final Map.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

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

I, KATHY WARD, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-xx-xx-XX adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008 by the following vote:

AYES:

NOES:

ABSENT:

(SEAL)

KATHY M. WARD, CITY CLERK

Attachment A: Landscape and Maintenance Agreement**RECORDING REQUESTED BY:****WHEN RECORDED MAIL TO:**

COX, CASTLE & NICHOLSON LLP
19800 MacArthur Boulevard, Suite 500
Irvine, CA 92612
Attn: Camellia K. Schuk, Esq.

(Space Above For Recorder's Use)

**LANDSCAPING, IRRIGATION AND MAINTENANCE AGREEMENT
(The Residences at Monarch Beach Resort)**

THIS LANDSCAPING, IRRIGATION AND MAINTENANCE AGREEMENT ("**Agreement**") is entered into as of the ____ day of _____, 2008, by and between the CITY OF DANA POINT, a municipal corporation, organized and existing under the constitution and laws of the State of California ("**City**"), and RESORT RESIDENTIAL SOUTH, LLC, a Delaware limited liability company ("**Developer**"). The City and the Developer are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. The Developer owns that certain real property located in the City of Dana Point, County of Orange, State of California ("**Property**"), more particularly described on **Exhibit A**.

B. The Developer intends to improve the Property with a residential condominium project to be known as The Residences at Monarch Beach Resort (the "**Project**").

C. The City (i) is the owner of the public right-of-way adjacent to the Project which is currently improved with, among other things, the public street known as "Niguel Road," related parkways, and public sidewalks and (ii) shall be granted a public right-of-way over the road segment between Stonehill Drive and Sea Terrace Park along the southern boundary of the Project ("**Road Segment**") once the Road Segment is developed (collectively, the "**Public Right-of-Way**"). In connection with the development of the Project, the Developer will install or has installed landscaping in accordance with the City's approved landscape plan and will make or has made various other improvements to the Public Right-of-Way, as required by the conditions of approval of the tract map for the Project ("**Conditions of Approval**").

D. The City and the Developer desire to enter into this Agreement to satisfy the requirements set forth in the Conditions of Approval for the maintenance and repair of the landscaping and irrigation system to be installed or already installed by the Developer in the Public Right-of-Way pursuant to a landscape plan approved by the City (collectively, the

“Improvements”), which Improvements are located as described and depicted on **Exhibit B** attached hereto and incorporated herein (the **“Maintenance Area”**).

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions set forth hereinbelow, the City and the Developer hereby agree as follows:

Grant of License. The City hereby grants to the Developer a license in, on, over, under, across, and through the Maintenance Area for purposes of inspecting, maintaining, repairing, and replacing the Improvements originally installed by the Developer in the Maintenance Area. These license rights shall include incidental rights thereto, which shall consist of reasonable rights of ingress and egress, as necessary, across the Maintenance Area to inspect, maintain, repair, and replace the Improvements originally installed by the Developer in the Maintenance Area. All such maintenance shall be conducted so as to minimize interference with the use of the public of the City’s Public Right-of-Way. The City shall have the unilateral right to terminate the license, and if the City does so, this Agreement shall be of no further force or effect and thereupon the City shall assume the obligation to inspect, maintain, repair and replace the Improvements.

Irrigation and Maintenance of Landscaping. For so long as the license granted in Section 1 is in effect, the Developer shall maintain, or cause to be maintained, at its sole cost and expense and in a neat, clean, safe, attractive, orderly, and operating condition at all times, the Improvements originally installed by the Developer in the Maintenance Area pursuant to the City’s approved landscape plan. Such maintenance shall include, without limitation, regularly inspecting, mowing, fertilizing, watering, removing weeds from, and replacing (as necessary) the grass and other groundcover in the Maintenance Area; regularly inspecting, fertilizing, watering, pruning, trimming, removing dead leaves and branches from, and replacing (as necessary) the trees in the Maintenance Area; regularly inspecting and raking, sweeping, cleaning up, and/or otherwise removing any fallen leaves, branches, cut grass, trash, and other debris from the Maintenance Area; regularly inspecting, maintaining, repairing, and replacing (as necessary) the irrigation system originally installed by the Developer in the Maintenance Area; and otherwise maintaining the landscaping in the Maintenance Area in a condition comparable to the condition originally approved by the City. Subject to Sections 5 and 6 below, neither the City nor any of its employees or agents shall interfere with, modify, remove, supplement, maintain, irrigate, or replace the landscaping in the Maintenance Area on the Road Segment. Notwithstanding the foregoing, in the event any maintenance or repairs to the Maintenance Area are required due to the negligent acts or omissions, or intentional misconduct of employees of the City, the cost of such maintenance and repair shall be the responsibility and obligation of the City and not the responsibility and obligation of the Developer. Any repairs or replacement of the landscaping within the Maintenance Area must be done in accordance with the City approved landscaping plan.

Term. This Agreement shall commence as of the date first written above and shall remain in full force and effect indefinitely unless and until: (a) the City terminates the license granted in Section 1 hereof; (b) the Developer acquires fee simple title to the Maintenance Area; or (c) the Agreement is terminated by mutual written agreement of the Parties.

Notice(s) of Deficiency. If, in the opinion of the City, the Developer at any time fails to maintain the Maintenance Area in accordance with the terms hereof, the City shall give written notice to the Developer, specifying the exact nature of such deficiency. Such written **notice of**

deficiency from the City shall be addressed to the Developer and require that the Developer take appropriate corrective action within thirty (30) days of receipt of such written notice. The Developer shall have the right to file an appeal before the Director of Public Works for a hearing concerning the reasonableness of the City's requirements as set forth in the written notice of deficiency, provided such appeal is filed within fifteen (15) days after the Developer's receipt of the City's notice of deficiency. The decision of the Director of Public Works on such appeal shall be binding upon all Parties, but may be appealed by the Developer through an appropriate action in any court having jurisdiction.

Emergency Maintenance. Notwithstanding the provisions of Section 2 or Section 4, if there exists a hazardous condition creating a possibility of serious injury to persons or property, the Developer shall, upon receipt of the City's notice of deficiency, be required to take prompt corrective action. If the City determines, in its sole and absolute discretion, that the hazardous condition creates an immediate possibility of serious injury to persons or property, the City may forego the giving of notice and immediately take the corrective action necessary to correct the hazardous condition. The reasonable costs incurred by the City in taking such corrective action shall be assessed against the Developer, as described in Section 6.

Enforcement. If the Developer, within the time period set forth in the notice of deficiency (subject to extensions of such time as may be required to appeal the notice of deficiency to the City Council, except if a hazardous condition exists, in which no such extension will be granted), does not undertake and complete the corrective work required in the notice of deficiency, the City may (but is not obligated to) undertake and complete such corrective measures as are set forth in the notice and assess the reasonable costs thereof against the Developer. The City may elect to enforce payment of such assessment through the procedures set forth in the Declaration for the establishment of liens or through an action at law. In any such action, the prevailing party will be entitled to receive its reasonable attorney's fees and costs, in addition to such other relief as may be granted.

Liens. The Developer shall not permit to be enforced against the Maintenance Area any mechanics', materialmen's, contractors' or other liens arising from, or any claims for damages growing out of, any use herein authorized or acts of the Developer undertaken pursuant to this Agreement (except from the negligent actions or intentional misconduct of the City or any of its employees or agents), and the Developer shall pay or cause to be paid all of said liens and claims before any action is brought to enforce the same against the City or the Maintenance Area.

Interpretation. This Agreement shall be constructed according to its fair meaning and as if prepared by the Parties hereto. Any rule of law (including, but not limited to, Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is hereby waived. This Agreement shall be governed in accordance with the laws of the State of California without regard to conflict of law principals.

No Waiver. Waiver by either Party hereto of a breach of any of the covenants to be performed by the other Party as provided for herein shall not be construed as a waiver of any succeeding breach of the same or other covenants herein.

Indemnification by the Developer. Except for negligent acts or intentional misconduct of the City, the Developer hereby agrees to indemnify, defend and hold the City and employees

harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' and expert fees, arising from or in any way connected with this Agreement.

Entire Agreement; Amendment. This Agreement contains the entire understanding between the Parties with respect to the matters provided for herein, and may only be amended by subsequent written agreement executed by the City and the Developer.

Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Non-liability of City Officials. No officer, official, employee, agent or representative of the City shall be personally liable to the Developer or any successor in interest to the Developer, in the event of any default or breach by the City, or for any amount which may become due to the Developer or any of their respective successors, or for breach of any obligation of the terms of this Agreement.

Further Assurances. Each Party agrees to cooperate with the other Party, at no additional cost to such Party, and to execute such additional instruments and documents as may be reasonably necessary or proper in order to carry out the provisions of this Agreement.

Attorney's Fees. In any action or proceeding between the Parties arising out of or related to the terms of this Agreement, or in any way connected herewith, the prevailing party in such action shall be entitled, in addition to damages, injunctive or other relief, to its reasonable costs and expenses, including, but not limited to taxable costs and reasonable attorneys' and expert fees. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

Notices. Any notice, or document required or permitted by this Agreement to be given to either Party shall be in writing and shall be deemed to have been received when personally delivered or within three (3) days after deposit in the United States mail, first class, registered or certified, postage prepaid, address as follows:

If to the City:

City of Dana Point
33282 Golden Lantern
Dana Point, California 92629
Attention: Public Works and Engineering
Department

If to the Developer:

Resort Residential South, LLC
4100 MacArthur Boulevard, Suite 200
Newport Beach, California 92660
Attn: General Counsel

Any Party may change the address specified in this Section by giving the other Parties notice of such new address in the manner set forth herein.

Time of the Essence. Time is of the essence of each and every provision of this Agreement of which time of performance is a factor.

Incorporation of all Exhibits. Each and every Exhibit referred to in and attached to this Agreement is incorporated herein by this reference as if set forth herein in full.

Titles and Captions. Titles and captions are for convenience only and shall not constitute a portion of this Agreement.

Covenants Running with the Land; Assignment to Association. The terms and conditions of this Agreement shall constitute covenants running with the real property composing the Project and binding on the Developer, the Developer's successors and assigns in and to the real property composing the Project, and burdening the real property composing the Project for the benefit of the Maintenance Area, in accordance with the provisions of California Civil Code Section 1468. Upon the first close of escrow for a condominium within the Project, the Developer's rights and obligations under this Agreement shall be automatically assigned to The Residences at Monarch Beach Resort Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), and the Association shall assume the rights and duties of the Developer under this Agreement on behalf of the Developer and the other owners of interests in the Project and the City hereby consents to such assignment and assumption.

Insurance. The Developer shall procure and maintain, at all times during the terms of this Agreement the following policies of insurance:

A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than One Million Dollars (\$1,000,000) combined single limits; and

A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California.

All of the aforescribed policies of insurance shall be "occurrence" and not "claims made" insurance and shall be primary insurance and shall name the City and its agent, officials and employees as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City and its insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to City. In the event any of such policies of insurance are cancelled, the Developer, prior to the cancellation date, shall submit new evidence of insurance in conformance with this Section.

Prior to entering the Maintenance Area, a certificate of insurance and an endorsement evidencing the insurance coverage noted above shall be provided to and approved by the City. The insurance carrier shall be authorized and admitted to do business in California with a current A.M. Best's rating of A- or better and a financial size of VII or greater.

No Joint Venture or Partnership. The City and the Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained

in this Agreement or any document executed in connection with this Agreement shall be construed as making the City and the Developer joint venturers or partners.

Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

Assignment. Except as otherwise provided in Section 20, the Developer shall not assign this Agreement or any interest herein to any Party without the prior written consent of the City, which City may withhold in its sole and absolute discretion.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute a single agreement.

Authorized Signatures. Each person executing this Agreement on behalf of the Developer and the City represents and warrants to the other Party that each person executing this Agreement is authorized to do so and such execution shall legally bind each respective Party to the terms of this Agreement.

[signature pages follow]

[signature page to Landscaping, Irrigation
and Maintenance Agreement (The Residences at Monarch Beach Resort)]

CITY OF DANA POINT,
a municipal corporation

By: _____
Douglas C. Chotkevys, City Manager

Attest: _____
Kathy M. Ward, City Clerk

Approved As to Form: _____
Patrick A. Munoz, City Attorney

[Developer's signature page follows]

[signature page to Landscaping, Irrigation
and Maintenance Agreement (The Residences at Monarch Beach Resort)]

“DEVELOPER”

RESORT RESIDENTIAL SOUTH, LLC,
a Delaware limited liability company

By: Makallon Resorts I, LLC
Its Managing Member

By: Makallon, LLC,
Its Managing Member

By: Makar Properties, LLC,
Its Managing Member

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

On _____, 2008 before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

EXHIBIT A
to the Landscaping, Irrigation and Maintenance Agreement

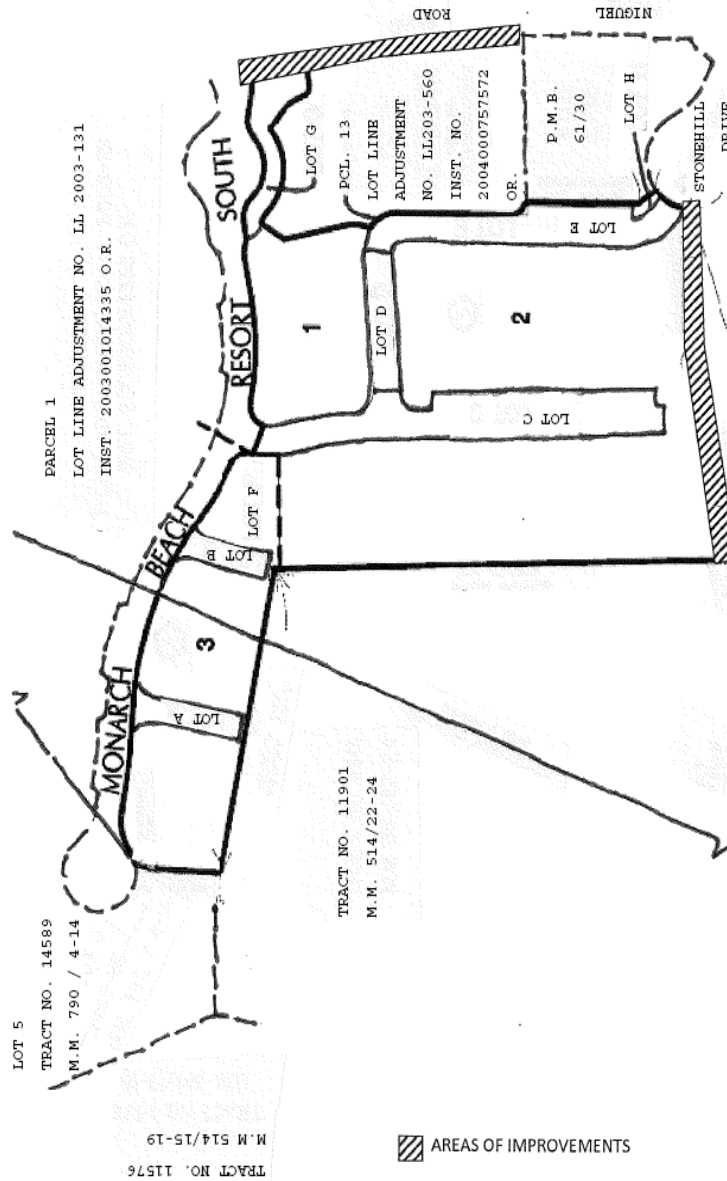
Legal Description – Property

Lots 1 through 3, inclusive, and A through H, inclusive, of Tract No. 16769 as per map recorded in Book ___, Pages ___ through ___, inclusive, of Miscellaneous Maps, of Official Records of Orange County, California and Parcel 13 of Lot Line Adjustment No. 2003-560 recorded on August 20, 2004 as Instrument No. 2004-000757572 in the Official Records of Orange County, California.

EXHIBIT B
to the Landscaping, Irrigation and Maintenance Agreement

Improvements

EXHIBIT B



Attachment B: Subdivision Improvement Agreement**SUBDIVISION IMPROVEMENT AGREEMENT**

THIS Subdivision Improvement Agreement (the "Agreement") is entered into this ____ day of _____, 200_, by and between the City of Dana Point, a municipal corporation ("City") and _____, (Subdivider").

RECITALS

A. On _____, the City Council approved a final map for Tract No. 16769, (the "Property").

B. Subdivider is the owner of the Property.

C. Subdivider has delivered to City and City has approved plans and specifications and related documents for certain "Works of Improvement" (as hereinafter defined) which are required to be constructed and installed in order to accommodate the development of the Property.

D. Subdivider's agreement to construct and install the Works of Improvement pursuant to this Agreement and its offer of dedication of the public improvements and facilities, as shown on the final map for the Property, are a material consideration to City in approving the final map for the Property and permitting development of the Property to proceed.

COVENANTS

Based upon the foregoing Recitals and in consideration of City's approving the final map for the Property and permitting development of the Property to proceed, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations

1.1 Works of Improvement. Subdivider agrees to construct or install or cause to be constructed or installed the improvements (herein sometimes collectively referred to as the "Works of Improvement") identified in Exhibit "A" to this Agreement, in accordance with the plans and specifications and related documents listed, as the same may be supplemented and revised from time to time as set forth herein.

1.2 Other Obligations Referenced in Conditions of Tentative Map Approval. In addition to the foregoing, Subdivider shall satisfy all of the conditions of approval on the tentative map for the Property.

1.3 Intent of Plans and Specifications. The intent of the plans and specifications referenced in paragraph 1.1 above is to prescribe a complete work of improvement which Subdivider

shall perform or cause to be performed in a manner acceptable to the City Engineer (or his/her designee) and in full compliance with all codes and the terms of this Agreement. Subdivider shall complete a functional or operable improvement or facility, even though the plans and specifications may not specifically call out all items of work required for the contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made of information necessary to carry out the full intent and meaning of the plans and specifications, Subdivider or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the plans, specifications, or related documents, reference shall be made to the City Engineer whose decision thereon shall be final.

Subdivider recognizes that the plans consist of general drawings. All authorized alterations affecting the requirements and information given on the plans shall be in writing and approved by the City Engineer. The plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Subdivider or Subdivider's contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.4 Performance of Work. Subdivider shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Subdivider's obligations under this Agreement.

1.5 Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties referenced in paragraph 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. It is mutually understood that it is inherent in the nature of the work contemplated by this Agreement that some changes in the plans and specifications and related documents may be necessary during the course of construction to adjust them to field conditions and to assure the protection of the public health, safety, and welfare. The City Engineer shall notify Subdivider or Subdivider's contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Subdivider or its contractor shall be binding on City unless approved in writing by the City Engineer.

1.6 Defective Work. Subdivider shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the City Engineer to be defective.

1.7 No Warranty by City. The plans and specifications and related documents for the Works of Improvement have been prepared by or on behalf of Subdivider or its consultants or contractors, and City makes no representation or warranty, express or implied, to Subdivider or to any other person regarding the adequacy of the plans or specifications or related documents.

1.8 Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all

questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement by Subdivider and Subdivider's contractor.

1.9 Documents Available at the Site. Subdivider shall cause its contractor to keep a copy of all approved plans and specifications and related documents at the job site and shall give access thereto to the City's inspectors and engineers at all times.

1.10 Inspection. Subdivider shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Subdivider, or his design engineer, and Subdivider's contractor(s) regarding the Works of Improvement. Subdivider shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the plans and specifications and related documents. If the City inspector requests it, the contractor at any time before acceptance of the Works of Improvement shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City shall not be considered as direct control of the individual workmen on the job site. City's inspector shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Subdivider or the contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.11 Compliance With Law. In addition to the express provisions of this Agreement and the plans and specifications and related documents, as the same may be supplemented and amended from time to time, Subdivider shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations, including without limitation the applicable requirements of the most recently-adopted editions of the Uniform Building, Mechanical, Plumbing, Electrical, Fire, and other Codes, including all local amendments thereto, the City's Grading Ordinance, and the most recent edition of the "Standard Specifications for Public Works Construction." Subdivider shall not be responsible for complying with any changes to such laws, ordinances, rules, and regulations adopted after the commencement of construction of the improvement to which such change relates.

1.12 Suspension of Work. In case of suspension of work for any cause whatever, Subdivider and its contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable drainage and erect temporary structures where necessary.

1.13 Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction

activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.14 Final Acceptance of Works of Improvement. After Subdivider's contractor has completed all of the Works of Improvement, the Subdivider shall then request a final inspection of the work. If items are found by the inspector to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the contractor of such items. After the contractor has completed these items, the procedure shall then be the same as specified above for the contractor's initial request for final inspection. If items are found by City's inspector to be incomplete or not in compliance after two (2) "final" inspections, City may require the contractor, as a condition to performing further field inspections, to submit in writing a detailed written statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by City is made. Final acceptance shall not constitute a waiver by City of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be that date on which the City Council accepts the improvements and authorizes the City Clerk to file a Notice of Completion with respect thereto.

1.15 Certificates of Occupancy. Certificates of Occupancy in any phase will only be granted after the City Engineer determines that the common area slope landscaping required for that phase meets the City's coverage requirements. The coverage requirements could be waived when an approved alternative erosion control and landscaping materials are used in lieu of hydroseeding.

2. Time For Performance

2.1 Outside Completion Date. Subject to paragraphs 2.2 and 2.3 below, Subdivider shall complete or cause to be completed all of the Works of Improvement no later than _____ after the date of this Agreement first written above.

2.2 Phasing Requirements. Notwithstanding paragraph 2.1, City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies City may have for Subdivider's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Subdivider acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, Subdivider shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of

fees, construction of improvements, or both.

2.3 Force Majeure. Notwithstanding the provisions of paragraph 2.1 herein, Subdivider's time for completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Subdivider, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, acts or failures to act of a public agency (including City), required changes to the Scope of Work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than thirty (30) days prior to City's receipt of a written notice from Subdivider or its Contractor detailing the grounds for Subdivider's claim to a right to extend its time for performance hereunder.

2.4 Continuous Work. After commencement of construction of the Works of Improvement (or separable portion thereof), Subdivider shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period of more than thirty (30) days, events of force majeure accepted.

2.5 Reversion to Acreage. In addition to whatever other rights City may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that City reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Sections 66499.11-66499.20-3/4. In this regard, Subdivider agrees that if none of the Works of Improvement referenced herein have been made within two (2) years from the date of this Agreement or within the time allowed herein, whichever is the later, and if City thereafter initiates proceedings to revert the Property to acreage, any improvements made by or on behalf of Subdivider after the date City initiates such action shall not be considered in determining City's authority to revert the Property to acreage.

2.6 Time of the Essence. Time is of the essence of Subdivider's performance of all of its obligations under this Agreement.

3. Labor

3.1 Labor Standards. Subdivider shall be responsible for causing all contractors and subcontractors performing any of the Works of Improvement to comply with all applicable federal and state labor standards, including to the extent applicable the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor.

3.2 Nondiscrimination. Subdivider agrees that no contractor or subcontractor performing any of the Works of Improvement shall discriminate against any employee or prospective employee with respect to such work in hiring, promotion, seniority, or any other terms and conditions of employment on the grounds of race, creed, color, national origin, ancestry, religion, sex, or marital status.

3.3 Licensed Contractors. Subdivider shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type

of work being performed.

3.4 Workers' Compensation. Subdivider shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security

4.1 Security to Guarantee Performance and Payment. At the time Subdivider executes this Agreement, Subdivider shall furnish to City bonds, letters of credit, or other security acceptable to City in its sole and absolute discretion (hereinafter "Security Instruments") as follows:

- (i) A Security Instrument securing Subdivider's faithful performance of all of the Works of Improvement, in the amount of one hundred percent (100%) of the estimated construction costs listed in paragraph 1.1 above.
- (ii) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment with respect to the Works of Improvement in an amount equal to one hundred percent (100%) of the estimated construction cost referenced in paragraph 1.1 above.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

4.2 Security Instrument For Warranty Period. In addition to the Security Instruments referenced in paragraph 4.1 above, prior to the City Council's acceptance of the Works of Improvement and recordation of a Notice of Completion, Subdivider shall deliver a Security Instrument warranting the work accepted for a period of one (1) year following said acceptance, with the amount of such Security Instrument to be equal to twenty-five percent (25%) of the estimated construction cost set forth in paragraph 1.1 above or a suitable amount determined by the City Engineer.

4.3 Release of Security Instruments. City shall release the faithful performance Security Instrument upon Subdivider's written request upon acceptance of the Works of Improvement and Subdivider's delivery of the substitute Security Instrument warranting the work. City shall release the payment Security Instrument upon Subdivider's written request after the Works of Improvement have been accepted and after passage of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code. If lien claims have been timely filed, City shall hold the payment Security Instrument until such claims have been resolved, Subdivider has provided a statutory bond, or otherwise as required by applicable law. City shall release the warranty Security Instrument upon Subdivider's written request upon the expiration of the warranty period, provided

no claims are outstanding at that time regarding defective work.

4.4 Form of Security Instruments. All Security Instruments shall meet the following minimum requirements and otherwise shall be in a form acceptable to the City Attorney:

- (i) Bonds are to be submitted and approved as follows:
 - (1) Ensure that the proposed surety is authorized to transact surety insurance in the State of California,
 - (2) Verify that the bond amount will not exceed the difference between the proposed sureties' assets and liabilities,
 - (3) Ensure that the bonds reference specific improvements that are based upon a City-approved cost estimate and are duly executed.
- (ii) Payments under the Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of Orange, State of California;
- (iii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Subdivider's completing the Works of Improvement, in accordance with paragraph 2.1 herein;
- (iv) The Security Instrument shall reference Subdivider's obligations under this Agreement, shall be irrevocable, and shall include as an additional obligation secured the responsibility to compensate City for all of City's attorney's fees and litigation expenses reasonably incurred in enforcing its rights under the Security Instrument.

5. Cost of Construction and Provision of Inspection Services

5.1 Subdivider Responsible for All Costs of Construction. Subdivider shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Subdivider is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Subdivider and City prior to construction of the works.

5.2 Payment To City For Cost of Related Inspection And Engineering Services. Subdivider shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Subdivider shall compensate City for all design, plan check, and engineering costs reasonably incurred by City in evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City Council or, in the absence of such procedures, upon invoice by the Public Works or Community Development Department. In no event shall Subdivider be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including

without limitation charges for applicable penalties and additional required inspections. As described in 1.14, two (2) final inspections shall be deemed sufficient to complete the inspection procedure, however, if after the initial inspection and follow up inspection to review the punchlist, subsequent inspections are required, Subdivider agrees to pay the cost of the additional inspection. Also, if an inspection is necessary after two years from the date of this agreement, Subdivider agrees to pay the cost of that inspection. If, after the two year period of this Agreement, additional engineering services are required other than, or in addition to inspection, Subdivider agrees to pay the cost of those engineering services.

6. Acceptance of Offers of Dedication

The City Council shall pass an appropriate resolution or resolutions accepting all offers of dedication shown on the final map for the Property, with acceptance to become effective upon completion and acceptance of the Works of Improvement by City. Such resolution(s) shall authorize the City Clerk to execute the Certificate made a part of the final map regarding said acceptance of the offer of dedication.

7. Warranty of Work

Subdivider shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the plans or specifications, Subdivider, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Subdivider fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Subdivider.

The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

8. Recordation of CC&Rs. The City's conditions of approval for Tract 16769 require Subdivider to obtain City approval of and record covenants, conditions, and restrictions that comply with the requirements set forth in the conditions of approval ("CC&Rs"). City has reviewed and approved CC&Rs for the Property, but the CC&Rs have not yet been approved by the California Department of Real Estate ("DRE"). Prior to, and as a condition of, the City's issuance of any certificate of occupancy for a unit developed on the Property, Subdivider shall submit to the City Attorney and obtain written approval of, the CC&Rs, as revised to address the DRE's comments, and shall record the same.

9. Default

9.1 Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Subdivider hereunder, such remedy shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

9.2 City Right to Perform Work. In addition to whatever other rights or remedies it may have for Subdivider's default hereunder, in the event Subdivider shall fail to timely perform any work required to be performed under this Agreement and such failure shall continue for a period of thirty (30) days after receipt of written notice of default from City, or thereafter Subdivider shall fail to diligently pursue the cure of any such default to completion, City shall have the right to enter onto the Property and perform any of the uncompleted work by force account or contract or both and thereupon recover from Subdivider and the surety company, or both, the full cost and expense thereby incurred by City.

9.3 Attorney's Fees and Costs. In the event of any litigation arising out of Subdivider's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and costs shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

10. Indemnity

Subdivider shall indemnify, defend, and hold harmless City and City's officers, employees, and agents from and against any and all claims, liabilities, losses, damages, causes of action, and obligations arising out of Subdivider's failure to perform the construction and installation of the Works of Improvement in accordance with the requirements contained or referenced in this Agreement. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which City may be subjected.

11. General Provisions

11.1 Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Subdivider's right, title, and interest in and to the Property and any portion thereof.

11.2 No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Subdivider intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

11.3 Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and

previous agreements between the parties with respect to all or any part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

CITY OF DANA POINT

By: _____
JOEL BISHOP, MAYOR

Date: _____

ATTEST:

KATHY WARD, CITY CLERK

"SUBDIVIDER"

By: _____

It's _____

By: _____

It's _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"**CITY OF DANA POINT
PUBLIC/PRIVATE IMPROVEMENT AGREEMENT**

DATE OF AGREEMENT: _____

NAME OF DEVELOPER: MAKAR PROPERTIES, LLC.NAME OF SUBDIVISION: Hotel SouthTRACT NO.: 16769TENTATIVE MAP RESOLUTION
APPROVAL NO.: 04-01-21-03IMPROVEMENT PLAN NO.: TRACT NO. 16769ESTIMATED TOTAL COST OF IMPROVEMENTS: **\$836,841.19**

NAME OF SURETY AND BOND NO. FOR LABOR AND MATERIALS BOND:

NAME OF SURETY AND BOND NO. FOR FAITHFUL PERFORMANCE BOND:

NAME OF SURETY AND BOND NO. FOR WARRANTY BOND:

COST ESTIMATE FOR BONDING PURPOSES
TENTATIVE TRACT 16769 (Hotel South)
CITY OF DANA POINT

Off-Site Improvements

SUMMARY

<i>Works of Improvement</i>	<i>Cost/Bond Amount</i>
Public Street Improvements within the City of Dana Point (Stonehill Dr.)	\$39,850.98
Grind and Overlay A.C. Pavement	\$16,138.98
Adjust Manhole To Grade	\$325.00
6" Conc. Curb & Gutter A2-6	\$7,366.00
Conc. Sidewalk	\$12,446.00
Depressed Curb Drive Approach	\$1,269.10
Storm Drain Inlet	\$3,550.00
Landscaping Along R/W on Niguel Rd.	\$35,000.00
Sub-total	\$115,946.06
10% contingency	\$11,594.61
TOTAL	127,540.67

On-Site Improvements

SUMMARY

<i>Works of Improvement</i>	<i>Cost/Bond Amount</i>
Private Street Improvements within the City of Dana Point	\$169,701.15
Grading	\$185,862.50
Storm Drain/Drainage Improvements	\$130,692.00
Erosion Control	\$8,563.00
Landscaping	\$150,000.00
Sub-Total	\$644,818.65
10% Contingency	\$64,481.87
TOTAL	\$709,300.52

GRAND TOTAL \$836,841.19

SUPPORTING DOCUMENT B – Planning Commission Staff Report**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

DATE: APRIL 20, 2005**TO:** DANA POINT PLANNING COMMISSION**FROM:** COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: (1) AMENDED SITE DEVELOPMENT PERMIT SDP91-07M(III) FOR A REDUCTION IN THE NUMBER OF DWELLING UNITS AND, (2) TENTATIVE TRACT MAP TTM16769 AMENDING A PORTION OF PREVIOUSLY APPROVED FINAL MAP 14589 FOR HOTEL RESIDENTIAL SOUTH IN THE MONARCH BEACH RESORT SPECIFIC PLAN AREA.

RECOMMENDATION: That the Planning Commission adopt the attached Resolution approving Site Development Permit SDP91-07M(III) and Tentative Tract Map TTM 16769.

APPLICANT: Michael Donohue

OWNER: Makallon Resorts I, LLC

REQUEST: Approval of an amendment to Site Development Permit SDP91-07M(III) and a new Tentative Tract Map TTM16769 amending a portion of Final Map 14589.

LOCATION: Northwest corner on Niguel Road and Stonehill Drive (APN's: 672-623-06, 07, 10, 11).

NOTICE: Notices were mailed to property owners within 500 feet of the site.

ENVIRONMENTAL: A Mitigated Negative Declaration (SCH No. 91121010) was prepared in accordance with Section 15070 of the California Environmental Quality Act (CEQA) for the Monarch Beach Resort Specific Plan as adopted by City Council Resolution No. 92-02-25-2.

BACKGROUND:

On February 25, 1992, the Dana Point City Council adopted the Monarch Beach Resort Specific Plan. The Specific Plan, which refined land use designations and established

zoning regulations, called for the subject site to be developed with a residential use (7-14 dwelling units per acre).

On May 19, 1992 the Planning Commission approved SDP91-07/VTM14589 for the development of a 400 key hotel and 86 residential dwelling units.

On May 29, 2002 the applicant received administrative approval for a Minor Site Development Permit SDP91-07M(II) for Hotel Residential North to reduce the amount of attached dwelling units from six fourplex's to seven triplex's and one duplex.

PROJECT DESCRIPTION:

Hotel Residential South is located to the south of the St. Regis Resort and Spa, abutting the northeast portion of the Monarch Beach Golf Course and west of the existing fire station. Access to the proposed Hotel Residential South development was constructed concurrently with the hotel development and is located off of Niguel Road just south of the St. Regis Resort and Spa main entrance.

SDP91-07M(III) is a proposal to reduce the number of attached, single-family dwelling units from 43 to 28. The dwelling units will consist of eight duplex's and four triplex's.

The design of the proposed residences meets all of the development standards of the RSF 7-14 Zoning District and do not require the approval of any variances. The table below summarizes the height and coverage requirements and the total size of the proposed residences.

Below is a project comparison of the existing 1992 plan and the current proposed plan.

PROJECT DATA		
	1992 (Entitled)	Proposed
Number of Building Structures	13	12
Type of Building	Single Family Estate (1) Mansion Penthouse – Duplex (2) Luxury Villas – Triplex (2) Mansion Penthouse – Fourplex (7) Mansion Villas –Fourplex (1)	Duplex (8) Triplex (4)
Number of Dwelling Units	43	28
Building Dimension & Footprint SF.	Single Family Estate 71'X74' (5,254 sf.) Duplex 54'X79' (4,266 sf.) Triplex 114'X90' (10,260 sf.) Four-plex 108'X79' (8,532 sf.) Mansion Villas 152'X90' (13,680 sf.)	Duplex 54'X97' (5,238 sf.) Triplex 80'X97' (7,760 sf.)

Square Footage Plan A/Plan 1 Plan B/Plan 2 Plan C/Plan 3 Plan D	2,350 sf., 2,750 sf., 3,515 sf 2,820 sf., 2,850 sf., 3,790 sf., 2,280 sf., 4,495 sf.	3,328 sf. 3,200 sf. 2,500 sf.
Total SF.	122,160 sf.	72,944 sf.
Building Heights	28'	28'
Pad Elevations	135.8 – 157.3 **	133 - 156.5
Public Access Easement	25'	40'

** Added 2.3' to pad elevation shown on 92 SDP due to elevation monument miscalculation.

The 1992 plan is approved for 42 attached dwelling units (duplex, triplex, and four-plex) and one detached single family estate, resulting in a total of 43 dwelling units. The proposed plan reduces the amount of dwelling units by 15 resulting in a total of 28 residences. Per the Monarch Beach Resort Specific Plan and General Plan policy 8.4, the Specific Plan site is restricted to a maximum of 238 dwelling units. Currently entitled and as proposed, the total number of dwelling units is well below the maximum allowed. See table below.

	Entitled	Proposed
Point Monarch	45 Single Family Dwelling	-
Hotel Residential North	23 Tri-plex Dwelling Units	-
Hotel Residential West	9 Dwelling Units	-
Hotel Residential South	43 Dwelling Units	28 Dwelling Units
Total Units	120	105

Overall, the plan as proposed has reduced the amount of building types (the proposed plan is no longer requesting single family estates or fourplex's), as well as the overall buildings square footage footprint (less 49,216 s.f.). As described above, the dimension and footprints of the eight proposed duplex buildings increased by 972 s.f. each while the remaining four triplex's have been reduced by 2,500 s.f. each, contributing to the overall reduction in total building square footage.

The proposed plans reduced the pad elevations between 0.8 to 3.7 feet respectfully with the highest elevation of 159.0 located closest in proximity to the St. Regis Resort and Spa. From the sea level elevation of Niguel Road, the building site pads are between 11' to 37' lower in elevation. The residences are permitted a maximum allowable building height of 28 feet from finished grade to the midpoint of roof with an additional 8 feet for architectural projection.

The overall plan proposes three floor plans ranging in size from approximately 2,500 to 3,200 square feet in size. The Tuscan architectural theme will feature smooth stucco finish, corbelled eaves, concrete trim at entry doors and arched window, decorative wrought

iron railing, and concrete tile. The Hotel Residential South landscaping will be comprised of low spreading and medium sized trees complementary to the hotel resort. The gated project will provide for private streets and landscaped slopes to be maintained by the future homeowners association.

Vehicle Access/Gates

The vehicular access point remains unchanged from the previously approved plans. Vehicle access will be provided off of Niguel Road by an existing 28' wide private street just south of the main hotel resort entrance. The Monarch Beach Resort entrance will include an un-manned guard gate for residences only. The project is conditioned to require that the details of the gate, including architecture and operation, be subject to subsequent City review and approval (condition no. 127).

The proposed gate at Stonehill Drive is to be used for emergency vehicle ingress and egress only with residential access prohibited. Per the Fire Departments Condition, maintenance vehicles may use the gate for exiting only to avert any potential conflict with emergency vehicles (condition no. 42).

Parking

Per the Monarch Beach Resort Specific Plan, a two car garage per dwelling unit is required. A total of 32 parking spaces have been provided. Additionally, 0.5 guest parking spaces are required per dwelling unit resulting in an additional 14 parking spaces. As shown, 28 guest parking spaces are provided with on-street parking bays and on-street parallel parking spaces.

Easements

A 40' access easement is proposed along the most southern boundary of the project connecting to Stonehill Drive. After some discussion, the applicant agreed to increase the access easement along the most southern boundary from 25' to 40' for future City use. In exchange, the City will reduce the 65' storm drain easement which runs through the middle of the property to 60' subject to a revised easement document (condition no's. 24 & 25).

Tentative Tract Map

The proposed Tentative Tract Map 16769 is a request to modify various lot lines and lot sizes. The resulting configuration will maintain the same number of numbered lots with an increase in the number of lettered lots. Lot 13, although not a part of the project, is currently being utilized as the maintenance facility for the Monarch Beach Golf Course. No improvements to the site have been proposed.

Below is a description of each lot.

Tentative Tract Map 16769		
	Land Use	Acreage
Lot E/Lot J	Open Space	0.3
Lot 2	One-triplex	0.6
Lot 3	Eight – duplex's One - triplex	2.5
Lot 4	Two-triplex's	0,8

Street A/B	28' wide with on-street parking -private	
Street C/D	24' wide with no parking - private	

ISSUES:

1. Is the proposal consistent with the City's adopted General Plan and the Monarch Beach Resort Specific Plan?
2. Is the proposal compatible with and an enhancement to the surrounding neighborhood and City?
3. Does the proposed project comply with the California Coastal Act?

DISCUSSION:**ISSUE 1: Does the proposed project comply with the City of Dana Point's General Plan and the MBR Specific Plan?**

Staff believes that Hotel Residential South complies with the City of Dana Point's General Plan and the MBR Specific Plan. The project complies with plan provisions including -applicable maps, policies and community design guidelines, for example:

1. Residential land use complies with the General Plan and Specific Plan as both plans designate this site as appropriate for a residential use with a density of 7-14 dwelling units per acre. The subject project will have a residential density of 7.3 dwelling units per net acre. As proposed, Hotel Residential South will have a total of 28 attached residential dwelling units which will result in 15 fewer dwelling units than permitted. Therefore, the proposed residential uses and building intensity remain consistent with the General Plan and Specific Plan.
2. Access and circulation alignments and street sections comply with the provisions of the Specific Plan. The project will take direct access from Niguel Road just south of the hotel's main entrance. Adopted mitigation measures applicable to the Hotel Residential South site that relate to Niguel Road improvements have been addressed with the construction of the hotel. The proposed residential parking complies with the Specific Plan parking standards. As a condition of approval (condition no. 102), a residential parking program is required as part of the building plan submittal.
3. Trails comply with the General Plan and Specific Plan since pedestrian access is available through the development as well as through the adjacent hotel development. Currently, along the projects westerly boundary, an existing tramway easement is available for public use as well as a proposed 40' public easement along the southern boundary providing access to Sea terrace Park. A comprehensive public access signage program, which makes clear the areas available for use by the general public, is a condition of approval applied to this project (condition no. 128).

4. Grading and landforms comply with provisions of the Specific Plan through rounding of manufactured slopes, contour grading and varying grades. As called for in the Specific Plan, the previously graded southerly portion of the site will be re-graded with contoured pads reflective of the natural topography. The proposed grading design is generally consistent with the previous plan and provides for 6,000 C.Y. of cut and 18,300 C.Y. of fill. 12,300 C.Y. will be imported.
5. Architectural character complies with the provisions of the Specific Plan by use of the Tuscany theme. In addition, based upon the submitted plans, the residential structures comply with all the zoning standards of the MBR Specific Plan such as setbacks, height, bulk, etc.
6. Landscaping complies with the provisions of the Specific Plan through use of low-spreading and medium-sized trees to emulate the Mediterranean coastal estates. A conceptual landscape plan has been submitted. Final landscape plans will be required prior to issuance of a building permit (Condition no. 130).
7. View corridors comply with Specific Plan provisions and guidelines intended to preserve and enhance public and private views especially those seaward. It should be noted that Niguel Road which is designated by the City as a "scenic road", does not currently offer ocean views along the entire stretch of road adjacent to the project site, because of existing mature vegetation and off-site development. Due to the location, massing and elevation of the hotel, clubhouse and residential buildings within the Specific Plan, controlled points have been preserved and maintained for public views. The existing controlled viewpoints from Niguel Road are located north of the St. Regis Resort and Hotel across the golf course plane, as well as from the existing Crescent Promenade and the two Vista Points located within the specific plan boundaries.

ISSUE 2: Is the proposal compatible with and an enhancement to the surrounding neighborhood and City?

Staff believes that Hotel Residential South is compatible with and an enhancement to the neighborhood and the City of Dana Point. The residential uses will be buffered from the existing residences to the east by mature, on-site landscaping and by vertical and horizontal physical separation including streets and landscaped interior areas. The site layout, lower elevation and careful placement of structures and landscaping will continue the resort living experience.

ISSUE 3: Does the proposed project comply with the California Coastal Act?

Staff believes that the project complies with the California Coastal Act. The California Coastal Act of 1976 was created to ensure responsible planning and development along the entire California coast. The basic goals were to responsibly manage coastal resources and maximize public access to the coast. The Coastal Act requires coastal

cities to adopt a Local Coastal Program (LCP). An LCP regulates local land uses and development in a manner that is consistent with the Coastal Act. The City has an effectively certified LCP for the MBR Specific Plan area. The proposed modifications to the project are in substantial conformance to the approved Coastal Development Permit issued for the resort complex.

CONCLUSION:

Based on the above analysis, Staff has determined that the required findings can be made and recommends that the Planning Commission approve Site Development Permit SDP91-07M(III) and Tentative Tract Map 16769 to develop 28 attached dwelling units and associated improvements on Hotel Residential South.

Deborah Drasler
Consultant – Project Manager

Kyle Butterwick, Director
Community Development Department

ACTION DOCUMENTS:

1. Draft Planning Commission Resolution

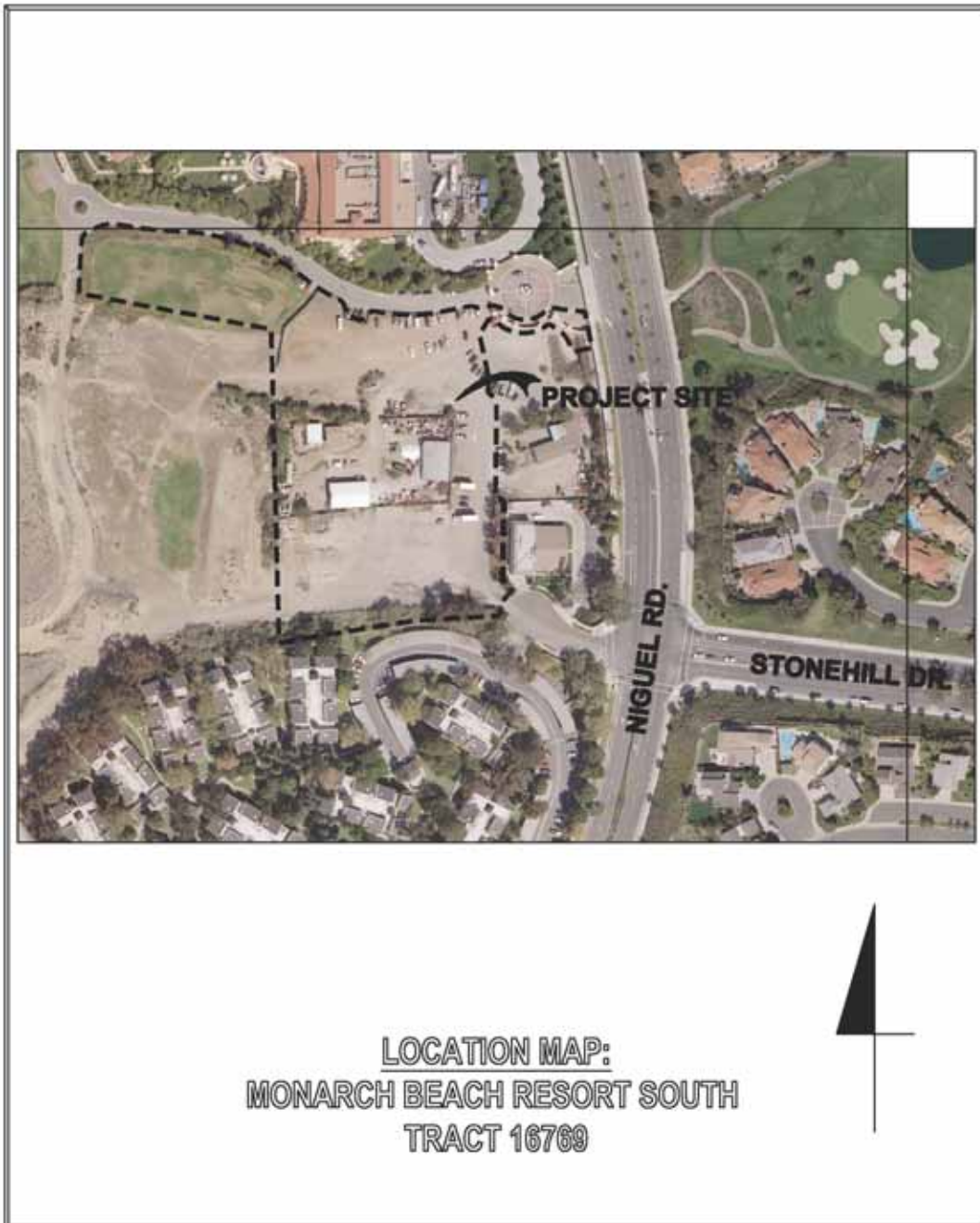
SUPPORTING DOCUMENTS:

2. Vicinity Map

Exhibits

- A. Submitted Plans
 1. Site Plan
 2. Proposed Map (Exhibit No. 1)
 3. Existing Map (Exhibit No. 3)

SUPPORTING DOCUMENT C – Location Map



SUPPORTING DOCUMENT D – Subdivision Map Act Sections, Pertinent Sections

FINAL TRACT MAP 16769

SUBDIVISION MAP ACT/STATUS OF COMPLIANCE

Date Prepared: June 4, 2008

**CITY OF DANA POINT
Subdivision Map Act****Tract map/Final Map Procedures for Condominium Conversions
(And other Final Map/Tract map Requirements)****Chapter 1, Article 1: General Provisions:****1. 66416.5: City Engineer defined, survey maps; contracting out**

- (b) A City Engineer is authorized to process maps if registered before January 1, 1982.
- (c) Nothing contained in this section shall prevent a City Engineer from delegating the land surveyor function to a person authorized to practice land surveying.

The City Engineer lawfully delegates the land surveyor function to the County of Orange Land Surveyor.

Chapter 2, Article 1: General Provisions:**2. 66426: Names types of projects requiring tentative and final maps; cites exclusions**

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

- (a) The land before the division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.
- (b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.
- (c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

- (d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.
- (e) Until January 1, 2003, the land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.
- (f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

The proposed tract will be subdivided into four (4) triplexes and eight (8) duplexes and does not fall under any of the circumstances described in Subsections (a), (b), (c), (d), or (e). Therefore, a final map is required.

3. 66426.5: Conveyance of land to a public entity is not considered a division of land

Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for right-of-way shall not be considered a division of land for purposes of computing the number of parcels. For purposes of this section, any conveyance of land to a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

The dedications included in this tract map have not been considered a division of land as described above. Therefore, the City and the applicant are in compliance with this section.

4. 66429: Only final and tract maps to record

Of the maps required by this division, only final and tract maps may be filed for record in the office of the county recorder.

The map in question is a Final Tract Map, and therefore, shall be recorded in the office of the County Recorder as described above.

5. 66430: Written consent of record owners to file map required

No final map or tract map required by this chapter or local ordinance which creates a subdivision shall be filed with the local agency without the written consent of all parties having any record title interest in the real property proposed to be subdivided, except as otherwise provided in this division.

All record owners have signed the title sheet of the Final Tract Map. Therefore, the City is in compliance with this section.

6. 66431: County surveyor may perform city engineer duties

Upon mutual agreement of their respective legislative bodies, the county surveyor may perform any or all of the duties assigned to the city engineer, including required certifications or statements. Whenever these duties have been divided between the county surveyor and city engineer, each officer shall state the duties performed by him or her.

The City Engineer and County Surveyor statements on the title sheet of the final map clearly depict the duties performed by each person. Therefore, the City is in compliance with this section.

Chapter 2, Article 2 – Final Maps:

7. Section 66434: Establishes persons qualified to prepare Final Map and established standards for preparation

The Final Map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

A – G; (See Section for specifics)

The Final Map was prepared by Rory S. Williams, Land Surveyor License Number 6654, expiring December 31, 2009. Therefore, the City has verified compliance with this section.

8. Section 66434.1: Requires acknowledgement of owner's development lien on Final Map

In the event that an owner's development lien has been created pursuant to the provisions ... or portion thereof subject to the Final Map, a notice shall be placed on the face of the Final Map...

The applicant has submitted a current title report for the proposed tract. Said title report shows that there are no developer liens against the property. Therefore, this section does not apply.

9. 66434.2: Local ordinance may require additional information to be filed or recorded simultaneously with Final Map or Tract map

..., a city or county may, by ordinance, require additional information to be filed or recorded simultaneously with a Final Map or Tract map.

The Dana Point Municipal Code does not require any additional information to be filed or recorded simultaneously with the Tract Map. However, in this case, the CC&R's, the Landscape, Irrigation &

Maintenance Agreement and the Subdivision Improvement Agreement will be recording simultaneously with the Final Tract Map.

10. 66435: Certificates, statements and acknowledgements required on Final Map

Prior to filing, those certificates, statements and acknowledgements set forth in this article appear on the Final Map and may be combined where appropriate.

All required information has been included on the Final Tract Map.

11. 66440: Legislative body approval stamp required

The Final Map shall contain a certificate or statement for execution by the clerk of each approving legislative body...

A statement of execution for the Clerk of Dana Point has been included on the title sheet of the final map. Therefore, the City is in compliance with this section.

12. 66441: Engineer or Surveyor statement required

A statement by the engineer or surveyor responsible for the survey and Final Map is required. His or her statement shall give the date of the survey, state that the survey and Final Map were made by him or her or under his or her direction, and that the survey is true and complete as shown.

The Final Tract Map contains a statement as described in this section. Therefore, the City has verified compliance with this section.

13. 66442: County surveyor or city engineer statements on Final Maps

- (a) If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign , date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and state that:
 - 1. He or she has examined the map.
 - 2. The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.
 - 3. All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.
 - 4. He or she is satisfied that the map is technically correct.
- b. City or County engineers registered as civil engineers after January 1, 1982 shall only be qualified to certify statements of paragraphs 1, 2, and 3 of subdivision a. The statement specified in paragraph 4 shall only be certified by a person authorized to practice land surveying

pursuant to the Professional Land Surveyor's Act...

The City Engineer meets the requirements to sign for items 1-3. However, the County Surveyor's Statement satisfies item 4. Therefore, the City has verified compliance with this section.

14. 66442.5: Statement required on Final Map (Duplicated in 66449 for Tract map)

The following statements shall appear on a Final Map:

- a. Engineer's (surveyor's) statement
- b. Recorder's certificate or statement

These statements are included on the Final Map. Therefore, the City has verified compliance with this section.

Chapter 2, Article 3 – Tract maps:

15. 66445: Establishes persons qualified to prepare Tract maps and establishes standards for preparation

The Tract map shall be prepared by, or under the direction of, a registered engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to the following provisions:

(a – j)

(See Section for details)

The Final Tract Map has been prepared by a licensed land surveyor and complies with the requirements of this section.

16. 66450: County surveyor (or City Engineer's) statement

- (a) If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign , date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and state that:
 - 5. He or she has examined the map.
 - 6. The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.
 - 7. All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.
 - 8. He or she is satisfied that the map is technically correct.

- (b) City or County engineers registered as civil engineers after January 1, 1982 shall only be qualified to certify statements of paragraphs 1, 2, and 3 of subdivision a. The statement specified in paragraph 4 shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyor's Act...

The City Engineer has signed the City Engineer's Certificate on the title page of the map. Said certificate addresses the items above in 66450(a)(5-7). The County of Orange has reviewed the map for technical accuracy per Section 66450(a)(8), and a copy of the approval letter from the County Surveyor was included in this staff report. Therefore, the City has verified compliance with this section.

Chapter 3, Article 2 – Tentative Maps:

17. 66452.1: Action required by agency within 50 days

- b. If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove a tentative map, it shall take that action within 50 days after filing thereof...

The City acted within the specified time limits. Therefore, the City is in compliance with this section.

18. 66452.3: Staff reports to be served on subdivider and tenants prior to hearing

Any report or recommendation on a tentative map by the staff of a local agency ... shall be in writing and a copy thereof served on the subdivider...

City staff served the subdivider with a copy of the staff report recommending approval of the tentative map. Therefore, the City is in compliance with this section.

19. 66452.4: No action by local agency to be deemed as approval

If no action is taken upon a tentative map by an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map or by the legislative body within the time limits specified in this Chapter ..., shall be deemed approved...

The City acted on the tentative map within the specified time limits. Therefore, the City has verified compliance with this section.

20. 66452.6: Term of tentative map approvals; effect of moratoriums and lawsuits upon approval time limits; extensions of time

a.1. An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after an additional period of time as may be described by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend \$178,000 or more to construct, improve, or finance the construction of improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property and which are reasonably related to the development of that property, each filing of a Final Map authorized by Section 66456.1 shall extend the expiration of the approved or conditional approved tentative map by 36 months ...

d. ...Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map...

The Conditionally Approved Tentative Map expiration was ultimately approved to June 8, 2008. Filing of the map was performed prior to the conditionally approved tentative map expiration date. The map was in process at the time of expiration. Therefore, recording may lawfully occur after the date of expiration.

Chapter 3, Article 3 – Review of Tentative Map by other agencies

21. 66455.7: Review by school districts; time limits for transmittal of tentative maps and recommendations

Within five days of a tentative map application being determined to be complete pursuant to Section 65943, the local agency shall send a notice of the determination to the governing board of an elementary school, high school, or unified school district within the boundaries of which the subdivision is proposed to be located.

The City sent out notifications as described above. Therefore, the City has verified compliance with this section.

Chapter 3, Article 4 – Final Maps

22. 66456.2: Improvement plans, time limits to act, extensions

a. An improvement plan being processed in conjunction with either an approved tentative, parcel or Final Map shall be prepared by a registered civil engineer and acted on within 60 working days of its submittal, except that at least 15 working days shall be provided for processing any resubmitted improvement plan. The 60 day working day period shall not include any days during which the improvement plan has been returned to the applicant for correction, ...

The rough and precise grading plans, street improvement plans, and

storm drain plans have been reviewed and approved by the Public Works and Engineering Department and the Community Development Department. Additionally, a permit for rough grading has been issued. The time constraints outlined in Section 66456.2 have been met. Therefore, City staff has verified compliance with this section.

23. 66457: Effective date of Final Map or Tract map filing

a. A Final Map or Tract map conforming to the approved or conditionally tentative map, if any, may be filed with the legislative body for approval after all required certificates or statements on the map have been signed and, where necessary, acknowledged.

All appropriate signatures have been obtained. Therefore, the City has verified compliance with this section.

24. 66458: Time limit on map approvals by legislative body; delegation to city or county engineer

- (a) The legislative body shall, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.
- (b) If the legislative body does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the legislative body shall certify or state its approval thereon.

Per the Planning Department, the Final Tract Map conforms to the Tentative Tract Map. City staff has assured compliance with this section by placing the item on the agenda as instructed.

25. 66462: Improvement agreements between subdivider and local agency; delegation to designated official

- (a) If, at the time of approval of the Final Map by the legislative body, any public improvements required by the local agency pursuant to this division or local ordinance have not been completed and accepted in accordance with standards established by the local agency by ordinance applicable at the time of the approval or conditional approval of the tentative map, the legislative body, as a condition precedent to the approval of the final map, shall require the subdivider to enter into one of the following agreements specified by the local agency:

- (1) An agreement with the local agency up on mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.
- (2) An agreement with the local agency to thereafter do either of the following:
 - (A) and (B)...
 - (See section for details)
- (b) See section for details
- (c) The local agency entering into any agreement pursuant to this section shall require that performance of the agreement be guaranteed by the security specified in Chapter 5 (commencing with Section 66499).
- (d) See section for details

The applicant proposes to enter into a Subdivision Improvement Agreement with the City pending approval by City Council of the Final Tract Map. The appropriate bonds have been collected. Therefore, the City has verified compliance with this section.

26. 66462.5 Approval of final map cannot be refused because of offsite improvement requirements on land not belonging to subdivision or local agency

A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the tentative or final map is filed with the local agency, to permit the improvements to be made...

The City has not conditioned the project as described. Therefore, compliance with this section has been verified.

Chapter 3, Article 6 – Filing Maps with County Recorder

27. 66464: City clerk to transmit to county recorder

- (a) Unless otherwise provided by the county, if the final map or parcel map is not subject to Section 66493, after the approval by the city of a final map of a subdivision or a parcel map, the city clerk shall transmit the map to the county recorder.

The City Clerk shall transmit the approved map to the County Recorder in accordance with this section.

28. 66465: Subdivider to provide recorder with evidence of record title interests at the time of recording

(a) The subdivider shall present to the county recorder evidence that, at the time of the filing of the Final Map or Parcel map in the office of the county recorder, the parties consenting to such filing are all of the parties having a record title interest in the real property being subdivided ...

The City Clerk shall ensure that a current title report is transmitted concurrently with the approved Tract Map to the County Recorder.

29. 66468: Filing by recorder determines the validity of the map

The filing for record of a final or parcel map by the county recorder shall automatically and finally determine the validity of such map and when recorded shall impart constructive notice thereof.

The City Clerk shall ensure that a current title report is transmitted concurrently with the approved Final Tract Map to the County Recorder.

Chapter 4, Requirements, Article 1 – General

30. 66473: Disapproval of Final Map for failure to meet requirements or conditions

A local agency shall disapprove a map for failure to meet or perform any of the requirements or conditions imposed by this division or local ordinance enacted pursuant thereto; provided that a Final Map shall be disapproved only for failure to meet or perform requirements or conditions which were applicable to the subdivision at the time of approval of the tentative map; ...

All pertinent Conditions of Approval have been met. Therefore, City staff has verified compliance with this condition, and recommends approval.

31. 66473.5: Subdivision must be consistent with general plan or specific plan

(See Section for specifics)

Approval of the tentative map illustrates consistency with the general plan or specific plan, per the Planning Department. Therefore, City staff has verified compliance with this section.

32. 66474: Grounds for denial of tentative or Tract map

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

(See Section for a-g)

City Council Resolution No. 05-06-08-04 dated June 8, 2005, demonstrates that the proposed Final Tract Map did not include any of the items listed in sections a-g. Therefore, the City has verified compliance with this section.

33. 66474.1: Final or parcel map must be approved if in substantial compliance with approved tentative map

A legislative body shall not deny approval of a Final Map or Tract map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final or Tract map is in substantial compliance with the previously approved tentative map.

The Final Tract Map has been found to be in substantial compliance with the Tentative Tract Map. Therefore, per this section, City staff recommends that the City Council approve the Final Tract Map.

Chapter 4, Requirements, Article 5 – Fees

34. 66483: Local ordinance may impose fees for storm drainage and sanitary sewer offsite improvements

Will serve letters from the South Coast Water District have been submitted and are on file. The Municipal Code provides for a fee as described in this section. Therefore, the City has verified compliance with this section.

35. 66484: Local ordinance may impose fee for construction of bridges and major thoroughfares

No bridges or major thoroughfares are proposed as part of this project. Therefore, this section does not apply to the subject tract map.

Chapter 4, Requirements, Article 7 – Soils Report

36. 66490/66491: Preliminary Soils Report required for every subdivision/Local ordinance may provide for waiver of soils report or may require additional reports if soil problems are encountered; agency engineer may require additional information

A soils report was submitted with both the Tentative Tract Map and Final Tract Map. Therefore, the City has verified compliance with this section.

Chapter 4, Requirements, Article 8 – Taxes and Assessments

37. 66492: Subdivider shall file a statement indicating that there are no liens against subdivision for unpaid taxes or special assessments

Prior to the filing of the Final Map or Parcel Map with the legislative body, the subdivider shall, in accordance with procedures established by the county, file with county recorder of the county in which any part of the subdivision is located, a certificate or statement from the official computing redemptions in any public agency in which any part of the subdivision is located, showing that, according to the records of that office, there are no liens against the subdivision or any part thereof for unpaid, state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable.

The County Treasurer shall sign the Final Tract map certifying this prior to recordation at the County of Orange. Therefore, the City has verified compliance with this section.

Chapter 4.5 – Development Rights

38.66498.4: Right of property owner to seek approvals

Notwithstanding any provision of this chapter, a property owner or his or her designee may seek approvals or permits for development ...

The developer has already obtained approval for the grading and retaining wall plans, the street improvement plans, the signing and striping plans, and the traffic control plans. The developer has obtained a grading permit.

Chapter 5 – Improvement Security

39.66499: Local agency may specify types of security

a. Whenever this division or a local ordinance authorizes or requires the furnishing of security..., the security shall be one of the following, subject to the approval of the local agency:

(1-5; See Section for details)

The applicant has prepared a Subdivision Improvement Agreement with the City and has bonded for the grading, retaining walls, and public improvements. Said agreement is included herein and recommended for approval as part of the resolution. Therefore, the City has verified compliance with this section.

SUPPORTING DOCUMENT E– Final Tract Map No. 15924 Conditions of Approval

TENTATIVE TRACT MAP 16769

Only pertinent Conditions of Approval/Status of Compliance to Final Map processing are included

Date Prepared: June 5, 2008

Conditions:**A. A. General:**

1. Approval of this application is for the development of 28 attached dwelling units on a 5.69 gross acre site as per the exhibit dated March 22, 2005. Subsequent submittals for this project shall be in substantial compliance with the submitted plans presented to the Planning Commission, and in compliance with the applicable provisions of the Dana Point General Plan, The Monarch Beach Specific Plan, and the Dana Point Zoning Code.

STATUS: The applicant is in compliance with this condition.

2. Approval of this application is valid for a period of twenty-four (24) months from the date of determination. If the development approved by this action is not established, or a building permit for the project is not issued within such period of time, the approval shall expire and shall thereafter be null and void.

STATUS: The applicant has obtained an extension and the Tentative Tract Map does not expire until June 8, 2008.

3. The application is approved as a precise plan for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plans, he may approve the amendment without requiring a new public hearing.

STATUS: The applicant is in compliance with this condition.

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.

STATUS: The applicant acknowledges this and is in compliance with this condition.

5. The applicant, and applicant's successors, heirs, and assigns, shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from any claim, action, or proceeding against the City, its officers, employees, or agents to attack, set aside, void, or annul the approval granted by this Resolution, which action is brought within the appropriate statute of limitations period.

The applicant, and the applicant's successors, heirs, and assigns, shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents employees, or contractors.

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

STATUS: The applicant acknowledges and is in compliance with this condition.

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all of the plans, programs, guidelines, development phasing standards, and zoning and development standards of the Monarch Beach Resort Specific Plan and the Monarch Beach Resort Phasing Plan, including making known the conditions to City staff for future governmental permits or actions on the project site.

STATUS: The applicant acknowledges and is in compliance with this condition.

7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions.

STATUS: The applicant acknowledges and is in compliance with this condition.

8. Except as specifically approved by the Community Development

Director as provided for in this MBR Specific Plan Section 2.3.2, no exterior radio, television, or citizen band antenna, satellite dish, earth receiving station or other antenna or other above ground transmitting or receiving device of any type shall be allowed on the site.

STATUS: The applicant acknowledges and is in compliance with this condition.

9. Utilities (MIT): The construction contractor will perform all construction within the guidelines established by State building regulations and the Uniform Building Code (UBC) as they relate to energy conservation.

STATUS: The applicant acknowledges and is in compliance with this condition.

10. Noise (MIT): Construction activity shall be limited to the hours specified in the current local noise ordinance. Any deviations from these hours are subject to approval by the Community Development Director prior to construction.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

11. Noise (MIT): The on-going operations of the facility shall comply with the current local noise ordinance and the noise standards stated in the Noise Element of the General Plan.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

12. Air Quality (MIT): Applicant shall comply with all SCAQMD recommendations for mitigation of construction emissions to the maximum extent feasible. These measures may include the following:

- Phased construction, watering and sweeping to reduce fugitive dust emissions.
- The use of low-sulfur (0.5 percent by weight) fuels in construction vehicles and equipment.
- Proper tune of construction vehicles and equipment in accordance with SCAQMD standards.
- Replacement of ground cover where erosion control is a consideration and construction is not immediately on-line, in accordance with customary and recognized standards.
- Minimized interference of off-site traffic, circulation and parking.
- Suspension of construction activities to avoid high ozone days

and days of high winds and second stage smog alerts as required by the SCAQMD.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

13. Air Quality (MIT): Applicant shall reduce vehicle emissions by scheduling, to the maximum extent feasible, deliveries and transport of goods and materials to occur during off-peak traffic hours.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

14. Air Quality (MIT): Applicant shall reduce vehicle emissions by providing adequate ingress and egress at all entrances to resort facilities to avoid vehicle idling and potential traffic delays.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

15. The applicant, property owner or successor in interest shall prepare a Waste Management Plan to the City's C&D official per the Dana Point Municipal Code. A deposit will be required upon approval of the Waste Management Plan to ensure compliance.

STATUS: The applicant has submitted a Construction and Demolition Ordinance Form to the City. Therefore, the applicant is in compliance with this condition.

16. The Waste Management Plan shall indicate the estimated quantities of material to be recycled and the locations where the material is to be taken for recycling. Said plan shall be reviewed and approved by the City's C&D Compliance Official prior to issuance of any permits.

STATUS: The applicant has submitted a Construction and Demolition Ordinance Form to the City. Therefore, the applicant is in compliance with this condition.

17. Access to Fire station shall be maintained at all times during construction.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

18. No stockpiling of material will be allowed on Sea Terrace Park.

STATUS: The applicant acknowledges and is currently in compliance with this condition.

B. Prior to recordation of the Final Map:

Fire:

19. Prior to the recordation of a subdivision map, the applicant shall submit a fire hydrant location plan to the Fire Chief for review and approval

STATUS: A Fire Master Plan has been submitted to and approved by the Orange County Fire Authority (OCFA). Therefore, the applicant is in compliance with this condition.

20. Prior to the recordation of a subdivision map, the applicant shall provide evidence of adequate fire flow. The "Orange County Fire Authority Water Availability for Fire Protection" form shall be signed by the applicable water district and submitted to the Fire Chief for approval. If sufficient water to meet fire flow requirements is not available an automatic fire extinguishing system may be required in each structure affected.

STATUS: A Fire Master Plan has been submitted to and approved by the Orange County Fire Authority (OCFA). Therefore, the applicant is in compliance with this condition.

21. Prior to the recordation of a subdivision map, a note shall be placed on the map stating that all residential structures shall be protected by an automatic fire sprinkler system in a manner meeting the approval of the Fire Chief.

STATUS: A note has been placed on the title sheet that includes the required language. Therefore, the applicant is in compliance with this condition.

22. Prior to the recordation of a subdivision map, the applicant shall obtain approval of the Fire Chief for all fire protection access roads to within 150 feet of all portions of the exterior of every structure on site.

STATUS: A Fire Master Plan has been submitted to and approved by the Orange County Fire Authority (OCFA). Therefore, the applicant is in compliance with this condition.

23. Prior to the recordation of the subdivision map as determined by the Fire Chief in consultation with the City Staff, the subdivider shall

enter into an agreement for the installation of traffic signal preemption equipment for the surrounding controlled intersections at Stonehill and Niguel Rd. This agreement shall be accompanied by financial security.

STATUS: The applicant has already entered into an agreement with the City and the required pre-emption devices have already been installed. Therefore, the applicant is in compliance with this condition.

Engineering:

24. The applicant shall revise the existing 65 feet wide storm drain easement. The storm drain easement shall be minimum 60 feet wide. The easement document shall include language that the owner/developer/ successors shall be responsible for repair and replacement of all private improvements including streets, sidewalks, hardscape and landscape in the easement should the City find it necessary to excavate for repair or replacement of storm drain.

STATUS: The storm drain easement has been revised as required by this condition. Sheet 3 of the Final Tract Map lists the description of the easement and Sheet 5 depicts the location and width of said easement. Therefore, the applicant is in compliance with this condition.

25. The applicant shall dedicate to the public a 40 foot wide access easement subject to approval by the Director of Public Works. The existing 25' Public access easement and 20' ingress/egress easement shall be quit claimed. All documents shall be submitted to the Director of Public Works for approval prior to recordation.

STATUS: The public access easement has been included as required by the above condition. Said easement is listed on Sheet 3 and depicted on Sheet 6 of the Final Tract Map. Additionally, the existing 20' easement is not shown on the Final Tract Map, therefore when the map is recorded, the Subdivision Map Act states that the existing easement shall be extinguished. Therefore, the applicant is in compliance with this condition.

26. Applicant shall enter into a subdivision improvement agreement for the design, construction, and installation of the following improvements in accordance with plans and specifications meeting the approval of the City Engineer.

1. Construct on-site street improvement and drainage improvements

to the satisfaction of the City Engineer, including street lights, street appurtenances, street name sign, striping, red curbing as required.

2. Provide parking bays where noted on the approved plans for on-street parking requirements on all interior streets.
3. Provide adequate storage length for anticipated peak number of vehicles at all gated entries.
4. All driveway access from Niguel Road to the hotel/residential shall accommodate minimum bus and truck turning movement radii.
5. The water distribution system and appurtenances which shall also conform to the applicable laws and adopted regulations enforced by the County Fire Chief.
6. Sewer distribution system and appurtenances which shall be designed and approved.
7. On-site and off-site grading shall be designed and approved.
8. Monumentation of the subdivision boundary shall be provided.

STATUS: All of the items listed above have been included on the improvement plans and have been bonded for with the subdivision improvements agreement. Therefore, the applicant is in compliance with this condition.

27. Transportation and Circulation (MIT): The applicant shall provide a seven (7) percent cash contribution for the signalization of Niguel Road at Mariner Drive.

STATUS: The applicant is in compliance with this condition.

28. The applicant has provided a \$50,000 cash deposit which shall be used for the construction of the signal at Stonehill Drive and Niguel Road.

STATUS: The applicant is in compliance with this condition.

29. The developer shall contribute a total of \$22,000 to the City of Dana Point for median landscape improvements along Niguel Road between Stonehill Drive and Pacific Coast Highway.

STATUS: The applicant is in compliance with this condition.

30. The applicant shall place a note on the map, or record a notice with the map that states: "The private streets constructed within this map

shall be owned, operated and maintained by Makar, its successors or assigns. The City of Dana Point shall have no responsibility therefore unless pursuant to appropriate sections of the said private streets have been accepted into the City Road System by appropriate resolution of the Dana Point City Council”.

STATUS: A note with the required language has been included on the title sheet of the Final Tract Map. Therefore, the applicant is in compliance with this condition.

31. All street names shall be submitted for review and approval by the Director of Community Development and the Fire Authority.

STATUS: The Community Development Department and the Fire Authority has approved the proposed street names. Therefore, the applicant is in compliance with this condition.

32. At least ninety (90) days prior to the approval of a final map, the applicant shall submit a copy of the proposed CC&R's and Articles of Incorporation of the Owner's Association for review and approval by the City Attorney, the Director of Community Development and the City Engineer. The CC&R's shall be recorded with the final map.

STATUS: The CC&Rs have been reviewed and approved by the City Attorney's Office, the Community Development Department, and the Public Works Department. Therefore, the applicant is in compliance with this condition.

33. The Covenants, Conditions and Restrictions (CC&R's) shall include a statement that prohibits amendment of the document without review and approval by the City Attorney and the Director of Community Development.

STATUS: The CC&Rs have been reviewed and approved by the City Attorney's Office, the Community Development Department, and the Public Works Department. Therefore, the applicant is in compliance with this condition.

34. The CC&R's shall reflect common access easements, and maintenance responsibility of all recreation areas, common walls, accessways, trails, parking areas, landscaping and grounds by the parties common to the CC&R's.

STATUS: The CC&Rs have been reviewed and approved by the City Attorney's Office, the Community Development Department, and the Public Works Department. Therefore, the applicant is in compliance with this condition.

35. CC&R's shall require privately owned catch basins to be annually inspected and cleaned prior to the storm season no later than October 15 of each year.

STATUS: The CC&Rs have been reviewed and approved by the City Attorney's Office, the Community Development Department, and the Public Works Department. Therefore, the applicant is in compliance with this condition.

36. CC&R's shall require privately owned streets and parking lots to be swept on the same periodic schedule as the City.

STATUS: The CC&Rs have been reviewed and approved by the City Attorney's Office, the Community Development Department, and the Public Works Department. Therefore, the applicant is in compliance with this condition.

Planning:

37. The applicant shall dedicate all public access easements to the City of Dana Point, in a form approved by the Community Development Director. Trails shall be maintained by the property owner.

STATUS: The appropriate easement has been included for dedication on the Final Tract Map. Therefore, the applicant is in compliance with this condition.

- C. Prior to the recordation of the final map or prior to the issuance of a rough grading permit, whichever comes first, the applicant shall meet the following conditions.**

Building:

38. Earth Resources and Seismicity (MIT): The applicant shall provide verification that site soils are adequate for the proposed project and/or description of required remedial work to the satisfaction of the Building Official.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

40. Utilities (MIT): The construction contractor will conduct a pre-construction briefing to ensure that all project contractors and equipment operators have information regarding the locations of existing water, sewer, natural gas lines, electrical, and/or associated facilities and the appropriate procedures for contacting the appropriate

agency or company and the City Engineer in the event of accidental damage to any lines or related facilities during construction.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

41. Utilities (MIT):The applicant shall coordinate with SCGC and SDG&E during final design to confirm the exact location and depth of gas lines and associated facilities and the need to replace and/or relocate any of the existing facilities.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

Fire:

42. Prior to the issuance of any grading permits, the applicant shall obtain the approval from the Fire Chief for the construction of any gate for the development. The gate at Stonehill Drive shall only be used for emergency vehicle ingress and egress only and residential access shall be prohibited. Maintenance vehicles may use the gate for exiting only. Please contact the OCFA at (714) 573-6100 or visit the OCFA website to obtain a copy of the "Guidelines for Design and Installation of Emergency Access Gates and Barriers."

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A Fire Master Plan has been reviewed and approved by OCFA.

Engineering:

43. Water and Hydrology (MIT): The applicant shall submit the following drainage studies to be approved by the City Engineer and the County of Orange:
- a. A drainage study including diversions, off-site areas that drain onto and/or through the subject site, and justification for any diversions; and
 - b. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and
 - c. Detailed drainage studies indicating how the grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water detention, will protect building pads from inundation by rainfall runoff which may be expected from all storms up to and including the projected 100-year flood.
 - d. The report shall also address the water quality of any proposed dewatering facilities and, if applicable, indicated how dewatering will comply with California Water Quality Control Board requirements.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A hydrology and hydraulics study has been reviewed and approved by the Public Works Department.

44. The applicant shall design the following improvements and provide necessary dedications in a manner meeting the approval of the City Engineer:
- a. All provisions for grading and surface drainage; including providing documentation to indicate compliance with the grading and drainage provisions of the Coastal Development Permit; and
 - b. All necessary storm drain facilities extending to a satisfactory point of disposal for the proper control, cleaning, and disposal of storm runoff; and
 - c. Where determined necessary by the City Engineer, the associated easements shall be dedicated to the City of Dana Point.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

45. Haul route permit will be required.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A haul route permit has already been issued by the Public Works Department.

46. The applicant shall provide public utility easements to serve the subject property. Easements shall be reviewed and approved by the Director of Public Works.

STATUS: The appropriate easements are shown on the Final Tract Map to be dedicated. Therefore, the applicant is in compliance with this condition.

47. The applicant shall submit "will serve" letters from the applicable water and sewer districts.

STATUS: Will Serve Letters are on file with the Public Works Department. Therefore, the applicant is in compliance with this condition.

48. The applicant shall provide a minimum 6 foot high screen wall and landscaping for the entire project perimeter. Landscape and irrigations plans shall be submitted to the Director of Public Works for review and approval prior to issuance of grading permit.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

49. The applicant shall provide a temporary walkway and trail along the southerly project boundary, including dedicated access easement. Trail and access shall be maintained at all times during construction.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

50. Daily vacuum /Broom type street sweeping shall be provided during construction on Niguel Road and any other impacted street.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. Additionally, the applicant has acknowledged the requirements of this condition and will provide compliance as necessary during construction activities.

51. In the event there is to be any borrow or stockpiling on site, the applicant shall obtain borrow-site permit, stockpile permit, and haul route permit. A soils report shall be submitted by the applicant and approved by the City Engineer addressing the following concerns:
- a. Surcharge of stockpiles and potential settlement of adjacent structures.
 - b. Use of 1-1/2:1 or temporary slopes.
 - c. Settlement monitoring program.
 - d. Cuts and fills on existing slopes that support structures.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

52. In the event there is to be any borrow or stockpiling on-site, the applicant shall obtain a borrow-site permit or stockpile permit or haul route permit. The applicant shall submit mitigation measures and safeguards addressing the following concerns:
- a. Hours of operation.
 - b. Dust control.
 - c. Haul route.
 - d. Drainage of open pits on borrow site.
 - e. Drainage around stockpiles.
 - f. Erosion control and hydroseed of disturbed dirt.
 - g. Noise.
 - h. Length of time for borrow site or stockpile.
 - i. Perimeter safety fencing.
 - j. Stability of temporary slopes.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

53. The applicant shall submit a preliminary sanitary sewer plan for review and approval by the City Engineer. The plan shall show line size, flow

line elevations and connections(s) to existing lines. All sanitary sewer facilities shall be constructed to the specifications of the applicable sanitary district and the City Engineer. Said facilities shall be dedicated to the applicable sanitary district. The applicant shall remit the Master Plan of Sewer fee at the applicable rate.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. Sanitary sewer plans have been reviewed and approved by South Coast Water District (SCWD) and the Public Works Department.

54. The applicant shall submit a water plan for review and approval by the City Engineer. The plan shall show line size, flow line elevations and connection(s) to existing lines. Water supply facilities shall be constructed to the specifications of the applicable water district and the City Engineer with all incidental fees being paid by the applicant.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. Water plans have been reviewed and approved by South Coast Water District (SCWD) and the Public Works Department.

55. Transportation and Circulation (MIT): The applicant shall coordinate with the City of Dana Point and any other affected City in developing a truck routing plan for the off-site transport of excess fill material. Said routing plan will also include the hours in which transport activities can occur.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A Haul-Route permit has been issued by the Public Works Department.

56. Earth Resources and Seismicity (MIT): The applicant shall submit a geotechnical report to the City Engineer for review and approval. This report will primarily involve assessment of potential soil related constraints and hazards such as slope instability, settlement, liquefaction, or related secondary seismic impacts where determined to be appropriate by the City Engineer. The report shall also include evaluation of potentially expansive soils and recommended construction procedures and/or design criteria to minimize the effect of these soils on the proposed development. All reports shall recommend appropriate mitigation measures and be completed in the manner specified by the Orange County Grading Manual and the Orange County Subdivision Ordinance.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

57. Cultural Resources (MIT): The applicant shall provide written evidence to the City Engineer that a certified paleontologist and archaeologist have been retained to observe grading activities and salvage and catalogue fossils as necessary. The paleontologist and archaeologist shall be present at the pre-grading conference, shall establish procedures for paleontological and archaeological surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification and evaluation of the findings. A report detailing the findings of the salvage program will be prepared for review and approval by the Community Development Director.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. The applicant has secured a paleontologist as required by this condition.

58. Earth Resources and Seismicity (MIT): The applicant's plan shall comply with the City's adopted standards and regulations for grading, revegetation, drainage and soil management techniques to reduce erosion to the satisfaction of the City Engineer. Implementations of said plans shall be to the satisfaction of the City Engineer.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

59. Water and Hydrology (MIT): The applicant's plans shall comply with the City's Drainage Master Plan to avoid the potential for flooding on the site. Implementation of said plans shall be to the satisfaction of the City Engineer.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

60. If permits and mitigation are required by the U.S. Fish and Wildlife Service and the California Department of Fish and Game regarding the impacts to biological resources, they shall be complied with and verification of compliance by the applicant shall be provided to the City Engineer.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved

compliance with this condition. No regulatory permits are required for this project.

61. Prior to the issuance of any permits, the applicant shall determine the prioritization of the pollutant threat posed by the project during construction by completing the Urban Runoff Threat Assessment Form, available at the Permit counter.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A copy of a completed and approved Urban Runoff Threat Assessment Form is on file with the Public Works Department.

62. Projects subject to the following requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for City review on request. A SWPPP is required for projects that will result in soil disturbance of one or more acres of land. *Prior to the issuance of any grading or building permits, the applicant shall demonstrate that coverage has been obtained under California's General Permit for Stormwater Discharges Associated with Construction Activity by providing a copy of the Notice of Intent (NOI) submitted to the Regional Water Quality Control Board and a copy of the subsequent notification of the issuance of a Waste Discharge Identification (WDID) Number, or other proof of filing.*

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. A SWPPP has been submitted to and approved by the Regional Water Quality Control Board.

63. Prior to the issuance of any grading or building permit, the applicant shall include in the plans any urban runoff control measures deemed necessary by the Director of Public Works and shall submit to the City for review and approval a Water Quality Management Plan (WQMP) that:
- Fulfills all the requirements of the City's Standard Urban Stormwater Mitigation Plan (SUSMP, also known as the City's WQMP is Exhibit 7.V of the City's Local Implementation Plan),
 - Addresses Site Design BMPs such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas,
 - Incorporates the applicable Routine Source Control BMPs as defined in the SUSMP,

- Incorporates Treatment Control BMPs as defined in the SUSMP,
- Generally describes the long-term operation and maintenance requirements for the BMPs,
- Identifies the entity that will be responsible for long-term operation and maintenance of the BMPs, and
- Describes the mechanism for funding the long-term operation and maintenance of the BMPs.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

64. Prior to grading or building permit close-out and/or the issuance of a certificate of use or a certificate of occupancy, the applicant shall:
- Demonstrate that all structural best management practices (BMPs) described in the Project WQMP have been constructed and installed in conformance with approved plans and specifications,
 - Demonstrate that applicant is prepared to implement all non-structural BMPs described in the Project WQMP,
 - Demonstrate that an adequate number of copies of the approved Project WQMP are available onsite,
 - Submit for review, and receive approval by the City for an Operations and Maintenance (O&M) Plan for all BMPs.
 - Submit copies from County Recorder verifying that the existence, maintenance and funding of structural BMPs into perpetuity have been recorded with the property, along with the City's right of entry to inspect the BMPs.

STATUS: The Public Works and Building Inspector shall verify compliance with this condition prior to issuance of a certificate of occupancy and/or close out of the grading and/or building permit.

Planning:

65. The applicant shall produce evidence acceptable to the Community Development Director, that:
- a. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
 - b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control), as adopted by the City.
 - c. Stockpiling and vehicle staging areas shall be located as far as

practicable from residential dwellings.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition. The aforementioned notes are included on the title sheet of the grading plans.

66. Utilities (MIT): The applicant shall provide a reclaimed water irrigation plan to the Community Development Director and City Engineer for review and approval. The reclaimed water irrigation plan shall provide for the use of reclaimed water to irrigate on-site landscaping to the greatest extent feasible.

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

67. Noise (MIT): The applicant shall conduct a detailed acoustical study for proposed development within the 60 CNEL noise contour, based on the finished grades and design of proposed structures. The project shall provide mitigation to meet the City's adopted noise standards. Proper design may include orientation of residences, setbacks, shielding and sound insulation of the building itself. The following structural elements may be designed for varying amounts of noise reduction (at varying costs) depending on the requirements of a specific location:

- Exterior Walls (surface weight, depth, finishing, interior surface, sheathing, insulation)
- Windows (thickness/multiple, weather stripping, sealants, total area)
- Doors (structure/thickness, sliding door specifications, glazing, perimeter treatment)
- Roofs (structure/thickness, sliding door specifications, glazing, perimeter treatment)
- Ceilings (joints/ceiling material, insulation)
- Floors (material, openings)
- Ventilation (mechanical systems, fan specifications, baffle plates, gravity vent openings, duct lining, fireplaces)
- Structural barriers (walls, opaque or clear and berms)

STATUS: A rough grading permit has been issued by the Public Works Department and the applicant has already achieved compliance with this condition.

97. The applicant shall submit a landscape plan prepared by a State licensed landscape architect including where applicable:
- a. Proposed and required fencing and walls, including perimeter and retaining.
 - b. Permanent irrigation system;
 - c. Open space lots;
 - d. Landscaping and irrigation of all graded slopes;
 - e. Ground mounted lighting fixture details;
 - f. Existing trees;
 - g. Drainage details;
 - h. Electronic transformers;
 - i. Trash enclosures;
 - j. Areas to be maintained by a Landscape Maintenance District, Homeowner's Association, or property owner;
 - k. Temporary model sales complex details;
 - l. Ground mounted air conditioning units;
 - m. A table detailing the required and provided amounts of landscaping with an accompanying map illustrating the areas that were included in the calculation for the landscape coverage requirement and the size of each individual area included.

STATUS: The required Landscape and Maintenance Agreement included as Attachment A of the Resolution includes the required items and is approved by the Department of Public Works and the City Attorney. Therefore, the applicant is in compliance with this condition.

151. The applicant shall execute and record a Landscape and Maintenance Agreement for landscaping and irrigation located in the public right-of-way.

STATUS: The required landscape and maintenance agreement included as Attachment A of the Resolution and is approved by the Department of Public Works and the City Attorney. Therefore, the applicant is in compliance with this condition.

167. The applicant shall pay an in-lieu housing fee of \$5,000.00 per residential unit prior to or concurrent with the City Council approval of the final tract map. These funds will be used to address the City's need

for affordable housing.

STATUS: The applicant has paid this fee and therefore, is in compliance with this condition.

SUPPORTING DOCUMENT F – Municipal Code Requirements

CITY OF DANA POINT

MUNICIPAL CODE REQUIREMENTS FOR FILING (Final Tract Map)

Note: The following provides the Municipal Code Sections that apply to requirements for submittal of a Tentative Tract Map. The intent of this document is to assist in developing the list of required documents for submittal of any Tentative Tract Map. Not all sections included in this chapter of the code are referenced.

Section 7.02.110 reads:

"Tentative tract map" means a preliminary map that is used whenever a parcel or a number of contiguous parcels of land is proposed to be subdivided for the purpose of creating five or more lots, five (5) or more condominium units, the conversion of five (5) or more existing dwelling units to a stock cooperative or a community apartment project containing five (5) or more apartment units, except as otherwise specified by Section 7.03.020 or Section 7.03.050.

Tentative Tract Map TTM 16769 proposes eleven (11) new lots and therefore is permitted pursuant to this section of the code.

7.02.035 Definitions (C).

"City Council" means the City Council of the City of Dana Point.

"City Engineer" means the Director of Public Works and Engineering Services.

"City standards" means the Dana Point standard specifications as adopted by the City Council.

"Code" means the Municipal Code of the City of Dana Point.

"Community apartment project" means a project in which an undivided interest in the land is coupled with the right of exclusive occupancy of any apartment located thereon.

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include in addition a separate interest in other portions of such real property.

"Condominium project" means an entire parcel of real property divided or to be divided into condominiums, including all structures thereon.

"County" means the County of Orange.

"County Recorder" means the County Recorder of the County of Orange.

"County Surveyor" means the County Surveyor of the County of Orange.
(Added by Ord. 95-03, 2/14/95)

7.03.005 Types of Maps.

Four (4) different types of maps and procedures are available for the purpose of creating subdivisions and lots. Certain subdivisions may be created without following a map procedure. (Added by Ord. 95-03, 2/14/95)

7.03.010 Tentative Tract Maps.

A tentative tract map, as defined in Section 7.02.110, is permitted pursuant to the provisions of this Code. (Added by Ord. 95-03, 2/14/95)

7.03.030 Final Tract Maps.

A subdivision may be created by the recordation of a final tract map that is in substantial conformance with all or a portion of an approved or conditionally approved tentative tract map. Each final tract map shall include all or an approved portion of the approved or conditionally approved tentative tract map. It shall be filed in compliance with the provisions of this Subdivision Code, the Subdivision Map Act, and the Subdivision Manual. (Added by Ord. 95-03, 2/14/95)

Final Tract Map 16769 is in conformance with the approved Tentative Map and has been filed in compliance with the provisions of this Subdivision Code and the Subdivision Map Act. Therefore, the City has verified compliance with this section.

7.03.040 Final Tract maps.

(a) A subdivision may be created by the recordation of a Final Tract map that is in substantial conformance with an approved or conditionally approved tentative Tract map or with a portion of an approved or conditionally approved tentative Tract map which complies with the provisions of Section 7.03.020(c). A Final Tract map may also be recorded on portions of a tentative tract map when such portions comply with the specifications of Section 7.03.020(b), (c) or (d). It shall be filed in compliance with the provisions of this Subdivision Code, the Subdivision Map Act (in particular, Government Code Sections 66426 and 66463.1) and the Subdivision Manual.

(b) A Tract map shall be based upon a field survey except that a Tract map may be compiled from record data when the Director determines that the

subdivision does not require a field survey provided the map complies with the provisions of the Subdivision Map Act. (Added by Ord. 95-03, 2/14/95).

The Final Tract Map is in substantial conformance with the Tentative Map. Also, the Final Map was based upon a field survey. Therefore, the City has verified compliance with this section.

7.04.025 Certification of Ownership.

Each tentative map shall be signed by the property owner or owners of record, and shall be accompanied by evidence of ownership of the real property proposed for subdivision. When any portion of a tentative map includes property that is owned by a public agency, the certification of ownership need not include the signatures for such ownerships, provided such portions are clearly identified on the map. (Added by Ord. 95-03, 2/14/95)

Sufficient evidence of ownership was submitted to the City in the form of a title report. City staff has verified compliance with this section.

7.04.030 Title Report.

Tentative maps shall be accompanied by a preliminary title report which discloses all possessory interests and interests of record in the land being subdivided when determined to be necessary by the Director. (Added by Ord. 95-03, 2/14/95)

A current preliminary title report was submitted with the Tentative Tract Map. Therefore, the City has verified compliance with this section.

7.04.035 Environmental Documents.

Tentative maps shall be accompanied by appropriate environmental documents in accordance with the California Environmental Quality Act. (Added by Ord. 95-03, 2/14/95)

Requirement: When the Tentative Tract Map is submitted, all environmental documents shall be provided in accordance with CEQA. This would include the revised documents in the form of an amendment to the Environmental Impact Report.

A Mitigated Negative Declaration (SCH No. 91121010) was prepared in accordance with Section 15070 of the California Environmental Quality Act (CEQA) for the Monarch Beach Resort Specific Plan as adopted by City Council Resolution No. 92-02-25-2.

(a) Unless the requirement is waived by the City Engineer pursuant to subsection (b) or deferred pursuant to Subsection (c) of this Section, tentative maps shall be accompanied by a preliminary soils report based upon adequate test borings and prepared by a registered civil engineer. If the preliminary soils report indicates the presence of critically expansive soils or other soils problems which, if not corrected, would lead to structural defects, a

soils report on each proposed lot in the subdivision containing any such soils problem shall accompany the tentative map. If the preliminary soils report indicates the presence of rocks or liquids containing deleterious chemicals which, if not corrected, could cause construction materials such as concrete, steel and ductile or case iron to corrode or deteriorate, a soils investigation of each potentially affected lot in the subdivision may be required by the City Engineer. Such reports shall include recommended corrective action which is likely to prevent structural damage.

(b) The City Engineer may waive the preliminary soils report required by Subsection (a) of this Section for tentative tract maps, where the City Engineer determines that it is unnecessary because the City already has sufficient information as to the qualities of the soils in the proposed subdivision and for tentative Tract maps.

(c) The City Engineer may defer the requirement for a preliminary soils report until the submission of a final tract or Tract map.

(d) The City may approve or conditionally approve the tentative map or portion thereof where these soils problems exist if it determines that the recommended action is likely to prevent structural damage to each structure to be constructed and, as a condition to the issuance of any building permit, may require that the approved recommended action be incorporated in the construction of each structure.

(e) The preliminary soils report shall be submitted to the City Engineer for review. The City Engineer may review the preliminary soils report and may require additional information or reject the report if it is found to be incomplete, inaccurate or unsatisfactory. (Added by Ord. 95-03, 2/14/95)

A preliminary soils report was submitted with the Tentative and Final Tract Maps. The project site is currently being graded in accordance with the the approved Rough Grading Permit ENG07-0341. As a condition of the permit, an As-Graded Soils Report documenting soils conditions and appropriate recommendations, shall be submitted prior to the permit final. Therefore, the City has verified compliance with this section.

7.04.045 Additional Information.

(a) Tentative maps shall be accompanied by such additional information as may be specified by the Director. The Director shall have the authority to include among such requirements geologic, seismic and hydrology reports; aerial photographs and transparent overlays; grading, site development and landscaping plans, including building setback lines; evidence from the proposed sewer agency and water supplier with respect to their capability of serving the proposed subdivision; of protection and fuel modification reports and any other information reasonably relevant to proposed subdivisions.

(b) The Director may require differing amounts of supplementary information, depending upon the type of map involved, the scope of the proposed subdivision and the anticipated environmental impacts of the subdivision.

(c) The Director may require the submission of additional information after the filing of tentative maps as necessary.

(d) The preliminary soils report shall also address future groundwater or seepage conditions that may occur as the result of developing each proposed lot in the subdivision. The analysis shall specifically address the individual and cumulative impact of irrigation and rainwater absorption from past, present and anticipated future development. If the preliminary soils report determines that percolating groundwater may cause future damage or subsidence on public or private property, a soils investigation report of each potentially affected lot, public or private, shall accompany the tentative map. Such reports shall include recommended corrective action which is likely to prevent damage to public or private property including the installation of a subdrainage system throughout the proposed development. If the preliminary soils report determines that percolating groundwater will not cause future damage to public or private property no additional reports will be required. (Added by Ord. 95-03, 2/14/95)

The Director of Community Development did not require any additional information to be submitted with the Tentative Tract map. Therefore, the City has verified compliance with this section.

7.05.015 Filing.

Tentative maps shall be filed with the Director who shall accept such maps only when the Director determines that the requirements for filing a tentative map established by this Subdivision Code and the Subdivision Map Act have been satisfied. The tentative map shall be deemed filed on the date it is accepted as complete by the Director. Each tract or Tract map shall be identified by a number prominently displayed on the face of the map issued by the City. (Added by Ord. 95-03, 2/14/95)

The Director of Community Development accepted the Tentative Tract map and placed the item on a Planning Commission agenda for consideration. The Tentative Tract map was approved via City Council Resolution No. 05-06-08-04.

7.05.020 Copies to Concerned Agencies.

(a) Where a local agency has filed a territorial map with the Director pursuant to the Subdivision Map Act, the Director shall forward a copy of any filed tentative map which is located wholly or partially within the territory outlined on the territorial map to said local agency within three (3) days of the date the tentative map is filed.

(b) When the State Department of Transportation has filed with the City Council a map of territory within one (1) mile on either or both sides of any state highway routing pursuant to the Government Code, the Director shall forward a copy of any filed tentative map which is located wholly or partially within the territory outlined on the territorial map to the district office of the Department of Transportation within three (3) days of the date the tentative map is filed.

(c) Within three (3) days of the date a tentative map is filed, the Director shall give notice of the filing to the governing boards of the school district or districts within which the proposed subdivision is located pursuant to the Government Code. (Added by Ord. 95-03, 2/14/95)

Subsection (a) is not applicable since Tract Map 16769 is not a territorial map. Subsection (b) is not applicable since the map was not filed by the State Department of Transportation. Subsection (c) however, does apply and public notifications, including Capistrano Unified School District, were sent out as described in the Dana Point Municipal Code and the Subdivision Map Act.

7.05.025 Time for Action.

The Subdivision Committee shall act upon a tentative map within the time specified in the Subdivision Map Act unless:

(a) An extension of time for action is mutually consented to by the subdivider and the Subdivision Committee, in which case the map shall be acted upon within the time agreed upon; or

(b) The subdivider withdraws the map. (Added by Ord. 95-03, 2/14/95)

The Subdivision Committee, namely the Planning Commission, acted upon the Tentative Map within the time specified by the Subdivision Map Act. Therefore, the City is in compliance with this section.

7.05.035 Review of Tentative Maps.

Each tentative map shall be reviewed by the Subdivision Committee, which shall approve, conditionally approve or disapprove the tentative map. (Added by Ord. 95-03, 2/14/95)

The Subdivision Committee, namely the Planning Commission and the City Council, approved Tentative Tract Map 16769 on June 8, 2005. A one (1) year time extension was granted in 2007. Therefore, the Tentative Tract Map is still valid, and the approval of the Final Tract Map is recommended.

7.05.045 Meetings and Hearings.

The Subdivision Committee shall act on tentative maps at regularly scheduled meetings or duly noticed special meetings when the matter has been duly

placed upon the Committee's agenda. Public hearings shall be required for the consideration of tentative maps. At a public hearing, the Subdivision Committee shall allow all interested persons an opportunity to address the Subdivision Committee on any matter pertaining to a proposed subdivision. (Added by Ord. 95-03, 2/14/95)

The City Council acted on Tentative Tract Map 16769 per the above section (see Resolution No. 05-06-08-04). Therefore, the City has verified compliance with this section.

7.05.050 Notice.

Notice shall be given to all persons shown in the latest equalized assessment roll as owning property within five hundred (500) feet of the property proposed to be subdivided by all three (3) of the following methods:

- (1) Direct mailing of a notice to the owners;
- (2) Posting of a notice in accordance with the standard policy;
- (3) Publication of a notice in a newspaper of general circulation in the City of Dana Point. (Added by Ord. 95-03, 2/14/95)

The Planning Department noticed property owners within a 500' radius of the proposed project via direct mailing of a notice to homeowners. Also, the City Clerk posted a notice in accordance with the standard policy and published a notice in a newspaper as described above. Therefore, the City has verified compliance with this section.

7.05.060 Findings Required.

A tentative Tract map or tentative tract map shall be approved or conditionally approved only if the Subdivision Committee makes the following findings:

- (a) That the proposed map is consistent with the City's General Plan;
- (b) That the design and improvement of the proposed subdivision is consistent with the City's General Plan;
- (c) That the site is physically suitable for the proposed type of development;
- (d) That the requirements of the California Environmental Quality Act have been satisfied;
- (e) That the site is physically suitable for the proposed density of development;
- (f) That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat;

(g) That the design of the subdivision and the proposed improvements are not likely to cause serious public health problems;

(h) That the design of the subdivision and the proposed improvements will not conflict with easements of record or established by court judgment or acquired by the public at large for access through or use of property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and these will be substantially equivalent to ones previously acquired by the public;

(i) That the design and improvement of the proposed subdivision are suitable for the uses proposed and the subdivision can be developed in compliance with the applicable zoning regulations pursuant to Section 7.05.055;

(j) That the subdivision is not located in a fee area or, if located in a fee area, the subdivider has met the requirements for payment of the applicable fees or the subdivision would not allow development of a project which would contribute to the need for the facility for which a fee is required;

(k) That the subdivision is located in an area which has access to adequate utilities and public services to support the development proposed within the subdivision or that the subdivision includes the provisions and improvements necessary to ensure availability of such utilities and services. (Added by Ord. 95-03, 2/14/95)

Tentative Tract Map 16769 met all the requirements of this section. City Council Resolution No. 05-06-08-04 concurs that all of these requirements have been met. Therefore, the City has verified compliance with this section.

7.05.065 Additional Findings Required.

(a) The Subdivision Committee shall determine whether the discharge of waste from the proposed subdivision into an existing community sewer system, where such a system exists, would result in or add to a violation of existing requirements prescribed by the Regional Water Quality Control Board. In the event it is determined that the proposed waste discharge would result in or add to such a violation, the Subdivision Committee shall disapprove the tentative map unless there are extenuating or overriding considerations, in which case these shall be stated.

(b) In the event a subdivision fronting upon the coastline or shoreline or upon a public waterway, river, or stream or upon a lake or reservoir owned in part or entirely by a public agency does not provide public access to such public resources through the subdivision itself in accordance with requirements of Sections 7.08.125 and 7.08.130, the Subdivision Committee shall find that reasonable public access to the resource in question is otherwise available within a reasonable distance from the subdivision. If this finding cannot be made, the map shall be disapproved.

(c) If the Subdivision Committee approves or conditionally approves a tentative map which deviates from any standard of design as allowed by Section 7.08.145, the Committee shall make a finding or findings that each such deviation has been individually considered and found to be justified based upon specific special circumstances which apply. (Added by Ord. 95-03, 2/14/95)

(a) All waste from the proposed subdivision shall be directed to the existing sanitary sewer system. No waste is anticipated that would result in a violation of existing requirements prescribed by the State Water Resources Control Board.

(b) This subdivision does not front upon any of the entities described in this section. Therefore, this section does not apply.

(c) The Tentative Tract Map has been approved in conjunction with Site Development Permit No. SDP91-07M(III).

Therefore, the City has verified compliance with this section.

7.05.070 Modification of Maps and Conditions of Approval.

Upon the request of the subdivider, approved tentative maps may be modified and conditions of approval may be modified or deleted by the Subdivision Committee. In all cases, the Director shall attempt to notify any third parties who had previously indicated an interest in the proposed subdivision, of the Subdivision Committee's scheduled consideration of the modification. Modifications shall be covered by the Subdivision Committee in the same manner and in accordance with the notice requirements, where applicable, as set forth in Section 7.05.050. (Added by Ord. 95-03, 2/14/95)

The applicant was approved for modifications to the previously approved Tentative Map per Resolution 05-06-08-04. All provisions of this section have been met, including notifications. Therefore, the City has verified compliance with this condition.

7.05.075 Period of Validity--Extensions.

(a) In accordance with Government Code Section 66452.6, an approved or conditionally approved tentative map shall expire twenty-four (24) months after its approval or conditional approval, unless prior to the expiration date the subdivider requests an extension of time to extend said map or if the subdivider is required to expend one hundred twenty-five thousand dollars (\$125,000.00) or more to finance public improvements outside the boundaries of the tentative map, excluding improvements of public rights-of way which abut the boundaries of the property to be subdivided and which are reasonably related to the development of the property as set forth in Government Code Section 66452.6. The one hundred twenty-five thousand dollar (\$125,000.00) figure shall be adjusted annually pursuant to the provisions of Government Code Section 66452.6(a).

(b) In accordance with Government Code Section 66452.11, if an approved tentative map had not expired on September 13, 1993, the life of the tentative map shall be extended for twenty-four (24) months.

(c) The Subdivision Committee may grant an extension of time for any map for a period of up to one (1) year. The Subdivision Committee may grant more than one (1) extension but in no case may the total of the extensions granted exceed a total of three (3) years beyond the original date of expiration.

(d) An extension may be granted only where it will not result in conditions or circumstances contrary to the public health, safety or the general welfare.

(e) Denial of a request for extension may be appealed by the subdivider to the City Council pursuant to Section 2.04.100 et seq. of this Code. (Added by Ord. 95-03, 2/14/95)

The Tentative Tract Map approval expired on June 8, 2008. However, a timely filing of the Final Map occurred prior to the expiration date. Government Code Section 66452.6 (d) allows for processing and lawful recordation of the Final Map after the date of expiration of the Tentative Map.

Therefore the request for approval of the Final Tract Map and subsequent recordation of the Final Tract Map is valid.

7.05.080 Appeal of Tentative Map to City Council.

Except as provided in Section 7.05.075, any interested person may appeal to the City Council from any action of the Subdivision Committee with respect to a tentative map by filing an appeal in accordance with Section 2.04.100 et seq. of this Code. (Added by Ord. 95-03, 2/14/95)

To date, no appeals have been filed against the Tentative Tract Map. Therefore, the City has verified compliance with this section.

7.20.010 Certificate from Tax Collector-Treasurer.

Prior to the filing of a final tract map with the City Council, the subdivider shall file with the Orange County Surveyor a certificate from the Orange County Tax Collector-Treasurer stating that, according to the records of such office, there are no liens against the subdivision or any part thereof for unpaid state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments collected as taxes not yet payable. The subdivider shall file with the Orange County Surveyor a certificate by the Orange County Tax Collector-Treasurer giving his/her estimate of the amount of taxes and special assessments collected as taxes and special assessments collected as taxes which are a lien but not yet payable. (Added by Ord. 95-03, 2/14/95)

The County Treasurer-Tax Collector shall sign the Final Tract Map prior to recordation of the said map. This condition will be met upon transmittal of the map for recordation.

7.24.015 Final Tract Map Required.

When a subdivision is proposed to be created through the tentative tract map process, a final tract map shall be filed for recording with the County Recorder and the County Surveyor pursuant to Government Code Section 66466. No proposed subdivision shall be complete until such tract map has been filed for recording. (Added by Ord. 95-03, 2/14/95)

After receiving approval from the City Council, the City Clerk shall transmit the Final Tract Map to the office of the County Recorder and the County Surveyor as described in this section.

7.24.020 Signatures Required.

All parties having any record title interest in the real property being subdivided shall consent to the preparation and recordation of the tract map by signing the required certificate. Such signatures shall be properly acknowledged. The certificate need not be signed by public entities and public utilities which own rights- of-way, easements or other interests which cannot ripen into a fee; provided, that:

(a) Division and development of the property in the manner set forth on the map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement;

(b) The map contains a statement that the Subdivision Committee has determined that the division and development of the property in the manner set forth on the map will not unreasonably interfere with the free and complete exercise of public entity or public utility right-of-way or easement; and

(c) The public entity or utility has been given an opportunity to object to such a determination in accordance with the provisions of the Subdivision Map Act.

(Added by Ord. 95-03, 2/14/95)

The City Council approved TTM 16769 on June 8, 2005. Therefore, compliance with this section has been verified.

7.24.025 Method of Approval.

Final tract maps, together with any required improvement agreements and security, shall be submitted to the City Engineer for review and preliminary determination as to:

(a) Compliance with any conditions imposed on the approval of the tentative map;

and

(b) Substantial conformance with the approved tentative map and any improved alterations thereof.

In the event the City Engineer determines that the subdivision is not in compliance or substantial conformance, the Director shall within ten (10) days of the date the final map was submitted, advise the subdivider in writing of his/her preliminary determination. The subdivider may appeal the Director's determination to the Subdivision Committee or directly to the City Council in the event the map was originally approved on appeal to the City Council. Any such appeal shall be filed and heard in accordance with Section 2.04.10 et seq. of this Code. Upon hearing any such appeal, the Subdivision Committee or City Council shall make an advisory ruling to the City Engineer. The final determination as to whether the final tract map is in compliance and substantial conformance shall be made by the City Engineer.

Within twenty (20) days (or more if requested by the subdivider) after the City Engineer determines that all conditions precedent to the approval of the tract map have been satisfied and any required improvement agreements and security are in order, the Director shall execute the certificate required by the Subdivision Map Act. (Added by Ord. 95-03, 2/14/95)

The applicant has complied with all conditions of approval and the Final Tract Map is in substantial conformance with the Tentative Tract Map. Also, after receiving approval from the City Council, the City Clerk shall transmit the Final Tract Map to the office of the County Recorder and the County Surveyor within the time limits described in this section.

7.24.030 Filing with the City Council.

After the City Engineer executes the certificate, the Director shall transmit the tract map to the City Clerk. The City Clerk shall present the map and any required agreements, securities and approvals to the City Council for their approval and execution of the certificate by the City Clerk. (Added by Ord. 95-03, 2/14/95)

After receiving approval from the City Council, the City Clerk obtain any necessary signatures and then transmit the Final Tract Map to the office of the County Recorder for recordation.

7.24.035 Filing with the County Recorder and County Surveyor.

The City Engineer shall transmit the approved final tract map to the County Surveyor for its certificate, then to the County Recorder for recordation, unless the City Engineer or subdivider requests an alternate time schedule for recordation. It shall be the obligation of the subdivider to cause a copy of the approved final tract map to be filed with the County Surveyor in accordance with Government Code Section 66466. (Added by Ord. 95-03, 2/14/95)

The City Engineer will provide the map to the City Clerk for recordation at the County of Orange.

WAIVER FROM MAP PROCESS

7.26.015 Types of Subdivisions Eligible.

Only the following types of subdivisions are eligible to receive a waiver from the requirement for recording a Tract map:

- (a) Subdivisions containing four (4) or less parcels each of which is a minimum of five (5) acres in area and is proposed for further subdivision;
- (b) Subdivisions wherein each parcel will have a gross area of twenty (20) acres or more and a right of vehicular access for a continuous width of not less than forty (40) feet to a maintained public street or highway having a right-of-way width of not less than forty (40) feet;
- (c) Subdivisions wherein each parcel will have a gross area of not less than forty (40) acres.
- (d) Subdivisions in accordance with Government Code Section 66428.1 if at least two-thirds of the owners of mobile homes who are tenants in the mobile home park sign a petition indicating their intent to purchase the mobile home park for purposes of converting it to tenant-owned, condominium ownership interest, and a field survey is performed, the requirement for a Tract map as a tentative and Final Map specified by Section 66426 of the Government Code, shall be waived unless any of the following exist:
 - (1) There are significant design or improvement requirements necessitated by health or safety concerns;
 - (2) Subsequent to recordation of the existing parcel or Final Map, there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and Final Map;
 - (3) The existing lot or lots were not created by a recorded parcel or Final Map;
 - (4) The conversion would result in the creation of additional parcels.

If pursuant to Government Code Section 66428, the City imposes requirements on the applicant to mitigate health or safety conditions, no improvement bonds or other security device, except an unsecured improvement agreement, may be required. (Added by Ord. 95-03, 2/14/95)

Final Tract Map 16769 does not meet any of the criteria in this section and is therefore, not eligible for a waiver. To that end, the City has verified compliance with this section.

SUPPORTING DOCUMENT G – Letter of Survey Certification from the County of Orange**COUNTY OF ORANGE****RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT**

W 4/14/08 *Bryan Speegle, Director*
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2300
Fax: (714) 834-5188

April 14, 2008

Rory S. Williams
Hunsaker & Associates
3 Hughes
Irvine, CA. 92618-2021

City of Dana Point

Fourth Check

Dear Sir:

In our examination of the final map of Tract No. **16769** as provided by the Subdivision Map Act and the Subdivision Code, the following discrepancies were found:

- Make all corrections or modifications as shown on the check print.

The County Surveyor has found this map technically correct and acceptable for recordation. Any changes or corrections required by the City must be addressed and the City Engineer's signature with R.C.E. number and seal must be obtained prior to submitting original for recordation. Changes or corrections requested by the City may require additional checking by the County Surveyor.

Unless the map is revised it will not be necessary to submit additional prints to the County Surveyor for checking. Any changes to dimensions or map closure data will require submittal of two prints for a review of these changes before submitting originals.

Submit originals for final check when all corrections have been complied with and signatures and certificates (Including County Treasurer-Tax Collector's Certificate) completed.

All maps (tract, parcel and record of survey) shall be drafted on tracing cloth or polyester base film, the size of which shall be 18 X 26 inches with a 1 inch blank margin on all sides (SMA Section 66445 (a)).

All signatures and seals on tract maps, parcel maps, records of survey shall be in black opaque ink and all signatures and seals shall be clear and reproducible. (Orange County Recorder Requirement).

Submit an up to date title report when the originals are submitted for final check.

A subdivision guarantee furnished by a title company will be required at the time of recordation. Contact the appropriate title company regarding this requirement.

Rory S. Williams
TR 16769
Page 2 of 2

In accordance with Orange County Ordinance No. 3809 Sec. 7-9-337 submit a digital graphics file containing the boundary, street centerline, right-of-way, easement, and Lot/Parcel line data at the same time the original map is submitted.

All corrections not completed prior to submittal of the originals for review will only delay the approval of the map for recordation.

Questions concerning this review or letter should be directed to Dan Eckel at 714-834-3514.

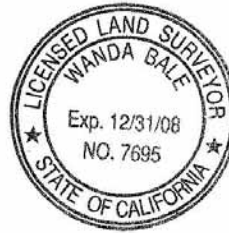
Sincerely,

Raymond L. Mathe
County Surveyor

This report was prepared
Under my direction

By Wanda Bale

Wanda Bale, P.L.S.
Senior Land Surveyor



cc: City Engineer, City of Dana Point.

SUPPORTING DOCUMENT H – Title Report**Fidelity National Title Company****PRELIMINARY REPORT**

*In response to the application for a policy of title insurance referenced herein, **Fidelity National Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

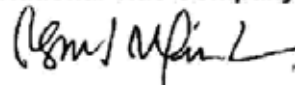
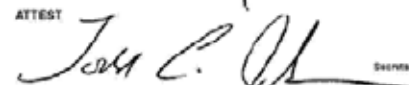
This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.


Countersigned

Fidelity National Title Company
BY  PRESIDENT
ATTEST  SECRETARY



Visit Us on our Website: www.fntic.com



Fidelity National Title Company

ISSUING OFFICE: 1300 Dove Street, Suite 310 • Newport Beach, CA 92660
949 622-5000 • FAX Call for Fax

PRELIMINARY REPORT

Amended

Title Officer: John Glance

Title No.: 07-**259910534**-A-JG

Locate No.: CAFNT0925-0925-0199-0259910534

TO: Makar Properties
4100 MacArthur, Suite 200
Newport Beach 92660

ATTN: Jason Y. Korengold
YOUR REFERENCE: TM 16769

SHORT TERM RATE:

PROPERTY ADDRESS: Dana Point, California

EFFECTIVE DATE: June 5, 2008, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

RESORT RESIDENTIAL SOUTH, LLC, a Delaware limited liability company
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

LM\JK 12/19/2007

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

LEGAL DESCRIPTION**EXHIBIT "A"****PARCEL 1:**

PROPOSED TRACT NO. 16769 BEING A SUBDIVISION OF THE FOLLOWING:

LOTS 3 AND 4 OF TRACT NO. 14589, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 790, PAGES 4 THROUGH 14, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 672-623-04 AND 05

PARCEL 2:

PARCELS 2, AND F AS SHOWN ON EXHIBIT "B" OF LOT LINE ADJUSTMENT NO. 2003-560, RECORDED AUGUST 20, 2004, AS INSTRUMENT NO. 2004-757572, IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PORTION OF APN: 672-623-13 AND 672-623-15

PARCEL 3:

PARCEL J AS SHOWN ON EXHIBIT "B" OF LOT LINE ADJUSTMENT NO. 2003-560, RECORDED AUGUST 20, 2004, AS INSTRUMENT NO. 2004-757572, IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PORTION OF APN: 672-623-16

THIS LEGAL DESCRIPTION IS FOR THE SOLE PURPOSE OF THIS REPORT AND MAY NOT BE CONSIDERED FOR USE IN ANY POLICY OF TITLE INSURANCE TO BE ISSUED BY THIS COMPANY; AND IS SUBJECT TO CHANGE AT ANY TIME. IT IS PREPARATORY TO THE ISSUANCE OF A SUBDIVISION GUARANTEE AND IS INTENDED SOLELY FOR THE USE OF THOSE PARTIES DIRECTLY INVOLVED IN THE PREPARATION AND CHECKING OF SAID MAP.

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2008-2009.

- 1. Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 672-623-04.

Code Area Number: 28117
1st Installment: \$16,731.23 Paid
2nd Installment: \$16,731.23 Paid
Land: \$3,262,714.00
Improvements: \$
Exemption:
Personal Property:

Property taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 672-623-05.

Code Area Number: 28117
1st Installment: \$22,250.86 Paid
2nd Installment: \$22,250.86 Paid
Land: \$4,343,085.00
Improvements: \$
Exemption:
Personal Property:

Property taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 672-623-13.

Code Area Number: 28117
1st Installment: \$14,632.99 Paid
2nd Installment: \$14,632.99 Paid
Land: \$2,855,685.00
Improvements: \$
Exemption:
Personal Property:

Property taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 672-623-15.

Code Area Number: 28117
1st Installment: \$7.32 Paid
2nd Installment: \$7.32 Paid
Land: \$
Improvements: \$
Exemption:
Personal Property:

ITEMS: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

Property taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 672-623-16.

Code Area Number: 28117
1st Installment: \$0.00 NA
2nd Installment: \$0.00 NA
Land: \$
Improvements: \$
Exemption:
Personal Property:

2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
3. **Water rights, claims or title to water**, whether or not disclosed by the public records.
4. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

 Granted to: South Coast County Water District
 Purpose: Public water line
 Recorded: August 5, 1982, Instrument No. 82-271574, of Official Records
 Affects: Portion of Lot 3 of Parcel 1
5. An Agreement between South Coast County Water District, Chandler-Sherman Corporation and Avco Community Developers, Inc., re to design, construct and operate the Pacific Coast Highway Life Station and Force Main, recorded September 23, 1982 as Instrument No. 82-336082 of Official Records, upon the terms, provisions, covenants and conditions contained therein.
6. All vehicular access rights to Niguel Road from Lot J and Lot 2, except at approved access points, were released and relinquished to the County of Orange on the map of Tract No. 11889.
7. The irrevocable offer to dedicate to the County of Orange an easement for storm drain purposes over a portion of Parcels 1, 2 and 3, as shown on the map of Tract No. 11889.
8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

 In favor of: The City of Dana Point
 Purpose: Ingress and egress
 Recorded: September 7, 1983, Instrument No. 83-393844, of Official Records
 Affects: A portion of Lot 3 Parcel 1

ITEMS: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

- 9. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.
- | | |
|-------------|--|
| Granted to: | San Diego Gas & Electric Company |
| Purpose: | Underground lines and/or conduits, including above-ground appurtenant fixtures |
| Recorded: | December 19, 1983, Instrument No. 83-574519, of Official Records |
| Affects: | A portion of Lot 3 Parcel 1 |
- 10. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.
- | | |
|-------------|---|
| Granted to: | South Coast County Water District |
| Purpose: | Public sewer line |
| Recorded: | January 11, 1985, Instrument No. 85-009422, of Official Records |
| Affects: | A portion of Lot 2, 4 and F of Parcels 1 and 2 |
- 11.** Covenants, conditions and restrictions in an instrument recorded January 9, 1986 as Instrument No. 86-009596 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of The United States Codes.
- 12.** An easement Agreement dated June 23, 1986, executed by and between Stein-Brief Group, Inc., a California corporation, and BH Mortgage Corporation, a California corporation, and is acknowledged and agreed to by Monarch Beach Tennis Villas, LTD., a California limited partnership, recorded June 27, 1986 as Instrument No. 86-274981 of Official Records, upon the terms, provisions, covenants, conditions and easements contained therein.
- NOTE: A document declaring modifications thereof, recorded November 2, 1987 as Instrument No. 87-610625 of Official Records.
- 13.** The terms, provisions and conditions contained in a document entitled "Irrevocable License - Pedestrian Underpasses", executed by and between The City of Dana Point and Laguna Niguel Resort Associates, a California General Partnership, recorded May 24, 1989 as Instrument No. 89-275053 of Official Records.
- 14.** A Release and Agreement Regarding Additional Development of Sea Terrace Community Park and Surrounding Lands, dated June ____, 1991, executed by and between Capistrano Bay Parks and Recreation District, a public agency, and Monarch Bay Resort, Inc., a Delaware corporation, recorded June 28, 1991 as Instrument No. 91-336163 of Official Records, upon the terms, provisions, covenants and conditions contained therein.
- 15.** Covenants, conditions and restrictions in an instrument recorded October 12, 1994 as Instrument No. 94-0607032 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of The United States Codes.

ITEMS: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

Modification(s) of said covenants, conditions and restrictions

Recorded: December 28, 1999, Instrument No. 874767, of Official Records

16. Covenants, conditions and restrictions in an instrument recorded October 12, 1994 as Instrument No. 94-0607034 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of The United States Codes.
17. Covenants, conditions and restrictions in an instrument recorded October 12, 1994 as Instrument No. 94-0607036 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of The United States Codes.
18. A Letter Agreement Regarding Coastal Development Permit Number 5-92-168 (Monarch Bay Resort), recorded October 17, 1994 as Instrument No. 94-0614904 of Official Records, upon the terms, provisions, covenants and conditions contained therein.
19. A Letter Agreement Regarding Coastal Development Permit Number 5-92-168 (Monarch Bay Resort), recorded October 17, 1994 as Instrument No. 94-0614905 of Official Records, upon the terms, provisions, covenants and conditions contained therein.
20. Covenants, conditions and restrictions in an instrument recorded May 16, 1996 as Instrument No. 19960245970 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of The United States Codes.

Modification(s) of said covenants, conditions and restrictions

Recorded: September 10, 1999, Instrument No. 653588, of Official Records

Modification(s) of said covenants, conditions and restrictions

Recorded: September 21, 1999, Instrument No. 674659, of Official Records

21. An Agreement Affecting Real Property dated May 30, 1996, executed by and between the California Coastal Commission, The City of Dana Point, and The Monarch Bay Resort, Inc., a Delaware corporation, recorded May 29, 1996 as Instrument No. 19960267384 of Official Records, upon the terms, provisions, covenants and conditions contained therein.

ITEMS: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

- 22. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: San Diego Gas & Electric Company
 Purpose: Underground lines and/or conduits, including above-ground appurtenant fixtures
 Recorded: July 10, 1996, Instrument No. 19960352445, of Official Records
 Affects: A portion of said land

- 23.** An instrument entitled "Covenant of Easement", recorded May 8, 1998 as Instrument No. 19980283676 of Official Records, executed by and between Monarch Bay Resort, Inc., a Delaware corporation and the City of Dana Point, a California Municipal Corporation; reference being made to the record thereof for full particulars.

- 24. Easement(s)** for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract.

Purpose: Emergency vehicular access, public utility, pedestrian use, maintenance vehicle purposes, access and parking as dedicated to the City of Dana Point on Tract No. 14589.
 Affects: Lots 2, 3, 4, 13, F and J.

- 25. Easement(s)** for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract.

Purpose: Private storm drain reserved for future owners on Tract Map No. 14589
 Affects: Lot F

- 26. Recitals** as shown on that certain map recorded August 23, 1999, Instrument No. 1999-611944, Book 790, Page 4, of Official Maps, which, among other things states:

"The phasing plan will be referenced in the title report for the conveyance of each lot created by this map. Compliance with the phasing plan is a condition of approval of all coastal development permits for development proposed in the approved specific plan area."

Reference is made to said map for full particulars.

- 27. Recitals** as shown on that certain map recorded August 23, 1999, Instrument No. 1999-611944, Book 790, Page 4, of Official Maps, which, among other things states:

"The private streets constructed within this map shall be owned, operated and maintained by the developer, it's successors or assigns, The City of Dana Point shall have no responsibility therefor. "

Reference is made to said map for full particulars.

- 28.** The terms, provisions and conditions, contained in a document entitled "Subdivision Improvement Agreement", executed by and between City of Dana Point and CPH Resorts I, LLC, a Delaware limited liability company, recorded October 4, 1999 as Instrument No. 19990705318 of Official Records.

ITEMS: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

29. A document entitled "Public/Private Improvement Agreement for Tract No. 14589 (Hotel Village)", dated October 26, 1999, executed by CPH Resorts I, LLC, a Delaware limited liability company, subject to all the terms, provisions and conditions therein contained, recorded March 31, 2000 as Instrument No. 20000166219, Official Records.
30. **Matters** contained in that certain document entitled "Grant of Easement and Agreement" dated December 4, 2000, executed by and between CPH Resorts I, LLC, a Delaware limited liability company and CPH Monarch Golf, LLC, a Delaware limited liability company recorded December 7, 2000, Instrument No. 20000665377, of Official Records, which document, among other things, contains or provides for: Intend to establish an easement for maintenance facilities.

Reference is hereby made to said document for full particulars.

Affects: Lots 2, 3 and F of Tract No. 14589

31. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	Southern California Gas Company, a California corporation, its successors and assigns
Purpose:	Pipelines and conduits reasonable right of ingress and egress to and from the easement
Recorded:	December 19, 2000, Instrument No. 20000687165, of Official Records
Affects:	A portion of said land

32. No known matters otherwise appropriate to be shown have been deleted from this report, which is not a policy of title insurance, but a report to facilitate the issuance of a policy of title insurance.

For the purpose of policy issuance, no items may be eliminated on the basis of an indemnity agreement or other agreement satisfactory to the Company as insurer.

END OF ITEMS

Title No. 07-**259910534**-A-JG
 Locate No. CAFNT0925-0925-0199-0259910534

Note 1. Relate to Tentative Subdivision Map No. 16769 the parties whose signatures will be necessary, under the provisions of the Subdivision Map Act, on the Final Subdivision Map of said land are set forth below.

1. The signature(s) of the Party(ies) named hereinafter will be required as owner(s) of the herein named interest pursuant to the provisions of Section 66436 of said Subdivision Map Act.

Nature of Interest: A FEE

Owner: Resort Residential South, LLC, a Delaware limited liability company

2. The signature of either the trustee or the beneficiary named below but not both, will be required under the provisions of Section 66436(a) of said Subdivision Map Act for the following Deed(s) of Trust:

None

3. The signature(s) of the party(ies) named hereinafter as owner(s) of the interest(s) set forth, may be omitted under the provisions of the Subdivision Map Act, as their interest is such that it cannot ripen into a fee and said signature(s) is (are) not required by the local agency.

South Coast County Water District holder of an interest recorded August 5, 1982 Instrument No. 82-271574, Official Records

County of Orange holder of an interest recorded Tract No. 11889, Official Records

The City of Dana Point holder of an interest recorded September 7, 1983, Instrument No. 83-393844 Official Records

San Diego Gas & Electric Company holder of an interest recorded December 19, 1983 Instrument No. 83-574519, Official Records

South Coast County Water District holder of an interest recorded January 11, 1985 Instrument No. 85-009422, Official Records

Monarch Beach Tennis Villas, LTD., a California limited partnership holder of an interest recorded June 27, 1986 Instrument No. 86-274981, Official Records

City of Dana Point holder of an interest recorded Tract No. 14589, Official Records

Future Owners holder of an interest recorded Tract No. 14589, Official Records

CPH Monarch Golf, LLC, a Delaware limited liability company holder of an interest recorded December 7, 2000 Instrument No. 20000665377, Official Records

Southern California Gas Company, holder of an interest recorded December 19, 2000 Instrument No. 20000687165, Official Records

NOTES: (continued)

Title No. 07-**259910534**-A-JG
Locate No. CAFNT0925-0925-0199-0259910534

Note 2. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

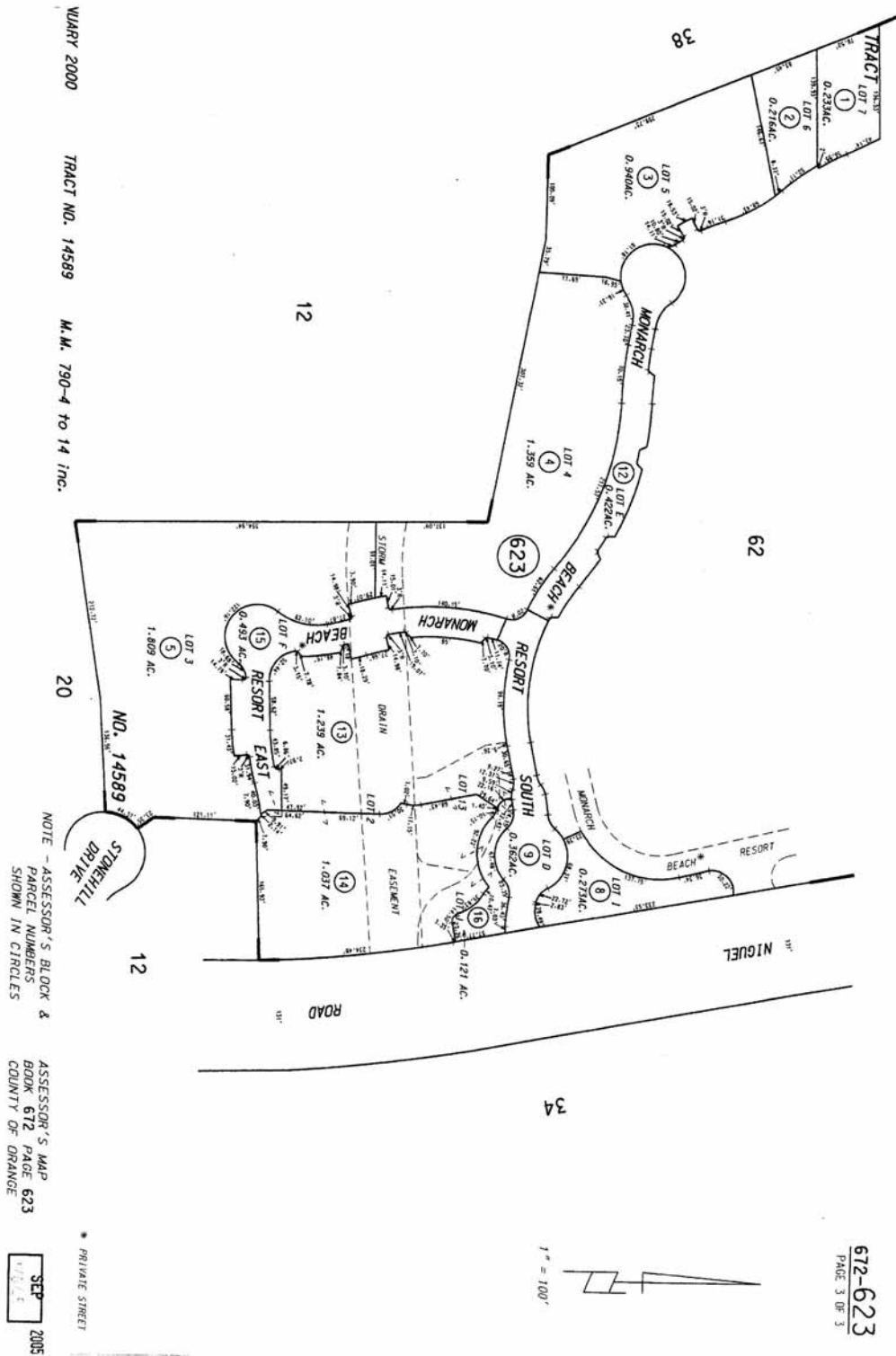
Note 3. Wiring instructions for Fidelity National title Company, Corona, CA, are as follows:

Receiving Bank:	Union Bank of California (800) 849-6466 Irvine, CA 92614
ABA Routing No.:	122000496
Credit Account Name:	Fidelity National title Company - Builder Services Payoff/Admin 1315 Corona Pointe Court, Corona, CA 92879
Credit Account No.:	9100586700
Reference No.:	07- 259910534

These wiring instructions are for this specific transaction involving the Title Department of the Newport Beach office of Fidelity National Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 4. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

END OF NOTES



ATTACHMENT ONE

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
- or
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**SCHEDULE B, PART I
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;
 (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;
- (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
 - a. building
 - b. zoning
 - c. Land use
 - d. improvements on Land
 - e. Land division
 - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date – this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	<u>1.00%</u> of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	<u>\$ 10,000.00</u>
Covered Risk 15:	<u>1.00%</u> of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	<u>\$ 25,000.00</u>
Covered Risk 16:	<u>1.00%</u> of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	<u>\$ 25,000.00</u>
Covered Risk 18:	<u>1.00%</u> of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	<u>\$ 5,000.00</u>

**ATTACHMENT ONE
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy. (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
- (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
 - (a) The time of the advance; or
 - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

Notice

You may be entitled to receive a \$20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is subject of your current transaction, you must - prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

Effective through November 1, 2014

(privacy)(05-08)

Page 1 of 2

Effective Date: 5/1/2008

Fidelity National Financial, Inc.
Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

(privacy)

Page 2 of 2

Effective Date: 5/1/2008

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access To Personal Information/**Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Changes to this Privacy Statement

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

SUPPORTING DOCUMENT I – Final Map

SHEET 1 OF 8 SHEETS
3 NUMBERED LOTS AND
LOTS A THROUGH H, INCLUSIVE
ACREAGE: 5.019 ACRES
(ALL OF TENTATIVE
TRACT NO. 16769)

TRACT NO. 16769
IN THE CITY OF DANA POINT, COUNTY OF ORANGE,
STATE OF CALIFORNIA

BEING A SUBDIVISION OF LOT 3 AND A PORTION OF LOT 4 OF TRACT NO. 14589
 AS PER MAP FILED IN BOOK 790, PAGES 4 THROUGH 14, INCLUSIVE, OF
 MISCELLANEOUS MAPS, TOGETHER WITH A PORTION OF PARCEL 2 AND ALL OF
 PARCELS F AND J OF LOT LINE ADJUSTMENT NO. LL 2003-560 RECORDED
 AUGUST 20, 2004 AS INSTRUMENT NO. 200400075752 OF OFFICIAL RECORDS,
 BOTH IN THE OFFICE RECORDER OF ORANGE COUNTY, CALIFORNIA.

HUNSAKER AND ASSOCIATES IRVINE, INC.
RORY S. WILLIAMS, L.S. 6854 **DATE OF SURVEY: JUNE, 2008**

OWNERSHIP CERTIFICATE:
 WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE
 LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND
 RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.
 WE HEREBY DEDICATE TO THE CITY OF DANA POINT THE EASEMENTS FOR PUBLIC ACCESS,
 EMERGENCY VEHICULAR ACCESS, PUBLIC UTILITY, STORM DRAIN, ACCESS AND PARKING
 PURPOSES, ALL AS SHOWN ON SAID MAP. THE CITY SHALL NOT BE RESPONSIBLE FOR
 MAINTENANCE OF OR DAMAGE TO THE PRIVATE STREETS SHOWN ON SAID MAP.

SURVEYOR'S STATEMENT:
 THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN
 CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT
 THE REQUEST OF ORN MONARCH HOTEL, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND
 MAKALLON RESORTS I, LLC, A DELAWARE LIMITED LIABILITY COMPANY. IN JUNE, 2008, I HEREBY
 STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED,
 OR THAT THEY WILL BE SET IN SUCH POSITIONS, AND THAT SAID MONUMENTS ARE SUFFICIENT TO
 ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY
 CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

Rory S. Williams 1/25/09
 RORY S. WILLIAMS, L.S. 6854
 LICENSE EXPIRES: 12/31/09

COUNTY SURVEYOR'S STATEMENT:
 I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND THAT ALL MAPPING
 PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH AND I AM SATISFIED
 SAID MAP IS TECHNICALLY CORRECT.

DATED THIS _____ DAY OF _____, 2008.

RAYMOND L. MATHE, COUNTY SURVEYOR
 L.S. 6185, EXPIRATION DATE: 3/31/2010

COUNTY TREASURER-TAX COLLECTOR'S CERTIFICATE:
 STATE OF CALIFORNIA } ss.
 COUNTY OF ORANGE } ss.
 I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS
 AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE,
 COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES,
 EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET PAYABLE.
 AND DO ALSO CERTIFY TO THE RECORDER OF ORANGE COUNTY THAT THE PROVISIONS OF
 THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE
 THE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND
 COVERED BY THIS MAP.

DATED THIS _____ DAY OF _____, 2008.

CHRIS W. STREET BY: _____
 COUNTY TREASURER-TAX COLLECTOR DEPUTY TREASURER - TAX COLLECTOR

CITY ENGINEER'S STATEMENT:
 I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE SUBSTANTIALLY IN
 CONFORMANCE WITH THE TENTATIVE MAP, IF REQUIRED, AS FILED WITH, AMENDED AND APPROVED
 BY THE CITY PLANNING COMMISSION; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY
 SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH.

DATED THIS _____ DAY OF _____, 2008.

MATTHEW V. SINACORI, R.C.E. 59239
 REGISTRATION EXPIRES: 6/30/09
 CITY ENGINEER, CITY OF DANA POINT

CITY CLERK'S CERTIFICATE:
 STATE OF CALIFORNIA } ss.
 COUNTY OF ORANGE } ss.
 CITY OF DANA POINT } ss.
 I HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF THE
 CITY OF DANA POINT AT A REGULAR MEETING THEREOF HELD ON THIS _____ DAY OF _____
 2008, AND THAT THEREUPON SAID COUNCIL DID, BY AN ORDER DULY PASSED
 AND ENTERED, APPROVE SAID MAP.
 AND DID ALSO ACCEPT ON BEHALF OF THE CITY OF DANA POINT, THE EASEMENTS FOR EMERGENCY
 VEHICULAR ACCESS, PUBLIC UTILITY, STORM DRAIN, ACCESS AND PARKING PURPOSES, ALL AS
 DEDICATED.

I HEREBY CERTIFY THAT THE CITY COUNCIL, AT SAID REGULAR MEETING DID ADOPT, PURSUANT
 TO SECTION 66434(a) OF THE SUBDIVISION MAP ACT, THE EASEMENT FOR PUBLIC PEDESTRIAN,
 BICYCLE TRAIL, PEDESTRIAN UNDERPASS MAINTENANCE PURPOSES WHICH WAS ACQUIRED BY THE
 CITY OF DANA POINT, AN IRREVOCABLE OFFER FOR DEDICATION OF AN EASEMENT FOR STORM DRAIN
 PURPOSES WHICH WAS ACQUIRED BY THE COUNTY OF ORANGE BOTH PER THE MAP OF TRACT NO.
 11889, FILED IN BOOK 514, PAGES 28 THROUGH 27, INCLUSIVE, AND THE EASEMENT FOR
 EMERGENCY VEHICULAR ACCESS AND PUBLIC UTILITY PURPOSES, THE EASEMENT FOR ACCESS AND
 PARKING PURPOSES, THE EASEMENT FOR PUBLIC PEDESTRIAN AND BICYCLE USE PURPOSES AND THE
 EASEMENT FOR PUBLIC UTILITY PURPOSES WHICH WERE ACQUIRED BY THE CITY OF DANA POINT PER
 THE MAP OF TRACT NO. 14589, FILED IN BOOK 790, PAGES 4 THROUGH 14, INCLUSIVE, BOTH OF
 MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA AND THE EASEMENT FOR
 INGRESS, EGRESS AND INCIDENTAL PURPOSES WHICH WAS ACQUIRED BY THE CITY OF DANA POINT
 BY INSTRUMENT NO. 83-393844 OF OFFICIAL RECORDS, WITHIN THE BOUNDARY OF THIS MAP, NOT
 SHOWN ON THIS MAP.

AND DID ALSO APPROVE SUBJECT MAP PURSUANT TO THE PROVISIONS OF SECTION 66436(c)(3)(A)
 OF THE SUBDIVISION MAP ACT.

DATED THIS _____ DAY OF _____, 2008.

KATHY WARD, ACTING CITY CLERK
 CITY OF DANA POINT

NOTARY ACKNOWLEDGEMENTS:
 STATE OF CALIFORNIA } ss.
 COUNTY OF ORANGE } ss.
 ON THIS June 17, 2008 BEFORE ME, Blair Selano PERSONALLY
 APPEARED Michael Casper and Douglas S. Kral PERSONALLY
 KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S)
 WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT
 HE/SHE/IT/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY
 HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR ENTITY UPON BEHALF OF
 WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.
 WITNESS MY HAND:
 SIGNATURE Blair Selano MY PRINCIPAL PLACE OF BUSINESS IS
 NOTARY PUBLIC IN AND FOR SAID STATE IN ORANGE COUNTY.
Blair Selano MY COMMISSION EXPIRES: May 15, 2010
 (NAME PRINTED)

STATE OF CALIFORNIA } ss.
 COUNTY OF ORANGE } ss.
 ON THIS _____ BEFORE ME, _____ PERSONALLY
 APPEARED _____
 KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S)
 WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT
 HE/SHE/IT/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY
 HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR ENTITY UPON BEHALF OF
 WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.
 WITNESS MY HAND:
 SIGNATURE _____ MY PRINCIPAL PLACE OF BUSINESS IS
 NOTARY PUBLIC IN AND FOR SAID STATE IN _____ COUNTY.
 _____ MY COMMISSION EXPIRES: _____
 (NAME PRINTED)

NOTES:
 THE PRIVATE STREETS CONSTRUCTED WITHIN THIS MAP SHALL BE OWNED, OPERATED AND
 MAINTAINED BY THE DEVELOPER, ITS SUCCESSORS OR ASSIGNS. THE CITY OF DANA
 POINT SHALL HAVE NO RESPONSIBILITY THEREFOR, UNLESS PURSUANT TO APPROPRIATE
 SECTIONS OF THE STREET AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA. THE SAID
 PRIVATE STREETS HAVE BEEN ACCEPTED INTO THE CITY ROAD SYSTEM BY APPROPRIATE
 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT.
 ALL RESIDENTIAL STRUCTURES SHALL BE PROTECTED BY AN AUTOMATIC FIRE SPRINKLER
 SYSTEM IN A MANNER MEETING THE APPROVAL OF THE FIRE CHIEF.

SEE SHEET 2 FOR SIGNATURE OMISSIONS

SHEET 2 OF 6 SHEETS
9 NUMBERED LOTS AND
LOTS A THROUGH H, INCLUSIVE
ACREAGE: 6.079 ACRES
(ALL OF TENTATIVE
TRACT NO. 16769)

TRACT NO. 16769

IN THE CITY OF DANA POINT, COUNTY OF ORANGE,
STATE OF CALIFORNIA

HUNSAKER AND ASSOCIATES IRVINE, INC.
RORY S. WILLIAMS, L.S. 6654 DATE OF SURVEY: JUNE, 2006

SIGNATURE OMISSIONS:

PURSUANT TO THE PROVISIONS OF SECTION 86436 (a)(3)(A) OF THE SUBDIVISION MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

SOUTH COAST COUNTY WATER DISTRICT, HOLDER OF AN EASEMENT FOR PUBLIC WATER LINE AND INCIDENTAL PURPOSES RECORDED AUGUST 5, 1982 AS INSTRUMENT NO. 82-271574, OF OFFICIAL RECORDS.

THE CITY OF DANA POINT, SUCCESSOR IN INTEREST TO THE COUNTY OF ORANGE, HOLDER OF EASEMENTS FOR PUBLIC PEDESTRIAN, BICYCLE TRAIL, PEDESTRIAN UNDERPASS MAINTENANCE AND STORM DRAIN PURPOSES DEDICATED ON THE MAP OF TRACT NO. 11886, M.M. 514/25-27 AND AN EASEMENT FOR INGRESS AND EGRESS PURPOSES RECORDED SEPTEMBER 7, 1983 AS INSTRUMENT NO. 83-303844, OF OFFICIAL RECORDS.

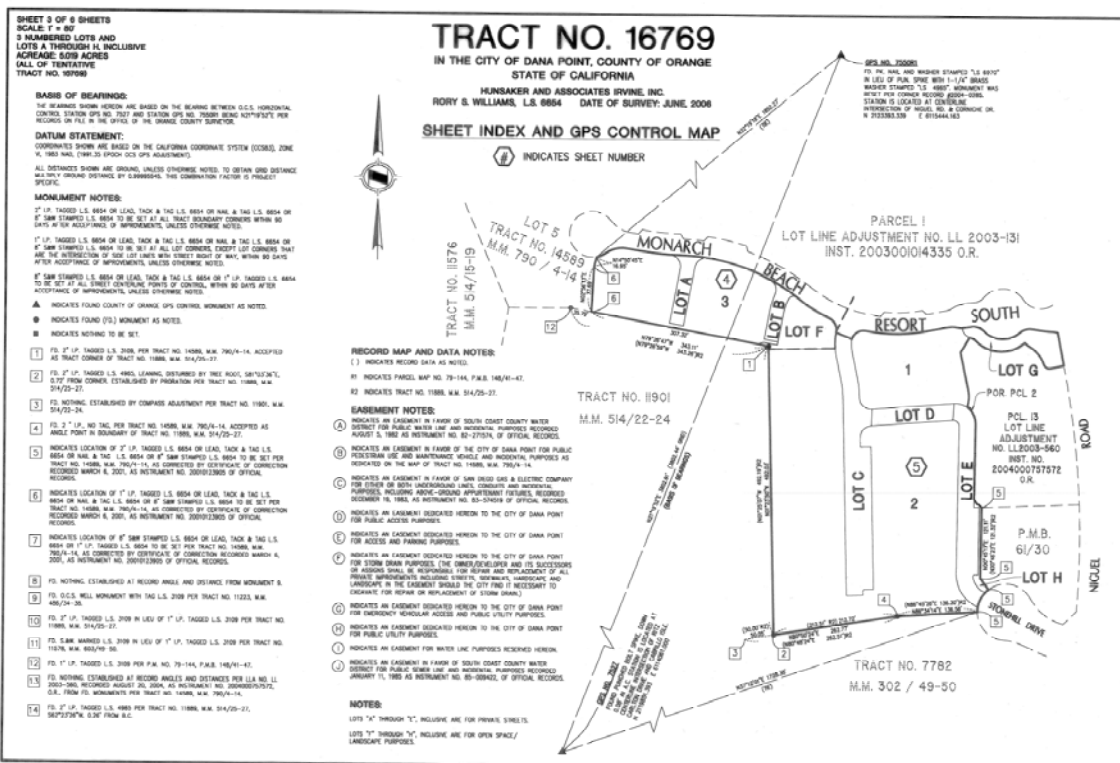
SAN DIEGO GAS & ELECTRIC COMPANY, HOLDER OF EASEMENTS FOR EITHER OR BOTH UNDERGROUND LINES, CONDUITS, INCLUDING ABOVE-GROUND APPURTENANT FIXTURES AND INCIDENTAL PURPOSES RECORDED DECEMBER 19, 1983 AS INSTRUMENT NO. 83-574519, AND AS INSTRUMENT NO. 19860353445 (NOT PLOTTABLE), BOTH OF OFFICIAL RECORDS.

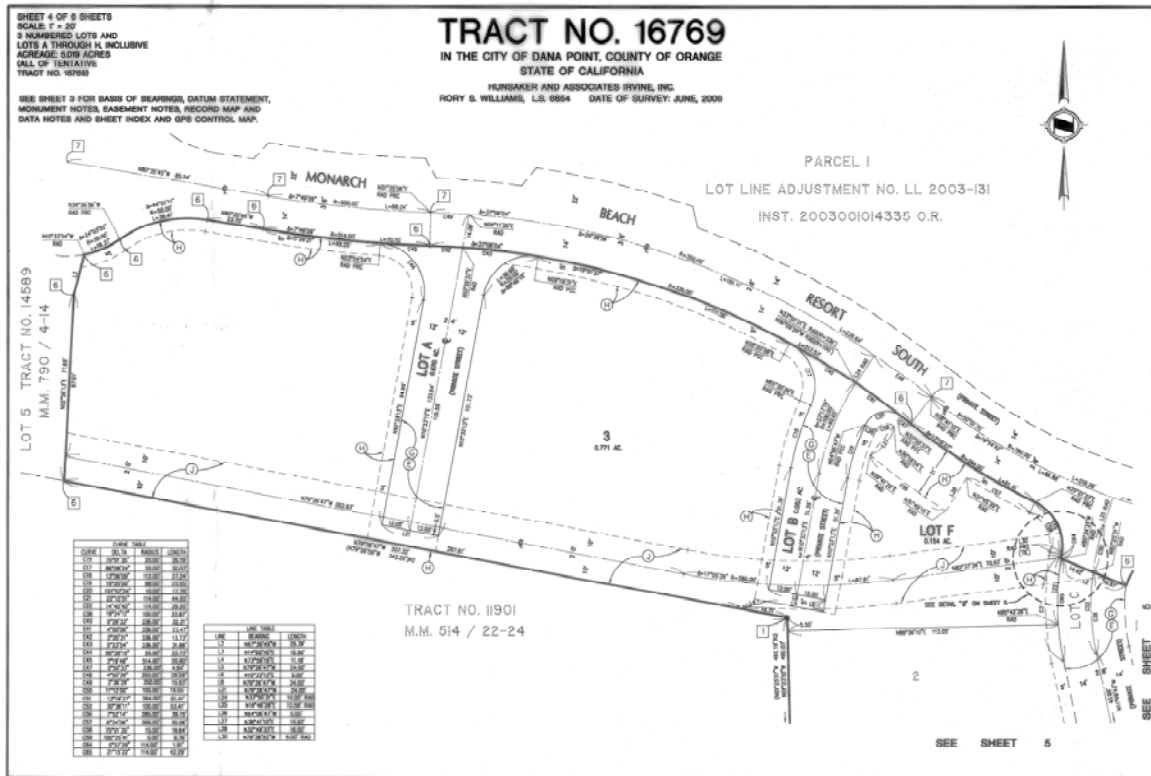
CITY OF DANA POINT, HOLDER OF EASEMENTS FOR PUBLIC PEDESTRIAN USE, MAINTENANCE VEHICLE, BICYCLE USE, EMERGENCY VEHICULAR ACCESS, PUBLIC UTILITIES, ACCESS, PARKING AND INCIDENTAL PURPOSES AS DEDICATED ON THE MAP OF TRACT NO. 14589, M.M. 790/4-14.

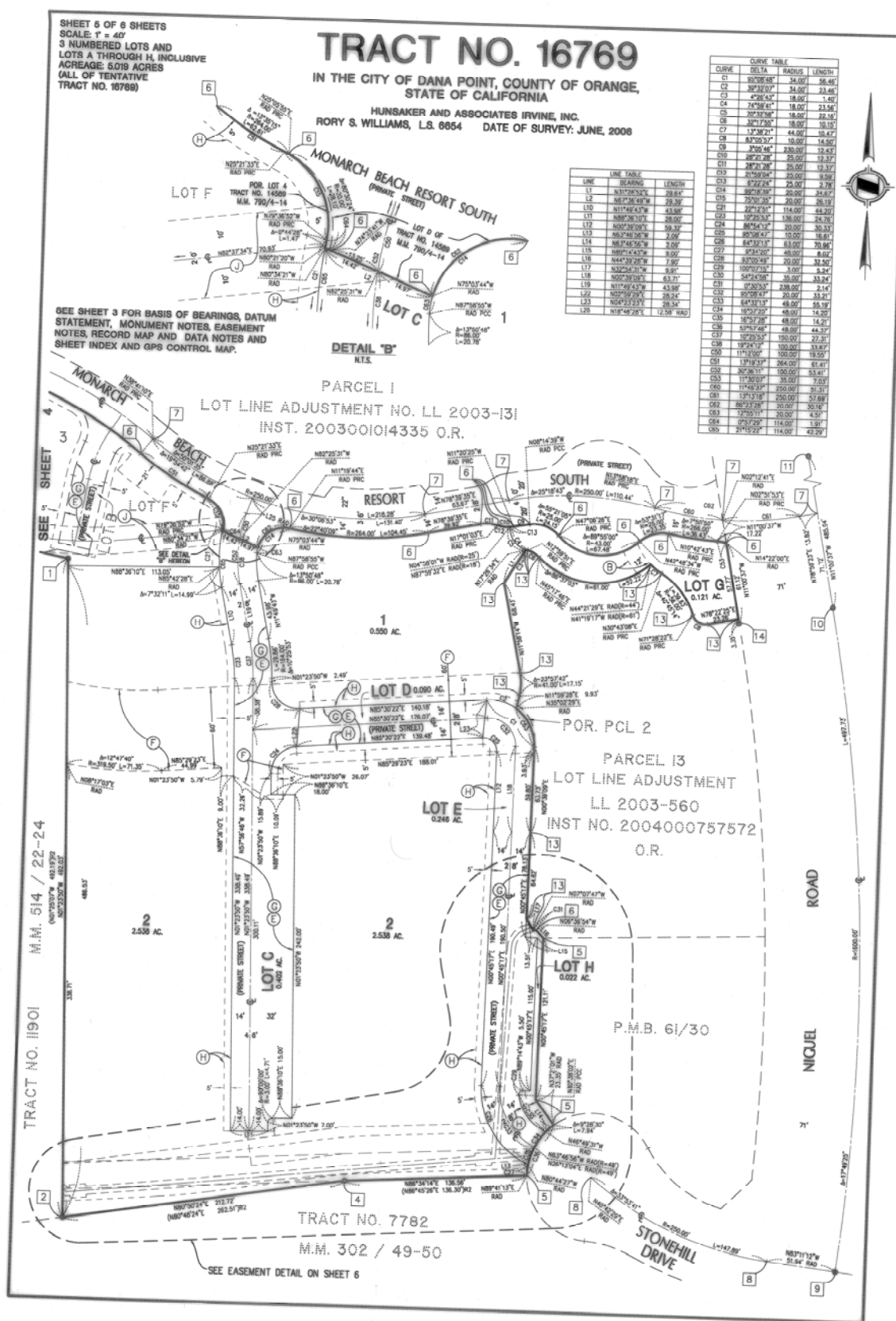
CPH MONARCH GOLF, LLC, HOLDER OF AN EASEMENT FOR MAINTENANCE AND INCIDENTAL PURPOSES RECORDED DECEMBER 7, 2000 AS INSTRUMENT NO. 20000665377, OF OFFICIAL RECORDS (NOT PLOTTABLE).

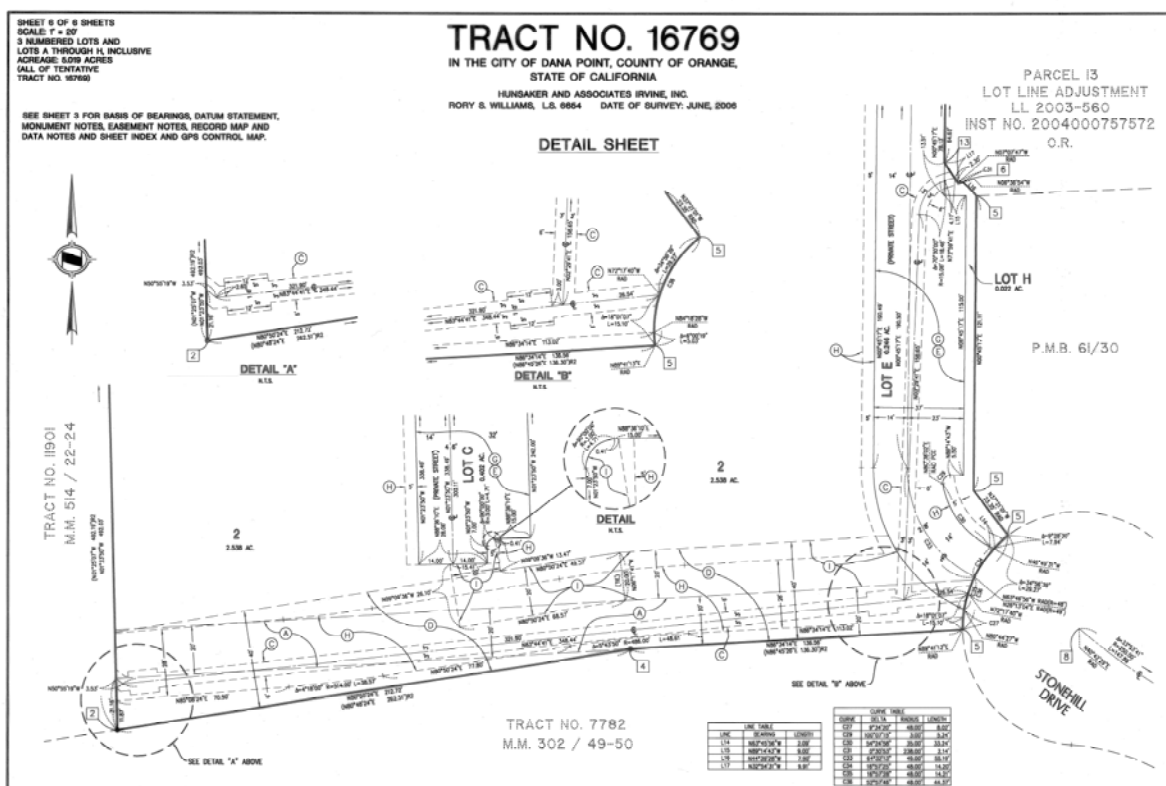
SOUTHERN CALIFORNIA GAS COMPANY, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES RECORDED DECEMBER 19, 2000 AS INSTRUMENT NO. 20000687185, OF OFFICIAL RECORDS (NOT PLOTTABLE).

SOUTH COAST COUNTY WATER DISTRICT, HOLDER OF AN EASEMENT FOR PUBLIC SEWER LINE AND INCIDENTAL PURPOSES RECORDED JANUARY 11, 1985 AS INSTRUMENT NO. 85-009422, OF OFFICIAL RECORDS.









CITY OF DANA POINT**AGENDA REPORT**

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JUNE 17, 2008
TO: CITY MANAGER/CITY COUNCIL
FROM KATHY M. WARD, CITY CLERK
SUBJECT: CALLING FOR A GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2008 TO FILL TWO CITY COUNCIL SEATS

RECOMMENDED ACTION:

That the City Council adopt the following Resolutions entitled:

- A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES; and
- B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE; and
- C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATE'S STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008.

BACKGROUND:

The procedures for conducting a General Municipal Election are established by State law. Prior to July 14, 2008, the City Council must adopt a resolution calling and giving notice of the November 4, 2008 General Municipal Election (per Election Code Section 12001) to elect two Council Members and request consolidation with the Statewide General Election. The Council must also adopt regulations for candidate statements by July 7, 2008.

DISCUSSION:

The candidate filing period for the November 4, 2008 election will open on Monday, July 14, 2008, and close at 4:30 p.m. on Friday, August 8, 2008. If an incumbent does not file nomination papers by this deadline, the filing period for that office is extended five calendar days, until 5:30 p.m. on Wednesday, August 13, 2008, for candidates other than the incumbent to file.

It is optional for each candidate to submit a Candidate's Statement. If the candidate chooses to have a statement included in the Sample Ballot, the resolution stipulates that the costs involved are paid by the candidate at the time the nomination paper is filed. Based on an estimate from the Registrar of Voters, the deposit for printing each statement (maximum of 200 words) in the Sample Ballot is \$1,546.

The resolutions calling for the General Municipal Election, requesting consolidation with the Statewide General Election, and regulations for candidates' statements are presented as Action Documents A, B, and C respectively.

The attached resolutions have been prepared for Council consideration and adoption at this time.

NOTIFICATION AND FOLLOW-UP:

Notice of the election will be provided in accordance with Elections Code requirements. In addition, a Press Release will be sent to local newspapers, radio and television stations, and Cox Communications.

STRATEGIC PLAN INITIATIVE:

Achieve total excellence in municipal services and City administration/planning with excellent customer service and cost-effectiveness.

FISCAL IMPACT:

Based on cost estimates from the Registrar of Voters, \$33,000 was budgeted for this election.

ACTION DOCUMENTS:**Page No.**

A.	Resolution Calling Election	3
B.	Resolution Requesting Consolidation	6
C.	Resolution Adopting Regulations	9

Action Document A

RESOLUTION NO. 08-06-17-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to General Law cities in the State of California, a General Municipal Election shall be held on Tuesday, November 4, 2008 for the election of Municipal Officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Dana Point, California, on Tuesday, November 4, 2008, a General Municipal Election for the purpose of electing two (2) members of the City Council for the full term of four years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 5. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form and manner as required by law.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 8. The City Council authorizes the City Clerk to administer said election and all reasonable and actual expenses shall be paid by the City upon presentation of a properly submitted invoice from the County of Orange.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

Joel Bishop
MAYOR

ATTEST:

Kathy M. Ward
CITY CLERK

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

I, KATHY M. WARD, Acting City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-06-17-_____ adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008.

AYES:

NOES:

ABSENT:

Kathy M. Ward
CITY CLERK

Action Document B**RESOLUTION NO. 08-06-17- _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Dana Point, California, called a General Municipal Election to be held on Tuesday, November 4, 2008 for the purpose of the election of two (2) members of the City Council; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places, and election officers of the two elections be the same, and that the County Election Department of the County of Orange canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Orange is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 4, 2008 for the purpose of the election of two (2) members of the City Council.

SECTION 2. That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of Dana Point recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 5. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters/Election Department of the County of Orange.

SECTION 6. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

Joel Bishop
MAYOR

ATTEST:

Kathy M. Ward
CITY CLERK

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

I, KATHY M. WARD, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-06-17-_____ adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008, by the following vote:

AYES:

NOES:

ABSENT:

Kathy M. Ward
CITY CLERK

Action Document C**RESOLUTION NO. 08-06-17- _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATE'S STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2008

WHEREAS, Section 13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidate's statement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. GENERAL PROVISIONS. Pursuant to Section 13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Dana Point on November 4, 2008, may prepare a candidate's statement on an appropriate form provided by the City Clerk. The statement may include the name and a brief description of no more than 200 words of the candidate's occupation, education, and qualifications expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in typewritten form in the Office of the City Clerk at the time the candidate's nomination papers are filed. Except as provided by Section 13309 of the Elections Code, the statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:30 p.m. of the next working day after the close of the nomination period.

SECTION 2. FOREIGN LANGUAGE POLICY.

- A. Pursuant to the Federal Voting Rights Act, the City is required to translate candidate statements into the following language: Spanish.
- B. Pursuant to state law, the candidate's statement must be translated and printed in the voters pamphlet in Spanish at the candidate's request.
- C. The City Clerk shall:
 - 1. Have all candidate's statements translated into the languages specified in (A) above.
 - 2. Print all translations of all candidate's statements in the voters pamphlet and may have all translations made available upon request in the Office of the City Clerk.

SECTION 3. PAYMENT.

A. Translations

1. The candidate shall be required to pay for the cost of translating the candidate's statement into any required foreign language as specified in (A) and/or (B) of Section 2 above pursuant to state and/or federal law.
2. The candidate shall be required to pay for the cost of translating the candidate's statement into any foreign language that is not required as specified in (A) and/or (B) of Section 2 above pursuant to state and federal law, but is requested as an option by the candidate.

B. Printing

1. The candidate shall be required to pay for the cost of printing the candidate's statement in the voters pamphlet in all required languages pursuant to state and federal and/or state law.

The City Clerk shall estimate the total cost of printing, handling, translating and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965, as amended, and require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voters' pamphlet. In the event the estimated payment is required, the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the Clerk is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the Clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the Clerk shall prorate the excess amount among the candidates and refund the excess amount paid within thirty (30) days of the election.

SECTION 4. Additional Materials. No candidate will be permitted to include additional materials in the sample ballot package.

SECTION 5. The City Clerk shall provide each candidate or the candidate representative a copy of this Resolution at the time nomination petitions are issued.

SECTION 6. All previous Resolutions establishing Council Policy on payment for candidate's statements are repealed.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

Joel Bishop
MAYOR

ATTEST:

Kathy M. Ward
CITY CLERK

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

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 08-06-17-____ adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 17th day of June, 2008, by the following vote:

AYES:

NOES:

ABSENT:

Kathy M. Ward
CITY CLERK

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> </u>

DATE: JUNE 17, 2008

TO: CITY COUNCIL/CITY MANAGER

**FROM: JOEL BISHOP, MAYOR
KATHY M. WARD, CITY CLERK**

SUBJECT: CITY COUNCIL POLICY ON REORGANIZATION

RECOMMENDED ACTION:

That the City Council adopt City Council Policy 117 on the annual appointment of the Mayor and Mayor Pro Tem.

DISCUSSION:

To provide for efficient organization of City Council business and activities, the City Council selects a Mayor and Mayor Pro Tem at the first meeting in December each year. The attached policy establishes the procedure for the annual appointment of the Mayor and Mayor Pro Tem.

STRATEGIC PLAN INITIATIVE:

Achieve total excellence in municipal services and City Administration/Planning with excellent customer service and cost-effectiveness.

FISCAL IMPACT:

There is no fiscal impact with this action.

Page No.

ACTION DOCUMENTS:

- A. [City Council Policy 117, City Council Reorganization](#).....2

Action Document A**CITY OF DANA POINT
COUNCIL POLICY**

SUBJECT: City Council Reorganization (annual appointment of Mayor and Mayor Pro Tem)	PAGE: 1 of 1	EFFECTIVE DATE: 6/17/08	POLICY NO.: 117
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PURPOSE:

To establish guidelines for the selection of the Mayor and Mayor Pro Tem to serve in these positions.

BACKGROUND:

Each year the City Council selects the Mayor and Mayor Pro Tem to serve a one year term at the pleasure of the City Council.

POLICY:

To provide for efficient organization of City Council business and activities, the City Council shall select from its members a Mayor and Mayor Pro Tem at the first meeting in December each year.

The Mayor and Mayor Pro Tem shall serve a one year term at the pleasure of the Council majority. During that period, the Mayor shall act as the primary spokesperson and official representative of the City Council, unless such responsibility is delegated by the Mayor, or otherwise assigned by a majority vote of the City Council.

At the first regularly scheduled City Council meeting in December, the City Clerk shall open the floor for nominations from among the Council Members for the purpose of electing the Mayor for the coming year. The newly-elected Mayor shall then conduct the election for Mayor Pro Tem from among the Council Members and open floor for nominations. Such elections shall be made by a majority vote of the Council Members present at the meeting.

The Mayor and Mayor Pro Tem shall assume the duties of their respective offices immediately upon election.

In the absence of the Mayor, the Mayor Pro Tem shall serve and perform the functions as the Mayor. If both the Mayor and Mayor Pro Tem are absent from a meeting, the Council Members present shall select a person from among its members to preside at that particular meeting.

If the Mayor or Mayor Pro Tem position is permanently vacated during their term of office, the City Council shall elect a new Mayor and/or Mayor Pro Tem at the next regular City Council meeting.

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: SECOND READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT TO INCLUDE MODIFICATIONS TO ZONE TEXT AMENDMENT ZTA06-04 AND ZC06-01 FOR THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX E OF THE ZONING CODE AND AUTHORIZING SUBMITTAL OF THE ORDINANCE TO THE CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION.

RECOMMENDATION: That the City Council conduct a second reading and adopt the Ordinance of the City of Dana Point entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX "E" OF THE ZONING ORDINANCE AS PART OF LOCAL COASTAL PLAN AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

BACKGROUND/DISCUSSION: At a regular meeting held on June 3, 2008, the City Council introduced and conducted a first reading of the Ordinance pertaining to the Town Center Plan. It is now appropriate for the Council to undertake a second reading and formally adopt the Ordinance.

NOTIFICATION AND FOLLOWUP: The Ordinance will be published in accordance with State and local regulations.

ACTION DOCUMENTS:

PAGE

- A. [Ordinance 08-XX](#)
(Zone Text Amendment ZTA 06-04 and Zone Change ZC 06-01) 2

SUPPORTING DOCUMENT:

None.

ACTION DOCUMENT A**ORDINANCE NO. 08-xx**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX "E" OF THE ZONING ORDINANCE AS PART OF LOCAL COASTAL PLAN AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point, Community Development Department
File No.: GPA 06-02/ZC06-01/ZTA06-04/LCPA 06-05

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

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

WHEREAS, the City seeks to amend the Zoning Code and Zoning Map, affecting properties in the Town Center; and

WHEREAS, the proposal is for a Zone Text Amendment, Zone Change and Local Coastal Program Amendment to amend the Dana Point Zoning Code by adding Chapter 9.26, Town Center District, and to amend the Dana Point Zoning Map to designate the Town Center project area as the Town Center District; and

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

WHEREAS, the Town Center District zoning designation will be harmonious with the zoning of the surrounding properties; and

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

WHEREAS, the City Council on November 8, 2006, approved General Plan Amendment GPA 06-02, Zone Change ZC 06-01, and Local Coastal Program Amendment LCPA 06-05 and, on December 13, 2006, approved Zone Text Amendment ZTA 06-04; and

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 3

WHEREAS, LCPA06-05 was submitted to the Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on May 8, 2008, approved Local Coastal Program Amendment LCPA06-05 with suggested modifications; and

WHEREAS, the Coastal Commission found that the LCP Amendment and implementation plan amendment with the suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act, minimized or mitigated any potential significant effects, would not result in significant adverse impacts within the meaning of CEQA and that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant environmental impacts; and

WHEREAS, said suggested modifications have been accepted and agreed to, and incorporated into GPA06-02 and LCPA06-05, and

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

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

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15251(f) and 15265(a)(1); and

WHEREAS, a Mitigated Negative Declaration was prepared as the environmental document for the consideration of the Zone Text Amendment and Zone Change;

WHEREAS, the City Council did on June 3, 2008 conduct a duly noticed public hearing as prescribed by law to consider the Town Center Plan, the Mitigated Negative Declaration and, specifically said Zone Text Amendment, Zone Change, and LCPA; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 06-04, ZC 06-01, and LCPA 06-05; and

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

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 3

- A. That the above recitations are true and correct;
- B. The City acknowledges receipt of the Coastal Commission's certification of the LCP amendment with suggested modifications.
- C. The City accepts and agrees to the suggested modifications and agrees to take formal action to satisfy the suggested modifications by making conforming amendments as necessary to its ordinances, General Plan, LCP, and Zoning Code.
- D. The City agrees to issue Coastal Development Permits for the total area included in the certified Local Coastal Program.
- E. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- F. That the Zone Text Amendment (ZTA 06-04) and Zone Change (ZC 06-01) are in the public interest;
- G. That the Local Coastal Program Amendment (LCPA 06-05) is consistent with, and will be implemented in full conformity with the Coastal Act;
- H. That the Mitigated Negative Declaration for the Town Center Plan is complete and adequate for the consideration of the Zone Text Amendment and Zone Change;
- I. That the City Council adopts the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.
 - 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the General Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the implementation program amendment is in conformance with and adequate to implement the Land Use Plan.

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 4

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a Zone Text Amendment and Zone Change, no specific development is proposed. Any proposed development will be reviewed for compliance with the City's Local Coastal Program.
 4. That the level and pattern of development proposed is reflected in the Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.
 5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's Zoning Code is being amended concurrently with the LCP amendment.
 7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 8. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
 9. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 10. The Ordinance of the City Council specifies that Local Coastal Program Amendment LCPA 06-05 be submitted to the Coastal Commission for final certification.
- J. The City Council adopts the suggested modifications to the amendment to the City Zoning Code and Zoning Map as shown in the Dana Point Town Center Plan – Exhibit "A" of this Ordinance.

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 5

- K. The City Council amends the currently adopted Implementation Action portion of the 1996 Local Coastal Program as shown in Zone Text Amendment ZTA 06-04 and Zone Change ZC 06-01, as shown in Exhibit "A" to this Ordinance.
- L. The City Council amends the 1986 Dana Point Local Coastal Program (including the Orange County Zoning Code) in its entirety as it applies to the property within the Town Center Plan and replaces these portions of the 1986 Dana Point Local Coastal Program with the 1996 Local Coastal Program (as amended) along with Zone Text Amendment (ZTA 06-04) and Zone Change (ZC 06-01).

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

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2008

JOEL BISHOP, MAYOR

ATTEST:

KATHY WARD
City Clerk

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 6

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

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 08-xx was duly introduced at a regular meeting of the City Council on the ____ day of _____, 2008, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY WARD, CITY CLERK

Ordinance No. 08-xx
ZTA 06-04/ZC 06-01/LCPA 06-05
Page 7

ORDINANCE NO. 08-xx

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

AFFIDAVIT OF POSTING
AND PUBLISHING

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

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

That in compliance with State Laws of the State of California, ORDINANCE NO. 08-xx, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX "E" OF THE ZONING ORDINANCE AS PART OF LOCAL COASTAL PLAN AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

was published in the Dana Point News newspaper on the ____ day of _____, 2008, and in further compliance with City Resolution No. 91-10-08-1 on the ____ day of _____, 2008, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

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

KATHY WARD, CITY CLERK
Dana Point, California

CITY OF DANA POINT**AGENDA REPORT**

Reviewed By:

DH ☒CM ☒CA ☐

DATE: JUNE 17, 2008

TO: CITY MANAGER / HONORABLE MAYOR AND CITY COUNCIL

FROM: MIKE KILLEBREW, DIRECTOR OF ADMINISTRATIVE SERVICES
JENNIFER ANDERSON, MANAGEMENT ANALYST

SUBJECT: *ADDENDUM TO JUNE 3, 2008 STAFF REPORT:*
HOTEL-RELATED INSURANCE RENEWAL FOR FY2008/2009

RECOMMENDED ACTION:

That the City Council approve revisions to the FY 2008/2009 renewal of hotel-related insurance business interruption coverage obtained from Landmark American Insurance Company ("Landmark") for protection of Transient Occupancy Tax ("TOT") and other hotel-generated revenues for the policy period of June 17, 2008 to June 17, 2009.

DISCUSSION:

On June 3, 2008, City Council approved the ratification and renewal of the City's current insurance policy which covers the City in the event hotel-related revenues are negatively impacted by damage to Dana Point hotels as may be caused by floods, earthquakes, other perils or acts of terrorism in the premium amount of \$67,562.34. Given the City's reliance on hotel generated revenue, it is prudent to invest in such insurance to ensure funds are available to provide critical municipal services, at all times and in any event. The City's insurance broker, Tutton Insurance ("Tutton"), has for the past three years only been able to secure \$5 million of coverage by Landmark, the insurer.

However, on June 4, 2008, Staff was informed by Tutton that through revised reinsurance agreements, Landmark is now able to increase the City's per loss occurrence and annual aggregate to \$8 million of coverage per event, per location or per year. Upon further research and examination of other beneficial coverage options, Staff also recommends adjusting the deductible from \$25,000 up to \$50,000 since the premium savings for the lower deductible is not cost-beneficial. The additional coverage, net of the savings from the higher deductible would increase the City's coverage by 63%, but only raise the annual premium by \$16,748.91.

On June 6, 2008, Tutton provided staff with a revised premium quotation reflecting the desired modifications to the insurance policy. Increasing the City's maximum coverage from \$5 million to \$8 million and increasing the minimum deductible limits from \$25,000 to \$50,000 raised the policy premium from \$64,344.84 to \$81,093.75. The additional terrorism risk insurance coverage in the amount of \$3,217.50 brings the total revised renewal amount from \$67,562.34 to \$84,311.25. The FY 2008/2009 adopted budget includes \$53,000 for this proposed renewal. A budget adjustment is not necessary to cover the \$31,311.25 overage due to savings realized in other areas of the City's insurance budget.

Typically, Tutton Insurance will not bind coverage until a premium deposit or premium payment in full has been received. However, Tutton Insurance has been informed of this addendum to the June 3, 2008 agenda report and the supplemental information being presented to Council for approval of the policy revisions. Though the current insurance policy is due to expire June 17, 2008, Tutton has agreed to nonetheless bind coverage effective today with no lapse in protection.

STRATEGIC PLAN IMPLEMENTATION:

Achieve total excellence in municipal services and City administration/planning with excellent customer service and cost-effectiveness.

FISCAL IMPACT:

There are sufficient funds in the adopted FY2008/2009 budget to cover the \$84,311.25 proposed outlay to secure TOT interruption insurance.

CITY OF DANA POINT
STAFF REPORT

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JUNE 17, 2008

TO: CITY MANAGER / CITY COUNCIL

FROM: A. PATRICK MUNOZ, CITY ATTORNEY
BRAD FOWLER, DIRECTOR OF PUBLIC WORKS & ENGINEERING

SUBJECT: OPPOSITION TO ASSEMBLY BILL 983 (Ma)

RECOMMENDED ACTION:

That the City Council:

1. Oppose AB 983 (Ma) - Public Contracts: Plans and Specifications; and
2. Authorize the City Manager to send a letter to the appropriate officials opposing AB 983.

BILL SUMMARY:

Assembly Bill 983 would amend Public Contracts Code § 1104 to require all public entities to provide full, complete and accurate plans and specifications and cost estimates for public works projects before entering into any contract for the project, unless the project or portion of project is identified as design-build. Additionally, Assembly Bill 983 would also add a provision to Public Contracts Code § 1104 that expressly states that contractors do not have to prove affirmative or intentional misrepresentation or concealment on the part of the public entity that provides the plans and specifications.

BACKGROUND:

As stated above, if passed, AB 983 would amend Public Contracts Code § 1104 to (1) require all public entities to provide full, complete and accurate plans and specifications and costs estimates prior to entering into a public works contract and (2) eliminate the requirement that contractors must prove affirmative or intentional misrepresentation or concealment in order to recover against the public entity that provided the plans and specifications.

These provisions are specifically intended to combat the ruling set forth in *Thompson Pacific Construction, Inc. v. City of Sunnyvale* ("Thompson"), (2007) 155 Cal.App.4th 525. In *Thompson*, the Court held that public works contractors can **only** recover on a breach of warranty of correctness claim (essentially a claim that the entity provided

misleading plans and specifications) against a public entity if the contractor can show that the public entity affirmatively misrepresented or concealed material facts. This is a reasonable standard for contractors to meet and affords public entities a great deal of protection.

AB 983, however, expressly seeks to eliminate this protection. By requiring all public entities to submit **complete and accurate** plans and specifications and cost estimates **prior** to entering into a public works contract and eliminating the responsibility contractors have to meet in order to recover from cities, AB 983 effectively would force public entities to become experts in engineering and construction and would eliminate the collaborative process that contractors and cities often engage in to identify omissions and/or changes to provided plans and specifications. The city providing the plans and specifications would likely bear sole responsibility for erroneous plans, even if submitted unintentionally or without malice, as contractors would not be required to exercise a prudent level of due diligence in their review of plans and specifications, and timely notify the City of any errors.

The requirements of AB 983 also would likely extend the time and cost for completion of design, as staff may need to employ third parties to conduct constructability reviews, which will delay project implementation and increase project costs.

Public works projects often involve extensive detail and public entities have historically relied upon the contractor's understanding and expertise to complete a secure and efficient project. If passed, AB 983 would significantly and negatively alter the relationship between public entities and contractors.

The bill passed through the Senate Judiciary on May 13, 2008 and is currently in the Senate Rules Committee.

CONCLUSION:

The City Council should oppose AB 983 and authorize the City Manager to send a letter to the appropriate authorities expressing this opposition.

FISCAL IMPACT:

None.

ALTERNATIVE ACTIONS:

Vote to not authorize the City Manager to send a letter opposing AB 983.

ACTION DOCUMENT:

None.

SUPPORTING DOCUMENT:

Page No.

A. [Assembly Bill No. 983](#) 3

SUPPORTING DOCUMENT A

AMENDED IN SENATE MAY 20, 2008

AMENDED IN SENATE APRIL 9, 2008

AMENDED IN SENATE JANUARY 14, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL**No. 983**

Introduced by Assembly Member Ma

February 22, 2007

An act to amend Section 1104 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 983, as amended, Ma. Public contracts: plans and specifications.

Existing law contains various provisions relating to the bidding process for public works projects. Existing law prohibits a local public entity, charter city, or charter county from requiring a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design-build projects.

This bill would require a local public entity, charter city, or charter county, before entering into any contract for a project, to provide full, complete, and accurate plans and specifications and estimates of cost, giving such direction as will enable any competent mechanic or other builder to carry them out. This bill would exempt from these provisions any clearly identified design-build projects or design-build portions thereof. This bill would further provide that these provisions shall not be construed to require a contractor to prove an affirmative or intentional misrepresentation or active concealment on the part of the public entity, charter city, or charter county that provides the plans and specifications,

AB 983

— 2 —

nor construed to prohibit the public entity, charter city, or charter county from raising any affirmative defenses available to it under law.

This bill would also specify that these provisions would not expand, restrict, or otherwise change the liability or potential liability of a design professional, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1104 of the Public Contract Code is
2 amended to read:

3 1104. (a) No local public entity, charter city, or charter county
4 shall require a bidder to assume responsibility for the completeness
5 and accuracy of architectural or engineering plans and
6 specifications on public works projects, except on clearly
7 designated design-build projects. Nothing in this section shall be
8 construed to prohibit a local public entity, charter city, or charter
9 county from requiring a bidder to review architectural or
10 engineering plans and specifications prior to submission of a bid,
11 and report any errors and omissions noted by the contractor to the
12 architect or owner. The review by the contractor shall be confined
13 to the contractor's capacity as a contractor, and not as a licensed
14 design professional.

15 (b) Except for clearly identified design-build projects or
16 design-build portions thereof, before entering into any contract for
17 a project, a local public entity, charter city, or charter county shall
18 provide full, complete, and accurate plans and specifications and
19 estimates of cost, giving such direction as will enable any
20 competent mechanic or other builder to carry them out.

21 ~~Nothing~~

22 (c) (1) ~~Nothing~~ in this section shall be construed to require a
23 contractor to prove an affirmative or intentional misrepresentation
24 or active concealment on the part of the local public entity, charter
25 city, or charter county that provides the plans and specifications.

26 (2) ~~Nothing in this section shall be construed to prohibit a local~~
27 ~~public entity, charter city, or charter county from raising any~~
28 ~~affirmative defenses available to it under law.~~

29 ~~Nothing~~

— 3 —

AB 983

- 1 (3) *Nothing* contained in this section shall expand, restrict, or
- 2 otherwise change the liability or potential liability of a design
- 3 professional as defined in paragraph (2) of subdivision (b) of
- 4 Section 2782.8 of the Civil Code.

O

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: GENERAL PLAN AMENDMENT GPA07-02 AND LOCAL COASTAL PROGRAM AMENDMENT 07-02 TO REVIEW CALIFORNIA COASTAL COMMISSION RECOMMENDED MODIFICATIONS FOR THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN

RECOMMENDED ACTION: That the City Council conduct a public hearing to adopt the suggested modifications approved by the California Coastal Commission in its certification of the City of Dana Point Local Coastal Program Amendment LCPA07-02 with respect to the Headlands Development and Conservation Plan (HDCP) and forward the adopted suggested modifications to the Coastal Commission for final certification by approving the following Resolutions:

1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 07-02, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT, URBAN DESIGN ELEMENT, CONSERVATION AND OPEN SPACE ELEMENT AS WELL AS VARIOUS TABLES AND FIGURES AND SUBMISSION OF GPA 07-02 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION; and
2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 AND REQUESTING FINAL CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

ISSUES:

1. Are the Coastal Commission modifications generally consistent with the approval previously granted by the City Council?
2. Will the project resulting from the modifications be generally consistent with the City Council's intent when it previously approved the project?

STRATEGIC PLAN IMPLEMENTATION:

The proposed modifications are consistent with and will continue to further the Strategic Planning Initiative(s) and Tactical Elements. Specifically, Initiative V will be directly furthered should the modifications be approved. Approval of the modifications, which includes the option of establishing a new trail behind the future hotel site within the Hilltop Park will continue to facilitate development of the Headlands parks, open space and public improvements. This potential new trail will serve as an additional public improvement/public access point to the Hilltop Park area and therefore is consistent with Initiative V.

BACKGROUND:

The Headlands project site is comprised of approximately 121.3 acres located adjacent to the Pacific Ocean. The site is characterized by scenic and natural features including sheer coastal bluffs, environmentally sensitive habitat areas, scenic vistas and pedestrian trails. At this juncture, the project is nearing completion – grading of both residential areas (Planning Areas 2 & 6) is nearly finished, the commercial development for Planning Area 4 received approval by the City in March 2008 and the finalization of interior streets, sidewalks, trails, and park and open space areas and other improvements continue to move forward. Completion of the project, with the exception of the hotel site, is estimated for late spring- early summer 2009. Development of the hotel site requires a separate Coastal Development Permit.

The following provides a brief chronology of the actions pertaining to approval of the Headlands project:

- January 14, 2005: California Coastal Commission gives final certification to Local Coastal Program Amendment LCPA01-02 for the Headlands Development thereby approving the Headlands Development and Conservation Plan (HDCP).
- February 23, 2005: The City Council upholds Planning Commission approval of the project.
- April 2005: Grading at the Headlands site began.
- July 2, 2007: Applicant submits application requesting Local Coastal Program Amendment LCPA07-02, General Plan Amendment GPA07-02, and amendments to Coastal Development Permit CDP04-23(I) and Site Development Permit SDP04-69(I) to eliminate a 150 foot proposed stairway, otherwise known as the “Mid-Strand Vista Park Accessway” and allow for the addition of approximately 800 linear feet of new public trails. The new public trails will be situated within Harbor Point Park and Hilltop Park.
- August 14, 2007: Planning Commission recommends adoption of the proposed Amendments to the City Council.
- September 18, 2007: City Council approves the proposed Amendments.
- May 8, 2008: California Coastal Commission denied certification of the LCPA 07-02 as originally submitted by the City, but approved the LCP Amendment with suggested modifications.

The Coastal Commission certification was conditioned upon suggested modifications to the LCP Amendment which must be adopted by the City of Dana Point in order for the LCP to become effective. The purpose of this hearing is to review the modifications and determine whether the City's approval should be revised to be consistent with the modifications adopted by the Coastal Commission. The modifications are outlined in the discussion section of this report. Should the City not accept the modifications proposed by the Coastal Commission, the Local Coastal Program Amendment cannot be certified. The City only has the discretion to vote yes or no on the suggested modifications submitted to the City by the Coastal Commission.

DISCUSSION:

The Coastal Commission suggested a total of six (6) modifications to the original HDCP approved by the City. The Commission suggested modifications primarily consist of text clarifications of the Coastal Land Use Plan and the Implementation Program. There are also other "global" changes that restore all policy language, text and graphics with respect to the Mid-Strand Vista Park accessway and the Harbor Point Park.

These changes are also described below:

1. Land Use Element, Urban Design Element and Conservation Open Space Element:
 - a. **Suggested Modification No. 1:** This modification would restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to the requested amendment (LCPA07-02).
 - b. **Suggested Modification No. 2:** This modification would restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
 - c. **Suggested Modification No. 3:** Add New Land Use Element policy to section on Dana Point Headlands, as follows: **Notwithstanding the requirements of Land Use Element Policies 5.37 and 5.42 and Conservation Open Space Element Policy 6.9, the trail segment depicted on Figure COS-4 located along the interface of the Hilltop Park and Greenbelt (Ridgeline) and the Visitor Serving Commercial Area planned for the luxury seaside inn that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.**
2. Implementation Program
 - a. **Suggested Modification No. 1:** This modification would restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to LCPA07-02.
 - b. **Suggested Modification No. 2:** This modification would restore all policy language, text and graphics related to and/or depicting the hook-shaped

trail in Harbor Point Park; delete all references to a loop-trail in this same location.

- c. **Suggested Modification No. 3:** Modify Section 3.7 (C) (6) (Development Phasing Plan), as follows: *Notwithstanding the requirements of this section, the trail segment depicted on Figure 4.5.1 (among other figures), located within Planning Area 5 along the interface of the Hilltop Park and Greenbelt and Planning Area 9 (Resort Seaside Inn) that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.*

CONCLUSION:

Generally the modifications recommended by the Coastal Commission are intended to restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway and the hook-shaped trail in Harbor Point Park as they existed prior to the requested Local Coastal Program Amendment. The Coastal Commission's modifications also included the option of including the trail segment behind Planning Area 9, where the future luxury seaside inn would be constructed. As mentioned earlier, this trail segment would be within the Hilltop Park and would provide an additional pedestrian connection from Scenic Drive to the trail system that has already been approved within the Hilltop Park.

After City Council adoption of the suggested modifications, the adopted modifications will be forwarded to the Coastal Commission for final certification.

NOTIFICATION AND FOLLOW-UP:

Notification of the amendments was published in the newspaper in accordance with the noticing requirements. In addition, all affected agencies and interested parties were provided notice of the hearing date. The Council's action is final unless modified through legal action.

FISCAL IMPACT:

No negative fiscal impacts are anticipated.

ACTION DOCUMENTS:

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A. Resolution #08-06-17-XX (GPA07-02)	5
(Exhibit A)	11
B. Resolution #08-06-17-XX (LCPA07-02 submittal to the CCC)	13
(Exhibit A)	18

SUPPORTING DOCUMENTS:

C. California Coastal Commission Suggested Modifications (letter from CCC staff dated May 14, 2008)	20
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ACTION DOCUMENT A**RESOLUTION NO. 08-06-17-xx**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 07-02, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT, URBAN DESIGN ELEMENT, CONSERVATION AND OPEN SPACE ELEMENT AS WELL AS VARIOUS TABLES AND FIGURES AND SUBMISSION OF GPA 07-02 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: Headlands Reserve LLC

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

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

WHEREAS, the City adopted the 1996 Local Coastal Program which was certified by the California Coastal Commission ("Coastal Commission"); and

WHEREAS, the City adopted the Headlands Development and Conservation Plan ("HDCP") that included in part General Plan Amendment GPA 01-02 and Local Coastal Plan Amendment LCPA 01-02, that amended the City's General Plan and Local Coastal Program for the Headlands Property; and

WHEREAS, the City has prepared and certified a Final Environmental Impact Report (SCH#2001071015) ("FEIR") for the HDCP and an Addendum ("Addendum") thereto, which was previously reviewed and approved by the City; and

WHEREAS, LCPA 07-02 was submitted to the Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on May 8, 2008, approved Local Coastal Program Amendment LCPA 07-02 with suggested modifications; and

WHEREAS, the Coastal Commission found that the LCP Amendment with the suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act; and

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LCPA07-02/GPA07-02
Page 2

WHEREAS, in accordance with Public Resources Code Section 21166 and CEQA Guidelines Sections 15162-15164, the City assessed whether any potential environmental impacts of the suggested modifications were previously analyzed in the Final Environmental Impact Report (FEIR) and Addendum and if any changes were necessary, and

WHEREAS, it was determined that no changes are needed to the previously approved Final Environmental Impact Report (FEIR) and Addendum; and

WHEREAS, said suggested modifications have been accepted, agreed to, and incorporated into LCPA 07-02, and

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

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

WHEREAS, the General Plan Amendment GPA 07-02 ("GPA") is the second General Plan Amendment processed for 2008; and

WHEREAS, the proposed amendment would make changes to the Land Use Element, Urban Design Element, and Conservation and Open Space Elements of the General Plan; and

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

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment 07-02 ("LCPA") is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15251(f) and 15265 (a)(1); and

WHEREAS, the City Council did on June 17, 2008 hold a duly noticed public hearing as prescribed by law to consider the General Plan Amendment GPA07-02 and Local Coastal Program Amendment LCPA07-02; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to GPA07-02 and LCPA07-02; and

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LCPA07-02/GPA07-02
Page 3

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

Section 1. That the above recitations are true and correct;

Section 2. The City Council finds as follows:

- A. The City acknowledges receipt of the Coastal Commission's certification of the LCP Amendment with suggested modifications.
- B. The City accepts and agrees to the suggested modifications and agrees to take formal action to satisfy the suggested modifications by making conforming amendments as necessary to its General Plan, Local Coastal Program and the Headlands Development and Conservation Plan.
- C. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- D. That the General Plan Amendment (GPA07-02) is in the public interest;
- E. That the Local Coastal Program Amendment (LCPA07-02) is consistent with, and will be implemented in full conformity with the California Coastal Act ("Coastal Act");
- F. That the City Council has previously reviewed and recommended approval of the Addendum, Statement of Overriding Considerations, and revised Mitigation Monitoring and Reporting Program as part of the FEIR;
- G. That the FEIR and Addendum for the HDCP is complete and adequate for the consideration of the GPA because (1) the GPA does not result in any new significant effects or a substantial increase in the severity of significant effects identified in the FEIR and Addendum; (2) no substantial changes in circumstances since certification of the FEIR and Addendum have occurred that would result in any new significant effects or a substantial increase in the severity of significant effects identified in the FEIR and Addendum; or (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR and Addendum were certified shows any of the conditions described in Section 15162(a)(3)(A) through (c) of the CEQA Guidelines exists;

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LCPA07-02/GPA07-02
Page 4

H. That the City Council adopts the following findings:

1. That the public and affected agencies have had ample opportunity to participate in the LCPA process and that proper notice in accordance with the Coastal Act amendment procedures has been followed.. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the General Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources.
2. That the Land Use Plan as amended by the GPA is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan and the HDCP.
3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. As a General Plan Amendment and Local Coastal Program Amendment, no specific development is proposed. Any proposed development will be reviewed for compliance with the City's Local Coastal Program.
4. That the proposed amendment(s) are reflected in the General Plan, Local Coastal Program and Headlands Development and Conservation Plan and the applicable sections are being amended accordingly to be consistent with state law.
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA.
6. That specific criteria are in place within the Headlands Development and Conservation Plan and the City's General Plan which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan.
7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

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LCPA07-02/GPA07-02
Page 5

8. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA07-02 be submitted to the Coastal Commission for final certification.

Section 3. The City Council adopts the amendments to the City's General Plan as shown in Exhibit "A" of this Resolution, attached hereto and incorporated herein by this reference.

Section 4. The City Council amends the currently adopted 2004 Local Coastal Program for the Headlands Property, as reflected in the Headlands Development and Conservation Plan (HDCP), attached hereto as Exhibit "A" to this Resolution.

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

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

Kathy Ward
City Clerk

Resolution No. 08-06-17-xx
LCPA07-02/GPA07-02
Page 6

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

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 08-06-17-XX was duly adopted and passed at a regular meeting of the City Council on the 17th day of June, 2008, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

KATHY WARD
CITY CLERK

Exhibit: A – Coastal Commission's Suggested Modifications to Dana Point General Plan Amendment – GPA07-02

EXHIBIT A
COASTAL COMMISSION'S SUGGESTED MODIFICATIONS TO
DANA POINT GENERAL PLAN AMENDMENT – GPA07-02

Note: The text to be deleted per the Suggested Modifications is shown in ~~Strike Out~~. The text to be added Per the Suggested Modifications is shown In **Bold Italic Underlined**.

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

1. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to this amendment request 1-07 (LCPA07-02).
2. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
3. Add New Land Use Element policy to section on Dana Point Headlands, as follows: **Notwithstanding the requirements of Land Use Element Policies 5.37 and 5.42 and Conservation Open Space Element Policy 6.9, the trail segment depicted on Figure COS-4 located along the interface of the Hilltop Park and Greenbelt (Ridgeline) and the Visitor Serving Commercial Area planned for the luxury seaside inn that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.**

SUGGESTED MODIFICATIONS TO IMPLEMENTATION PROGRAM:

1. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to this amendment request 1-07 (LCPA07-02).
2. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
3. Modify Section 3.7 (C) (6) (Development Phasing Plan), as follows: Development shall comply with the following development phasing plan: Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. The allowance for impacts up to 11.29 acres of environmentally sensitive habitat area (excluding public trails) and the allowances relative to the construction of new development in the Strand that is reliant upon significant landform alteration and a shoreline protective device shall only be allowed in the context of a project that: 1)

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

The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. The one exception...[no intervening changes]...

The public parks, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed and open to the public prior to the opening of the luxury inn in Planning Area 9...[no intervening changes]...

...All approved public park, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP...[no intervening changes]...

Notwithstanding the requirements of this section, the trail segment depicted on Figure 4.5.1 (among other figures), located within Planning Area 5 along the interface of the Hilltop Park and Greenbelt and Planning Area 9 (Resort Seaside Inn) that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.

...[no intervening changes]...

ACTION DOCUMENT B**RESOLUTION NO. 08-06-17-xx****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING LOCAL COASTAL PROGRAM AMENDMENT LCPA07-02 AND REQUESTING FINAL CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.**

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

WHEREAS, the City Council on September 22, 2004, approved General Plan Amendment GPA01-02, Zone Text Amendment ZTA01-02, Zone Change ZC01-01, Planned Development District PDD01-01 and Local Coastal Program Amendment LCPA01-02 for adoption of the Headlands Development and Conservation Plan; and

WHEREAS, the Coastal Commission on January 14, 2005 gave final certification to the Local Coastal Program Amendment LCPA01-02; and

WHEREAS, Local Coastal Program Amendment LCPA07-02 was submitted to the Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on May 8, 2008, approved Local Coastal Program Amendment LCPA07-02 with suggested modifications; and

WHEREAS, the Coastal Commission found that the LCP Amendment with suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act, minimized or mitigated any potential significant effects, would not result in significant adverse impacts within the meaning of CEQA and that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant environmental impacts; and

WHEREAS, said suggested modifications have been incorporated into the LCPA07-02 and the Headlands Development and Conservation Plan, and

WHEREAS, the City Council, after giving notice as prescribed by law, held a public hearing on June 17, 2008, regarding the Dana Point Local Coastal Program Amendment LCPA07-02, and the City Council finds that the proposed amendment is consistent with the Dana Point General Plan, the Local Coastal Program and the California Coastal Act; and

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

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LCPA 07-02
Page 2

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15251(f) and 15265(a)(1); and

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

Section 1. That the above recitations are true and correct;

Section 2. The City Council finds as follows:

- A. The City acknowledges receipt of the Coastal Commission's certification of the LCP Amendment with suggested modifications.
- B. The City accepts and agrees to the suggested modifications and agrees to take formal action to satisfy the suggested modifications by making conforming amendments as necessary to its General Plan, Local Coastal Program and Headlands Development and Conservation Plan (HDCP).
- C. That City agrees to issue Coastal Development Permits for the total area included in the certified Local Coastal Program.
- D. That the proposed action complies with all other applicable requirements of State law and local Ordinances;
- E. That the adoption of the proposed Local Coastal Program Amendment (LCPA07-02) as an amendment to the Local Coastal Program and Headlands Development and Conservation Plan is in the public interest;
- F. That the Local Coastal Program Amendment (LCPA 07-02) is consistent with, and will be implemented in full conformity with the Coastal Act;
- G. That the Final Environmental Impact Report (SCH#2001071015) and Addendum for the Headlands Development and Conservation Plan is complete and adequate for the consideration of the LCP Amendment (LCPA07-02);
- H. That the City Council adopts the following findings:

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LCPA 07-02
Page 3

1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.
2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the General Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act and that the Implementation Program Amendment is in conformance with and adequate to implement the Land Use Plan.
3. That Coastal Act policy concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the locations, and intensity of land and water uses. As a General Plan Amendment and Local Coastal Program Amendment, no specific development is proposed. Any proposed development will be reviewed for compliance with the City's Local Coastal Program.
4. That the level and pattern of development proposed is reflected in the Land Use Plan and Headlands Development and Conservation Plan (HDGP). The applicable sections are being amended accordingly to be consistent with state law.
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's General Plan and Headlands Development and Conservation Plan (HDGP) are being amended concurrently with the LCP amendment.
7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
8. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

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9. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
10. The Resolution of the City Council specifies that Local Coastal Program Amendment LCPA 07-02 be submitted to the Coastal Commission for final certification.

Section 3. That the Dana Point City Council approved Dana Point Local Coastal Program Amendment LCPA07-02 pursuant to Resolution 08-06-17-xx. LCPA07-02 pertains to the restoration of all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway and the hook-shaped trail in the Harbor Point Park as well as the option of establishing a new pedestrian trail connection that will be located along the interface of the Hilltop Park and the greenbelt ridge and the future hotel site (Planning Area 9) from Scenic Drive to the trail system that leads to the lookout within Hilltop Park. LCPA07-02 also includes the required land use and implementation measures as outlined in General Plan Amendment GPA07-02, and LCPA07-02. A copy of Resolution 08-06-17-xx approving LCPA07-02 with the specific content of the proposed amendment is attached hereto as Exhibit A and is incorporated herein by this reference as though fully set forth herein.

Section 4. That the California Coastal Commission is hereby requested to consider, approve and finally certify Dana Point Local Coastal Program Amendment LCPA07-02 which restores specific language within the General Plan and Headlands Development and Conservation Plan (HDCP) and permits the establishment of a new pedestrian trail as specifically referenced in Section 3 above.

Section 5. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Dana Point Local Coastal Program Amendment LCPA07-02 will automatically take effect immediately upon California Coastal Commission approval, as provided in Public Resources Code Section 30512, 30513 and 30519.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

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LCPA 07-02
Page 5

PASSED, APPROVED, AND ADOPTED this 17th day of June, 2008.

JOEL BISHOP, MAYOR

ATTEST:

KATHY WARD
City Clerk

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

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 08-06-17-_____ was duly adopted and passed at a regular meeting of the City Council on the 17th day of June, 2008, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

KATHY WARD
CITY CLERK

EXHIBIT A
COASTAL COMMISSION'S SUGGESTED MODIFICATIONS TO
DANA POINT GENERAL PLAN AMENDMENT – GPA07-02

Note: The text to be deleted per the Suggested Modifications is shown in ~~Strike Out~~. The text to be added Per the Suggested Modifications is shown In **Bold Italic Underlined**.

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

1. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to this amendment request 1-07 (LCPA07-02).
2. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
3. Add New Land Use Element policy to section on Dana Point Headlands, as follows: **Notwithstanding the requirements of Land Use Element Policies 5.37 and 5.42 and Conservation Open Space Element Policy 6.9, the trail segment depicted on Figure COS-4 located along the interface of the Hilltop Park and Greenbelt (Ridgeline) and the Visitor Serving Commercial Area planned for the luxury seaside inn that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.**

SUGGESTED MODIFICATIONS TO IMPLEMENTATION PROGRAM:

1. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park accessway as they existed prior to this amendment request 1-07 (LCPA07-02).
2. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
3. Modify Section 3.7 (C) (6) (Development Phasing Plan), as follows: Development shall comply with the following development phasing plan: Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. The allowance for impacts up to 11.29 acres of environmentally sensitive habitat area (excluding public trails) and the allowances relative to the construction of new development in the Strand that is reliant upon significant landform alteration and a shoreline protective device shall only be allowed in the context of a project that: 1)

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

The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. The one exception...[no intervening changes]...

The public parks, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed and open to the public prior to the opening of the luxury inn in Planning Area 9...[no intervening changes]...

...All approved public park, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP...[no intervening changes]...

Notwithstanding the requirements of this section, the trail segment depicted on Figure 4.5.1 (among other figures), located within Planning Area 5 along the interface of the Hilltop Park and Greenbelt and Planning Area 9 (Resort Seaside Inn) that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.

...[no intervening changes]...

SUPPORTING DOCUMENT C

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
CITY OF DANA POINT
COMMUNITY DEVELOPMENT DEPT.



2008 MAY 16 P 2:11

May 14, 2008

Kyle Butterwick
City of Dana Point
Community Development Dept.
33282 Golden Lantern
Dana Point, CA 92629

Re: **Dana Point Major Local Coastal Program Amendment No. 1-07**
Dana Point Headlands

Dear Mr. Butterwick:

You are hereby notified that the California Coastal Commission, at its May 8, 2008 meeting in Marina del Rey, approved City of Dana Point LCP Amendment No. 1-07 with modifications. Local Coastal Program (LCP) Amendment No. 1-07 was submitted pursuant to City Council Resolution No. Resolution No. 07-09-18-03 and proposed the changes contained in City Council Resolution No. 07-09-18-02. LCPA 1-07 proposed to eliminate the requirement of the Mid-Strand Vista Park public accessway (an approximately 150 foot long accessway) within the Strand Vista Park (Planning Area 1) and to add approximately 600 linear feet of trail within the Hilltop Park (Planning Area 5) and 200 linear feet of trail within Harbor Point Park (Planning Area 8a), for a total of 800 linear feet of trail. The Commission denied the request to eliminate the Mid-Strand Vista Park public accessway, denied the proposed addition of trail within the Harbor Point Park, and approved the addition of trail within the Hilltop Park.

The Commission approved the LCP amendment with suggested modifications. Therefore, LCP Amendment No. 1-07 will not be effective for implementation in the City's coastal zone until: 1) the Dana Point City Council adopts the Commission's suggested modifications, 2) the City Council forwards the adopted suggested modifications to the Commission by resolution, and 3) the Executive Director certifies that the City has complied with the Commission's May 8, 2008 action. The Coastal Act requires that the City's adoption of the suggested modifications be completed within six months of the Commission's action. At the City's request, the six month deadline can be extended; such extensions require Commission approval.

Pursuant to the Commission's action, certification of City of Dana Point LCP Amendment No. 1-07 is subject to the attached suggested modifications (Attachment A).

Thank you for your cooperation and we look forward to working with you and your staff in the future. Please call Karl Schwing or myself at (562) 590-5071 if you have any questions regarding the modifications required for effective certification of City of Dana Point LCP Amendment No. 1-07.

Sincerely,

Teresa Henry
District Manager

Attachment A - Suggested Modifications

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Attachment A (Suggested Modifications)
Page 2 of 3

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

Suggested Modifications to Coastal Land Use Plan Consisting of the Land Use Element (LUE), Urban Design Element (UDE), and Conservation Open Space Element (COSE):

1. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park public accessway as they existed prior to this amendment request 1-07.
2. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
3. Add New Land Use Element policy to section on Dana Point Headlands, as follows: Notwithstanding the requirements of Land Use Element Policies 5.37 and 5.42 and Conservation Open Space Element Policy 6.9, the trail segment depicted on Figure COS-4 located along the interface of the Hilltop Park and Greenbelt (Ridgeline) and the Visitor Serving Commercial Area planned for a luxury seaside inn that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.

Suggested Modifications to Implementation Program:

4. Global Change: Restore all policy language, text and graphics related to and/or depicting the Mid-Strand Vista Park public accessway as they existed prior to this amendment request 1-07.
5. Global Change: Restore all policy language, text and graphics related to and/or depicting the hook-shaped trail in Harbor Point Park; delete all references to a loop-trail in this same location.
6. Modify Section 3.7 (C)(6) (Development Phasing Plan), as follows:
Development shall comply with the following development phasing plan: Development of the Headlands shall occur in a comprehensive manner involving the entire approximately 121 acre site. The allowance for impacts to up to 11.29 acres of environmentally sensitive habitat area (excluding public trails) and the allowances relative to the construction of new development in the Strand that is reliant upon significant landform alteration and a shoreline protective device shall only be allowed in the context of a project that: 1) preserves, enhances, dedicates and perpetually manages all but 11.29 acres of environmentally sensitive habitat areas (ESHAs) known to be present at the Headlands; 2) dedicates the private portion of Strand beach to the public; 3) constructs and dedicates the public parks and public trail network described in this HDCP including realigning the existing revetment an average 5 feet landward or easterly than the existing alignment, implementation of a program to retrieve debris from the beach that impedes public access, and constructing a new lateral public access trail on top or landward of the revetment and seaward of the entire length of the Strand residential development; 4) implements extensive water quality management best management practices, including but not limited to the construction and maintenance of structural best management practices to treat off-site and on-site run-off; 5) preserves landforms including the Harbor Point and Headlands bluffs

DPT-MAJ-1-07
Attachment A (Suggested Modifications)
Page 3 of 3

and promontories and the Hilltop; and 6) provides lower-cost overnight accommodations (i.e. hostel) in conjunction with the construction of a luxury inn.

The public parks, open space and public trail network shall be offered for dedication and/or conveyed by the landowner/developer to the appropriate public agency or non-profit entity concurrent with the recordation of the first land division/Final Map(s). The first land division shall encompass the entire 121.3 acre site and shall fully expunge all development rights that may exist within the identified public parks, open space and public trail network that may have existed under any prior land division. The one exception...[no intervening changes]

The public parks, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed and open to the public prior to the opening of the luxury inn in Planning Area 9....[no intervening changes]...

...All approved public park, open space and public trail network improvements and amenities, including the Nature Interpretive Center and public parking, shall be constructed by the landowner/developer and shall include all such public parks, open spaces, public trails and associated improvements and amenities described in the HDCP....[no intervening changes]

Notwithstanding the requirements of this section, the trail segment depicted on Figure 4.5.1 (among other figures), located within Planning Area 5 along the interface of the Hilltop Park and Greenbelt and Planning Area 9 (Resort Seaside Inn) that provides a pedestrian trail connection from Scenic Drive to the trail system that leads to the lookout on the hilltop, shall be considered optional.

...[no intervening changes]...

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: ZONING CODE UPDATE PROGRAM – ZONE TEXT AMENDMENT ZTA08-0004

RECOMMENDED ACTION:

That the City Council conduct a public hearing and introduce for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA08-0004, REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES, AND PROVIDE CLARIFICATION TO EXISTING REGULATIONS GOVERNING “ALCOHOLIC BEVERAGE OUTLETS”, AND CLARIFY REQUIRED LANDSCAPING STANDARDS FOR RESIDENTIAL DISTRICTS.

BACKGROUND:

The intent and purpose of this Zoning Code Update Program is to correct inconsistencies in the Zoning Code, provide clarification to regulations and simplify the development review process for the public.

The City Council approved and adopted ZTA08-0001 on March 4, 2008, and ZTA08-0002, and ZTA08-0003 on May 20, 2008. The next phase of the update, ZTA08-0004 was approved by the Planning Commission on May 27, 2008, and is now before the City Council for action. In the future, City staff will continue to prepare additional updates to the Zoning Code.

DISCUSSION:

As part of the ongoing effort to update the Zoning Ordinance, staff has identified the following issues for an update:

- Section 9.07.040 – Alcoholic Beverage Outlets: Correct inconsistencies and clarify and streamline current standards to make it more user friendly.
- Section 9.09.030 - Clarify and eliminate conflicting Landscaping/Open Space standards for residentially zoned properties.

Alcoholic Beverage Outlets: This section of the code is proposed to be updated to clarify standards and to make it user friendly. Currently this Section mandates that Conditional Use Permits (CUP) for Alcoholic Beverage Outlets shall be approved by the Planning Commission, whereas Section 9.65.040 allows approval of a Minor CUP for the establishment of these uses. Staff is proposing to amend Section 9.07.040 to allow the approval of a Minor CUP for the establishment of Alcoholic Beverage Outlets. The Director will have the ability to forward any of the Minor CUPs to the Planning Commission for their review and action, based on the proposed size of the operation and its proximity to surrounding sensitive uses. In the past the City has approved Minor CUPs for Alcoholic Beverage Outlets.

Landscaping/Open Space Standards: The standard "Minimum Open Space" is proposed to be deleted from Residential Single Family Zones i.e. from Zones RSF 2, RSF 3, RSF 4, RSF 7, RSF 12, RBR 12, RBRD 18, and RSF 22. The "Minimum Landscape Coverage" standard provides for the amount of landscaping that is required to be provided on each residential lot. Since all the landscaping in Single Family Zones is for private use of one family, the Minimum Private Open Space standard is not applicable. This standard will remain applicable to Multi-Family Zones to guarantee that in addition to common spaces and areas, each unit in an apartment or condominium setting will have its own private open space as well.

CONCLUSION:

The proposed Zone Text Amendment is consistent with the General Plan, Local Coastal Program and Municipal Code. It updates Section 9.07.040 – Alcoholic Beverage Outlets, to correct inconsistencies, clarify existing standards and streamline the process of obtaining CUPs for the sale of alcoholic beverages; and updates Section 9.07.030 to eliminate conflicting standards on landscaping requirements for Single Family Residential Zones. It is recommended that the City Council introduce the ordinance for the Zone Text Amendment ZTA 08-0004.

NOTIFICATION:

Notice for the proposed action included a 1/8th page advertisement that was published in the Dana Point News on June 5, 2008. Notices were posted on June 6, 2008 at the Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, and the Dana Point Library.

FISCAL IMPACT:

There will be no fiscal impacts resulting from the approval of the proposed Zone Text Amendment.

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the Strategic Plan Initiative to evaluate land use issues to ensure goals, policies and programs of the General Plan reflect the community vision and mission, the proposed action supports and improves the existing Zoning Ordinance regulations.

ACTION DOCUMENT:

PAGE NO.

A. <u>Draft Ordinance No.08-xx</u>	4
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Exhibit “A”: Zone Text Amendment ZTA08-0004

SUPPORTING DOCUMENTS:

B. [Planning Commission Resolution No. 08-05-27-xx](#) 15

C. [Planning Commission Minutes dated May 27, 2008](#) 17

D. [Planning Commission Staff Report dated May 27, 2008](#) 18

ACTION DOCUMENT A**ORDINANCE NO. 08-xx**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA08-0004, REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES, AND PROVIDE CLARIFICATION TO EXISTING REGULATIONS GOVERNING "ALCOHOLIC BEVERAGE OUTLETS", AND CLARIFY REQUIRED LANDSCAPING STANDARDS FOR RESIDENTIAL DISTRICTS.

APPLICANT: City of Dana Point - Community Development Department
FILE NUMBER: ZTA 08-0004

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

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

WHEREAS, the City seeks to amend the Zoning Ordinance to correct inconsistencies, and provide clarification to existing regulations that govern "Alcoholic Beverage Outlets" and clarify required landscaping standards for Residential Districts; and

WHEREAS, the Planning Commission did, on the 27th of May, 2008, held a duly noticed public hearing as prescribed by law to consider the proposed Zone Text Amendment ZTA08-0004 and voted to recommend the City Council approve the said request; and

WHEREAS, the City Council did, on the 16th of June, 2008, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony, if any, of all persons desiring to be heard, said Council considered all factors related to Zone Text Amendment ZTA 08-0004; and

WHEREAS, the City's proposed amendments are identified as Exhibit A - ZTA08-0004, attached hereto and made a part of this Ordinance.

C.C. Ordinance No. 08-xx
ZTA08-0004
Page 5

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

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the City Council adopts the following findings:

Findings:

- 1) The amendments proposed are consistent with the Dana Point General Plan and Local Coastal Program.
- 2) The proposed amendments comply with all other applicable requirements of state law and local ordinances.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reasons held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2008.

JOEL BISHOP, MAYOR

ATTEST:

KATHY WARD,
CITY CLERK

C.C. Ordinance No. 08-xx
ZTA08-0004
Page 6

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

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 08-xx was duly introduced at a regular meeting of the City Council on the ____ day of _____, 2008, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY WARD, CITY CLERK

C.C. Ordinance No. 08-xx
 ZTA08-0004
 Page 7

ORDINANCE NO. 08-xx

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

AFFIDAVIT OF POSTING
AND PUBLISHING

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

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

That in compliance with State Laws of the State of California,
 ORDINANCE NO. 08-____, being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
 DANA POINT, CALIFORNIA, APPROVING ZONE TEXT
 AMENDMENT ZTA08-0004 REVISING THE CITY OF DANA
 POINT ZONING ORDINANCE TO CORRECT
 INCONSISTENCIES, AND PROVIDE CLARIFICATION TO
 EXISTING REGULATIONS GOVERNING “ALCOHOLIC
 BEVERAGE OUTLETS”, AND CLARIFY REQUIRED
 LANDSCAPING STANDARDS FOR RESIDENTIAL DISTRICTS.**

was published in summary in the Dana Point News newspaper on the ____ day of _____, 2008, and the ____ day of _____, 2008, and, in further compliance with City Resolution No., on the ____ day of _____, 2008, and the ____ day of _____, 2008, was caused to be posted in four (4) public places in the city of Dana Point, to wit:

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

 KATHY WARD, CITY CLERK
 Dana Point, California

C.C. Ordinance No. 08-xx
ZTA08-0004
Page 8

Exhibit “A”

ZONE TEXT AMENDMENT ZTA08-0004

Section 9.07.040 - Alcoholic Beverage Outlets, to be amended as follows (deletions are shown as strikeout and inserts are underlined):

The following regulations shall apply to alcoholic beverage outlets established after February 11, 1993. The establishment, operation, and maintenance of any alcoholic beverage outlet shall be subject to the following regulations:

(a) Establishment. The establishment of an alcoholic beverage outlet includes the opening of such a business, the relocation of such a business to a new location, the conversion of an existing use or premises to an alcoholic beverage outlet use, and/or the expansion or change of the type of alcoholic beverages to be sold at an existing alcoholic beverage outlet (i.e., a change in the type of retail liquor license within a license classification). For purposes of this Section, establishment shall not mean the transfer of an existing license from one operator to another at a location which is occupied by an existing alcoholic beverage outlet, unless there is a proposed change in the type of license.

(b) Conditional Use Permit. A Minor Conditional Use Permit, ~~subject to approval by the Planning Commission,~~ shall be required for the establishment of an alcoholic beverage outlet in the following situations:

~~(1) — Any alcoholic beverage outlet where such use is designated as a conditional use in the underlying zoning district.~~

~~(2) (1) Any off-sale~~ Sale of alcoholic beverages for off-site consumption ~~outlet where such use is designated as a permitted use in the underlying zoning district and~~ when located within:

(A) Five hundred (500) feet of any area zoned or used for any church, park, or educational institution utilized by minors; or

(B) Five hundred (500) feet of any hospital or public beach; or

(C) One hundred (100) feet of any area zoned or used for residential purposes.

~~(3) (2) Any on-sale~~ Sale of alcoholic beverages for on-site consumption ~~outlet, except a bona fide eating establishment, where such use is designated as a permitted use in the underlying zoning district and~~ when located within:

(A) Five hundred (500) feet of any area zoned or used for any church, park, or educational institution utilized by minors; or

C.C. Ordinance No. 08-xx
ZTA08-0004
Page 9

- (B) One hundred (100) feet of any area zoned or used for residential purposes.
- ~~(4) (3) Any establishment conducting concurrent sale of off-sale alcoholic beverages outlet involving the concurrent sale of and motor vehicle fuels. and alcoholic beverage.~~
- (c) Findings. An application for a Conditional Use Permit shall not be approved unless the ~~Planning Commission can make the~~ following findings can be made in addition to the required for a findings for the approval of a Conditional Use Permit contained in Chapter 9.65. ~~and additional findings as follows:~~
- (1) That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this Section will be observed;
 - (2) That the proposed use will not enlarge or encourage the development of a “skid row” area;
 - (3) That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any other city program; and,
 - (4) That all applicable regulations of the zoning district in which the use is permitted will be observed.
- (d) General Provisions.
- ~~(1) Where the alcoholic beverage outlet is proposed on a site which abuts the property line of any property zoned or used for residential purposes, a six (6) foot high solid masonry wall shall be constructed between the parking area of the proposed use and the adjacent residential property. Said wall shall be designed and constructed in compliance with all other applicable provisions of this Code including, but not limited to, Section 9.05.090, Sight Visibility Area and Section 9.05.120, Fences, Walls and Hedges.~~
- ~~(2) Consumption of alcoholic beverages shall be prohibited in the parking lot of the subject business.~~
- (e) Sale of alcoholic beverages for off-site consumption. ~~Off-Sale Requirements.~~ The sale of alcoholic beverages for consumption on the premises including parking lots shall be prohibited. There shall be appropriate and conspicuous posting of a notice inside the premises indicating that consumption of alcohol, either inside or outside of the building on the premises is prohibited by law. The notice shall be at least one and one-half (1½) square feet in size.

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(f) Sale of alcoholic beverages for on-site consumption. ~~On-Sale Requirements.~~ The sale of alcoholic beverages for consumption off the premises shall be prohibited. ~~T~~There shall be appropriate and conspicuous posting of a notice inside the premises, indicating that consumption of alcohol outside the building on the premises including its parking lot is prohibited by law, except as may be permitted in any designated outdoor eating or drinking area, such as an on-site patio. The notice shall be at least one and one-half (1½) square feet in size.

(g) Concurrent Sale Requirements. Any use engaged in the concurrent sale of the motor vehicle fuels and alcoholic beverages shall meet the following requirements:

- (1) An establishment engaged in the sale of motor vehicle fuels may offer beer and wine, and not distilled spirits, for sale for off-site consumption.
- (2) Beer and wine products shall not be displayed within five (5) feet of the cash register or the front door unless such display occurs within a permanently affixed cooler which existed as of January 1, 1988.
- (3) Advertisement of beer and wine products shall not be displayed at motor vehicle fuel islands, on fuel pumps, on the canopy supports or the canopy structure covering said motor vehicle fuels islands.
- (4) The sale of beer or wine shall not be made from a drive-through window.
- (5) Display or sale of beer or wine products shall not be made from an ice tub.
- (6) Self-illuminating advertising for beer or wine products shall not be located on buildings or in the windows.
- (7) Employees on duty between the hours of 10:00 p.m. and 2:00 a.m. shall be at least 21 years of age to sell beer or wine.
- (8) A notice shall be posted within three (3) feet of the cash register bearing the following message: "Don't Drink and Drive." The notice shall be at least one and one-half square feet in size.
- (9) Additional requirements on the establishment and operation of facilities engaged in the concurrent sale of motor vehicle fuels and beer and wine which are not inconsistent with this Section, may be imposed by the Planning Commission, or the City Council on appeal, where a Conditional Use Permit is required to establish such a use.

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Section 9.09.030 - Development Standards, to be amended as follows (deletions are shown as ~~strikeout~~ and inserts are underlined):

The following Table provides the minimum acceptable standards for development within the Residential Districts necessary to assure quality development and attractive local residential areas. The development standards are supplemented, and where applicable, superseded by the special development standards described in Chapter 9.05, Chapter 9.07, and Section 9.09.040. Parking standards are provided in Chapter 9.35.

SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

DEVELOPMENT STANDARDS (1)	RESIDENTIAL ZONING DISTRICTS			
	RSF 2	RSF 3	RSF 4	RSF 7
(a) Minimum Lot Size: (2)	17,500 sf	12,000 sf	8,700 sf	5,000 sf
(b) Minimum Lot Width - (2)				
Standard Lot:	70 ft	50 ft	50 ft	50 ft
Cul-De-Sac Lot (at front building setback line):	30 ft	30 ft	30 ft	30 ft
Flag Lot (for access extension):	20 ft	20 ft	20 ft	20 ft
(c) Minimum Lot Depth: (2)	100 ft	80 ft	75 ft	75 ft
(d) Maximum Lot Coverage:	35%	35%	45%	60% (12)
(e) Minimum Land Area Per Unit: (3)	17,500 sf	11,667 sf	8,750 sf	5,000 sf
(f) Maximum Height:	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
	2 stories	2 stories	2 stories	2 stories
(g) Minimum Front Yard Building Setback - (5)				
From Ultimate Public Street ROW line:	20 ft	10 ft	20 ft	20 ft
Flag Lot (from connection with access extension):	10 ft	10 ft	10 ft	10 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:	10 ft	8 ft	5 ft	5 ft
Exterior Side:	15 ft	10 ft	10 ft	10 ft
Flag Lot: (6)	10 ft	8 ft	5 ft	5 ft
(i) Minimum Rear Yard Setback - (5)			(7)	
Standard Lot:	30 ft	25 ft (7)	25 ft	25 ft
Flag Lot and Cul-De-Sac Lot:	30 ft	25 ft (7)	25 ft	25 ft
Adjacent to Alley: (13)	20 ft	20 ft	15 ft	15 ft
(j) Minimum Open Space (private):	30% N/A	30% N/A	30% N/A	30% N/A
(k) Minimum Landscape Coverage:	25%	25%	25%	25%
(l) Minimum Building Separation -				
(between primary and accessory buildings on the same lot):	10 ft	10 ft	10 ft	10 ft

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SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

(continued)

DEVELOPMENT STANDARDS (1)	RESIDENTIAL ZONING DISTRICTS		
	RSF 12	RBR 12	RBRD 18
(a) Minimum Lot Size: (2)	3,000 sf	4,200 sf	4,800 sf
(b) Minimum Lot Width - (2)			
Standard Lot:	40 ft	45 ft	45 ft
Cul-De-Sac Lot (at front setback line):	30 ft	N/A	N/A
Flag Lot (for access extension):	20 ft	10 ft	10 ft
(c) Minimum Lot Depth: (2)	60 ft	50 ft	50 ft
(d) Maximum Lot Coverage:	60% (12)	N/A	N/A
(e) Minimum Land Area Per Unit: (3)	2,917 sf	2,917 sf	1,945 sf
(f) Maximum Height:	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
	2 stories	2 stories (8)	2 stories (8)
(g) Minimum Front Yard Setback: (5)			
From Ultimate Public Street ROW line:	20 ft	20 ft (10)	20 ft (10)
Flag Lot (from connection with access extension):	10 ft	N/A	N/A
(h) Minimum Side Yard Setback - (5)			
Interior Side:	5 ft	3.5 ft	3.5 ft
Exterior Side:	10 ft	3.5 ft	3.5 ft
Flag Lot: (6)	5 ft	5 ft	5 ft
(i) Minimum Rear Yard Setback - (5)			
Standard Lot:	15 ft	(9)	(9)
Flag Lot and Cul-De-Sac Lot:	15 ft	(9)	(9)
Adjacent to Alley: (13)	10 ft	(9)	(9)
(j) Minimum Open Space (private):	700 sf per du N/A	700 sf per du N/A	700 sf per du N/A
(k) Minimum Landscape Coverage:	25%	10% (11)	10% (11)
(l) Minimum Building Separation -			
(between primary and accessory buildings on the same lot):	10 ft	10 ft	10 ft

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SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

(continued)

DEVELOPMENT STANDARDS (1)		RESIDENTIAL ZONING DISTRICTS		
		RSF 22	RD 14	RMF 7
(a) Minimum Lot Size: (2)		2,000 sf	5,000 sf	15,000 sf
(b) Minimum Lot Width - (2)				
Standard Lot:		40 ft	45 ft	60 ft
Cul-De-Sac Lot (at front setback line):		25 ft	30 ft	30 ft
Flag Lot (for access extension):		N/A	25 ft	25 ft
(c) Minimum Lot Depth: (2)		50 ft	100 ft	100 ft
(d) Maximum Lot Coverage:		60% (12)	50%	50%
(e) Minimum Land Area Per Unit: (3)		1,591 sf	2,500 sf	5,000 sf
(f) Maximum Height:		28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
		2 stories	2 stories	2 stories
(g) Minimum Front Yard Setback - (5)				
From Ultimate Public Street ROW line:		7.5 ft	20 ft	20 ft
Flag Lot (from connection with access extension):		7.5 ft	15 ft	15 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:		4 ft	4 ft	5 ft
Exterior Side:		4 ft	10 ft	10 ft
Flag Lot: (6)		4 ft	4 ft	5 ft
(i) Minimum Rear Yard Setback - (5)				
Standard Lot:		7.5 ft	15 ft	15 ft
Flag Lot and Cul-De-Sac Lot:		7.5 ft	15 ft	15 ft
Adjacent to Alley: (13)		7.5 ft	10 ft	10 ft
(j) Minimum Open Space	Private:	250 sf N/A	20% net ac	400 sf/du
	Common:	None N/A	N/A	30% net ac
(private and common):				
(k) Minimum Landscape Coverage:		20%	15%	25%
(l) Minimum Building Separation				
(between primary and accessory buildings on the same lot):		8 ft	10 ft	10 ft

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SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

(continued)

DEVELOPMENT STANDARDS (1)		RESIDENTIAL ZONING DISTRICTS		
		RMF 14	RMF 22	RMF 30
(a) Minimum Lot Size: (2)		7,500 sf	4,800 sf	4,800 sf
(b) Minimum Lot Width - (2)				
Standard Lot:		45 ft	45 ft	45 ft
Cul-De-Sac Lot (at front setback line):		25 ft	25 ft	25 ft
Flag Lot (for access extension):		25 ft	25 ft	25 ft
(c) Minimum Lot Depth: (2)		100 ft	90 ft	90 ft
(d) Maximum Lot Coverage:		60%	60%	60%
(e) Minimum Land Area Per Unit: (3)		2,600 sf	1,591 sf	1,167 sf
(f) Maximum Height:		28 ft/ (4) 2 stories	28 ft/ (4) 2 stories	28 ft/ (4) 2 stories
(g) Minimum Front Yard Setback - (5)				
From Ultimate Public Street ROW line:		20 ft	20 ft	20 ft
Flag Lot (from connection with access extension):		15 ft	15 ft	15 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:		5 ft	10 ft	15 ft
Exterior Side:		10 ft	10 ft	15 ft
Flag Lot: (6)		15 ft	10 ft	15 ft
(i) Minimum Rear Yard Setback - (5)				
Standard Lot:		15 ft	20 ft	20 ft
Flag Lot and Cul-De-Sac Lot:		15 ft	N/A	N/A
Adjacent to Alley: (13)		10 ft	15 ft	15 ft
(j) Minimum Open Space (private and common):	Private:	200 sf/du	200 sf/du	100 sf/du
	Common:	30% net ac	25% net ac	20% net ac
(k) Minimum Landscape Coverage:		25%	20%	15%
(l) Minimum Building Separation (between primary and accessory buildings on the same lot):		10 ft	10 ft	10 ft

SUPPORTING DOCUMENT B**RESOLUTION NO. 08-05-27-14**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ZONE TEXT AMENDMENT (ZTA08-0004) REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES AND PROVIDE CLARIFICATION TO EXISTING REGULATIONS GOVERNING "ALCOHOLIC BEVERAGE OUTLETS", AND TO CLARIFY REQUIRED LANDSCAPING STANDARDS FOR RESIDENTIAL ZONES.

APPLICANT: City of Dana Point - Community Development Department

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

WHEREAS, the City desires to amend the Zoning Ordinance to update Section 9.07.040 - Alcoholic Beverage Outlets, and clarify Landscaping/Open Space standards for Residential Zones; and

WHEREAS, the Planning Commission did, on the 27th of May, 2008, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors related to the Zone Text Amendment ZTA08-0004; and

WHEREAS, the City's proposed amendments are identified as Exhibit A, attached hereto and made a part of this Resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) The above recitations are true and correct.
- B) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and recommends to the City Council, approval and adoption of Zone Text Amendment ZTA08-0004:
 - 1) The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program.
 - 2) The proposed amendment complies with all other applicable requirements of state law and local ordinances.

PLANNING COMMISSION RESOLUTION No. 08-05-27-14

ZTA08-0004

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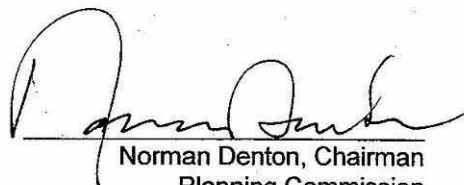
PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 27th day of May 2008, by the following vote, to wit:

AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel

NOES: None

ABSENT: None

ABSTAIN: None



Norman Denton, Chairman
Planning Commission

ATTEST:



Kyle Butterwick, Director
Community Development Department

SUPPORTING DOCUMENT C

CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES

FILE COPY

May 27, 2008
7:00 – 7:21 p.m.

PAGE 2

D. PUBLIC HEARINGS**ITEM 2: Zoning Code Update Program – Zone Text Amendment ZTA08-0004**Applicant:Owner: City of Dana Point – Community Development DepartmentLocation: Citywide

Request: Request for Zone Text Amendment ZTA08-0004 to correct inconsistencies and provide clarification to existing regulations governing “Alcoholic Beverage Outlets”, and clarify and eliminate conflicting standards related to required landscaping/open space for Residential Zones.

Environmental: The proposed project is found not to have a significant effect on the environment and is therefore exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15305, Class 5 – Minor Alterations in Land Use Limitations. The proposed project involves minor amendments to the Zoning Ordinance.

Recommendation: That the Planning Commission approve the attached draft Resolution, recommending approval and adoption of the proposed Zone Text Amendment to the City Council.

Saima Qureshy (Senior Planner) reviewed the staff recommendation and provided details of the staff report for the Commissioners' consideration.

There being no requests to speak on this item, Chairman Denton opened and closed the Public Hearing.

ACTION: Motion made (Conway) and seconded (Fitzgerald) to adopt Resolution No. 08-05-27-14 recommending to the City Council approval of Zone Text Amendment (ZTA08-0004) revising the City of Dana Point Zoning Ordinance to correct inconsistencies and provide clarification to existing regulations governing “Alcoholic Beverage Outlets”, and to clarify required landscaping standards for residential zones. Motion carried 5-0. (AYES: Brough, Conway, Denton, Fitzgerald, Schoeffel NOES: None ABSENT: None ABSTAIN: None)

E. NEW BUSINESS

There were no New Business items.

SUPPORTING DOCUMENT D**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT****ORIGINAL** ITEM #2

DATE: MAY 27, 2008
TO: DANA POINT PLANNING COMMISSION
FROM: COMMUNITY DEVELOPMENT DEPARTMENT
SUBJECT: ZONING CODE UPDATE PROGRAM – ZONE TEXT AMENDMENT
ZTA08-0004

RECOMMENDATION: That the Planning Commission approve the attached draft Resolution, recommending approval and adoption of the proposed Zone Text Amendment to the City Council.

APPLICANT: City of Dana Point – Community Development Department

REQUEST: Request for Zone Text Amendment ZTA08-0004 to correct inconsistencies and provide clarification to existing regulations governing "Alcoholic Beverage Outlets", and clarify and eliminate conflicting standards related to required landscaping/open space for Residential Zones.

LOCATION: Citywide

NOTICE: The Notice was published in the Dana Point News on May 15, 2008. Notices were posted on May 16, 2008, at the Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, and the Dana Point Library.

ENVIRONMENTAL

The proposed project is found not to have a significant effect on the environment and is therefore exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15305, Class 5 – Minor Alterations in Land Use Limitations. The proposed project involves minor amendments to the Zoning Ordinance.

ISSUES

- Project consistency with the Dana Point General Plan, Zoning Ordinance, and Local Coastal Program.
- Project satisfaction of all findings required pursuant to the Zoning Ordinance for the approval of a Zone Text Amendment.

BACKGROUND

As part of the ongoing effort to update the Zoning Ordinance, staff has identified the following issues for an update:

- Section 9.07.040 – Alcoholic Beverage Outlets: Correct inconsistencies and clarify and streamline current standards to make it more user friendly.
- Section 9.09.030 - Clarify and eliminate conflicting Landscaping/Open Space standards for residentially zoned properties.

DISCUSSION

Alcoholic Beverage Outlets: Section 9.07.040 of the Zoning Ordinance contains standards applicable to Alcoholic Beverage Outlets. In the Zoning Ordinance, an Alcoholic Beverage Outlet is defined as any establishment wherein alcoholic beverages are sold, served or given away for consumption off the premises, for off-site consumption, and any establishment wherein alcoholic beverages are sold, served or given away for consumption on the premises, for on-site consumption.

Staff is proposing to clarify these standards and update this section to make it more user friendly. Currently this Section mandates that Conditional Use Permits (CUP) for Alcoholic Beverage Outlets shall be approved by the Planning Commission, whereas Section 9.65.040 allows approval of a Minor CUP for the establishment of these uses. Staff is proposing to amend Section 9.07.040 to allow the approval of a Minor CUP for the establishment of Alcoholic Beverage Outlets. The Director will have the ability to forward any of the Minor CUPs to the Planning Commission for their review and action, based on the proposed size of the operation and its proximity to surrounding sensitive uses. Also if a project needs approval of other discretionary permits such as a Site Development Permit or a Coastal Development Permit which require Planning Commission's approval, the CUP for Alcoholic Beverages will also be forwarded to the Planning Commission in that instance.

This process of Minor CUP saves significant amount of time and expense for business owners and operators who need such permits to get authorization from California's Department of Alcoholic Beverage Control, before selling alcoholic beverages. The fee for a Minor CUP is \$392, whereas a Major CUP costs \$2,355 in fees. In the past the City has approved Minor CUPs for Alcoholic Beverage Outlets.

Landscaping/Open Space Standards: The Table in Section 9.07.030 contains development standards applicable to all the Residential Zones in the City. The Table currently lists two standards related to landscaping requirements. One standard requires "Minimum Landscape Coverage" which ranges from 10% to 25% of the lot area, depending on a particular Zone.

Planning Commission Agenda Report
ZTA08-0004
May 27, 2008

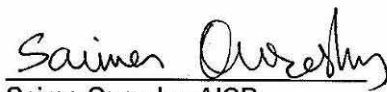
Page 3

The other standard is "Minimum Open Space (Private)" which is 30% of the lot area for Residential Single Family Zones i.e. RSF 2, RSF 3, RSF 4, and RSF 7; 700 square feet per dwelling unit for Zones RSF 12, RBR 12, and RBRD 18; and 250 square feet of Private Open Space for Zone RSF 22. For Residential Multi Family Zones i.e. RD 14, RMF 7, RMF 14, RMF 22, and RMF 30, the standard for required Common Open Space ranges from 20% to 30% per acre and the required Private Open Space ranges from 100 square feet per dwelling unit to 400 square feet per dwelling unit.

Staff is proposing to delete the "Minimum Open Space" standard from Residential Single Family Zones i.e. from Zones RSF 2, RSF 3, RSF 4, RSF 7, RSF 12, RBR 12, RBRD 18, and RSF 22. The "Minimum Landscape Coverage" standard provides for the amount of landscaping that is required to be provided on each lot. The Minimum Private Open Space standard is not applicable in Single Family Zones, since all the landscaping is for private use of one family. This standard will remain applicable to Multi-Family Zones to guarantee that in addition to common spaces and areas, each unit in an apartment or condominium setting will have its own private open space as well.

CONCLUSION

The proposed Zone Text Amendment is consistent with the General Plan, Local Coastal Program and Municipal Code. It updates Section 9.07.040 – Alcoholic Beverage Outlets, to correct inconsistencies, clarify existing standards and streamline the process of obtaining CUPs for the sale of alcoholic beverages; and updates Section 9.07.030 to eliminate conflicting standards on landscaping requirements for Single Family Residential Zones. Staff is recommending that the Planning Commission recommend adoption and approval of the proposed Zone Text Amendment to the City Council and approve the attached draft resolution containing required findings for the approval of Zone Text Amendment ZTA08-0004.


Saima Qureshy, AICP
Senior Planner


Kyle Butterwick, Director
Community Development Department

ATTACHMENTS:

Action Documents

1. Draft Planning Commission Resolution No. 08-05-27-xx
Exhibit "A": Zone Text Amendment ZTA08-0004

RESOLUTION NO. 08-05-27-xx

DRAFT

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ZONE TEXT AMENDMENT (ZTA08-0004) REVISING THE CITY OF DANA POINT ZONING ORDINANCE TO CORRECT INCONSISTENCIES AND PROVIDE CLARIFICATION TO EXISTING REGULATIONS GOVERNING "ALCOHOLIC BEVERAGE OUTLETS", AND TO CLARIFY REQUIRED LANDSCAPING STANDARDS FOR RESIDENTIAL ZONES.

APPLICANT: City of Dana Point - Community Development Department

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

WHEREAS, the City desires to amend the Zoning Ordinance to update Section 9.07.040 - Alcoholic Beverage Outlets, and clarify Landscaping/Open Space standards for Residential Zones; and

WHEREAS, the Planning Commission did, on the 27th of May, 2008, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors related to the Zone Text Amendment ZTA08-0004; and

WHEREAS, the City's proposed amendments are identified as Exhibit A, attached hereto and made a part of this Resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) The above recitations are true and correct.
- B) Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and recommends to the City Council, approval and adoption of Zone Text Amendment ZTA08-0004:
 - 1) The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program.
 - 2) The proposed amendment complies with all other applicable requirements of state law and local ordinances.

DRAFT

PLANNING COMMISSION RESOLUTION No. 08-05-27-xx
ZTA08-0004
Page 2

DRAFT

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 27th day of May 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Norman Denton, Chairman
Planning Commission

ATTEST:

Kyle Butterwick, Director
Community Development Department

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Exhibit "A"

ZONE TEXT AMENDMENT ZTA08-0004

Section 9.07.040 - Alcoholic Beverage Outlets, to be amended as follows (deletions are shown as strikeout and inserts are underlined):

The following regulations shall apply to alcoholic beverage outlets established after February 11, 1993. The establishment, operation, and maintenance of any alcoholic beverage outlet shall be subject to the following regulations:

(a) Establishment. The establishment of an alcoholic beverage outlet includes the opening of such a business, the relocation of such a business to a new location, the conversion of an existing use or premises to an alcoholic beverage outlet use, and/or the expansion or change of the type of alcoholic beverages to be sold at an existing alcoholic beverage outlet (i.e., a change in the type of retail liquor license within a license classification). For purposes of this Section, establishment shall not mean the transfer of an existing license from one operator to another at a location which is occupied by an existing alcoholic beverage outlet, unless there is a proposed change in the type of license.

(b) Conditional Use Permit. A Minor Conditional Use Permit, ~~subject to approval by the Planning Commission,~~ shall be required for the establishment of an alcoholic beverage outlet in the following situations:

~~(1) Any alcoholic beverage outlet where such use is designated as a conditional use in the underlying zoning district.~~

~~(2) (1) Any off-sale Sale of alcoholic beverages for off-site consumption outlet where such use is designated as a permitted use in the underlying zoning district and when located within:~~

(A) Five hundred (500) feet of any area zoned or used for any church, park, or educational institution utilized by minors; or

(B) Five hundred (500) feet of any hospital or public beach; or

(C) One hundred (100) feet of any area zoned or used for residential purposes.

~~(3) (2) Any on-sale Sale of alcoholic beverages for on-site consumption outlet, except a bona fide eating establishment, where such use is designated as a permitted use in the underlying zoning district and when located within:~~

(A) Five hundred (500) feet of any area zoned or used for any church, park, or educational institution utilized by minors; or

(B) One hundred (100) feet of any area zoned or used for residential purposes.

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~~(4) (3) Any establishment conducting concurrent sale of off-sale alcoholic beverages outlet involving the concurrent sale of and motor vehicle fuels, and alcoholic beverage.~~

(c) Findings. An application for a Conditional Use Permit shall not be approved unless the ~~Planning Commission can make the following findings can be made in addition to the required for a findings for the approval of a~~ Conditional Use Permit contained in Chapter 9.65. ~~and additional findings as follows:~~

- (1) That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this Section will be observed;
- (2) That the proposed use will not enlarge or encourage the development of a "skid row" area;
- (3) That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any other city program; and,
- (4) That all applicable regulations of the zoning district in which the use is permitted will be observed.

(d) General Provisions.

~~(1)~~ Where the alcoholic beverage outlet is proposed on a site which abuts the property line of any property zoned or used for residential purposes, a six (6) foot high solid masonry wall shall be constructed between the parking area of the proposed use and the adjacent residential property. Said wall shall be designed and constructed in compliance with all other applicable provisions of this Code including, but not limited to, Section 9.05.090, Sight Visibility Area and Section 9.05.120, Fences, Walls and Hedges.

~~(2) Consumption of alcoholic beverages shall be prohibited in the parking lot of the subject business.~~

(e) Sale of alcoholic beverages for off-site consumption. ~~Off-Sale Requirements.~~ The sale of alcoholic beverages for consumption on the premises including parking lots shall be prohibited. There shall be appropriate and conspicuous posting of a notice inside the premises indicating that consumption of alcohol, either inside or outside of the building on the premises is prohibited by law. The notice shall be at least one and one-half (1½) square feet in size.

(f) Sale of alcoholic beverages for on-site consumption. ~~On-Sale Requirements.~~ The sale of alcoholic beverages for consumption off the premises shall be prohibited. ~~There~~ shall be appropriate and conspicuous posting of a notice inside the premises, indicating that consumption of alcohol outside the building on the premises including its parking lot is prohibited by law, except as may be permitted in any designated outdoor eating or drinking

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area, such as an on-site patio. The notice shall be at least one and one-half (1½) square feet in size.

(g) Concurrent Sale Requirements. Any use engaged in the concurrent sale of the motor vehicle fuels and alcoholic beverages shall meet the following requirements:

(1) An establishment engaged in the sale of motor vehicle fuels may offer beer and wine, and not distilled spirits, for sale for off-site consumption.

(2) Beer and wine products shall not be displayed within five (5) feet of the cash register or the front door unless such display occurs within a permanently affixed cooler which existed as of January 1, 1988.

(3) Advertisement of beer and wine products shall not be displayed at motor vehicle fuel islands, on fuel pumps, on the canopy supports or the canopy structure covering said motor vehicle fuels islands.

(4) The sale of beer or wine shall not be made from a drive-through window.

(5) Display or sale of beer or wine products shall not be made from an ice tub.

(6) Self-illuminating advertising for beer or wine products shall not be located on buildings or in the windows.

(7) Employees on duty between the hours of 10:00 p.m. and 2:00 a.m. shall be at least 21 years of age to sell beer or wine.

(8) A notice shall be posted within three (3) feet of the cash register bearing the following message: "Don't Drink and Drive." The notice shall be at least one and one-half square feet in size.

(9) Additional requirements on the establishment and operation of facilities engaged in the concurrent sale of motor vehicle fuels and beer and wine which are not inconsistent with this Section, may be imposed by the Planning Commission, or the City Council on appeal, where a Conditional Use Permit is required to establish such a use.

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Section 9.09.030 - Development Standards, to be amended as follows
(deletions are shown as strikeout and inserts are underlined):

The following Table provides the minimum acceptable standards for development within the Residential Districts necessary to assure quality development and attractive local residential areas. The development standards are supplemented, and where applicable, superseded by the special development standards described in Chapter 9.05, Chapter 9.07, and Section 9.09.040. Parking standards are provided in Chapter 9.35.

SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

DEVELOPMENT STANDARDS (1)	RESIDENTIAL ZONING DISTRICTS			
	RSF 2	RSF 3	RSF 4	RSF 7
(a) Minimum Lot Size: (2)	17,500 sf	12,000 sf	8,700 sf	5,000 sf
(b) Minimum Lot Width - (2)				
Standard Lot:	70 ft	50 ft	50 ft	50 ft
Cul-De-Sac Lot (at front building setback line):	30 ft	30 ft	30 ft	30 ft
Flag Lot (for access extension):	20 ft	20 ft	20 ft	20 ft
(c) Minimum Lot Depth: (2)	100 ft	80 ft	75 ft	75 ft
(d) Maximum Lot Coverage:	35%	35%	45%	60% (12)
(e) Minimum Land Area Per Unit: (3)	17,500 sf	11,667 sf	8,750 sf	5,000 sf
(f) Maximum Height:	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
	2 stories	2 stories	2 stories	2 stories
(g) Minimum Front Yard Building Setback - (5)				
From Ultimate Public Street ROW line:	20 ft	10 ft	20 ft	20 ft
Flag Lot (from connection with access extension):	10 ft	10 ft	10 ft	10 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:	10 ft	8 ft	5 ft	5 ft
Exterior Side:	15 ft	10 ft	10 ft	10 ft
Flag Lot: (6)	10 ft	8 ft	5 ft	5 ft
(i) Minimum Rear Yard Setback - (5)			(7)	
Standard Lot:	30 ft	25 ft (7)	25 ft	25 ft
Flag Lot and Cul-De-Sac Lot:	30 ft	25 ft (7)	25 ft	25 ft
Adjacent to Alley: (13)	20 ft	20 ft	15 ft	15 ft
(j) Minimum Open Space (private):	30% N/A	30% N/A	30% N/A	30% N/A
(k) Minimum Landscape Coverage:	25%	25%	25%	25%
(l) Minimum Building Separation -				
(between primary and accessory buildings on the same lot):	10 ft	10 ft	10 ft	10 ft

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SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

(continued)

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DEVELOPMENT STANDARDS (1)	RESIDENTIAL ZONING DISTRICTS		
	RSF 12	RBR 12	RBRD 18
(a) Minimum Lot Size: (2)	3,000 sf	4,200 sf	4,800 sf
(b) Minimum Lot Width - (2)			
Standard Lot:	40 ft	45 ft	45 ft
Cul-De-Sac Lot (at front setback line):	30 ft	N/A	N/A
Flag Lot (for access extension):	20 ft	10 ft	10 ft
(c) Minimum Lot Depth: (2)	60 ft	50 ft	50 ft
(d) Maximum Lot Coverage:	60% (12)	N/A	N/A
(e) Minimum Land Area Per Unit: (3)	2,917 sf	2,917 sf	1,945 sf
(f) Maximum Height:	28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
	2 stories	2 stories (8)	2 stories (8)
(g) Minimum Front Yard Setback: (5)			
From Ultimate Public Street ROW line:	20 ft	20 ft (10)	20 ft (10)
Flag Lot (from connection with access extension):	10 ft	N/A	N/A
(h) Minimum Side Yard Setback - (5)			
Interior Side:	5 ft	3.5 ft	3.5 ft
Exterior Side:	10 ft	3.5 ft	3.5 ft
Flag Lot: (6)	5 ft	5 ft	5 ft
(i) Minimum Rear Yard Setback - (5)			
Standard Lot:	15 ft	(9)	(9)
Flag Lot and Cul-De-Sac Lot:	15 ft	(9)	(9)
Adjacent to Alley: (13)	10 ft	(9)	(9)
(j) Minimum Open Space (private):	700 sf per du N/A	700 sf per du N/A	700 sf per du N/A
(k) Minimum Landscape Coverage:	25%	10% (11)	10% (11)
(l) Minimum Building Separation -			
(between primary and accessory buildings on the same lot):	10 ft	10 ft	10 ft

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SECTION 9.09.030

DRAFT**RESIDENTIAL DEVELOPMENT STANDARDS**

(continued)

DEVELOPMENT STANDARDS (1)		RESIDENTIAL ZONING DISTRICTS		
		RSF 22	RD 14	RMF 7
(a) Minimum Lot Size: (2)		2,000 sf	5,000 sf	15,000 sf
(b) Minimum Lot Width - (2)				
Standard Lot:		40 ft	45 ft	60 ft
Cul-De-Sac Lot (at front setback line):		25 ft	30 ft	30 ft
Flag Lot (for access extension):		N/A	25 ft	25 ft
(c) Minimum Lot Depth: (2)		50 ft	100 ft	100 ft
(d) Maximum Lot Coverage:		60% (12)	50%	50%
(e) Minimum Land Area Per Unit: (3)		1,591 sf	2,500 sf	5,000 sf
(f) Maximum Height:		28 ft/ (4)	28 ft/ (4)	28 ft/ (4)
		2 stories	2 stories	2 stories
(g) Minimum Front Yard Setback - (5)				
From Ultimate Public Street ROW line:		7.5 ft	20 ft	20 ft
Flag Lot (from connection with access extension):		7.5 ft	15 ft	15 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:		4 ft	4 ft	5 ft
Exterior Side:		4 ft	10 ft	10 ft
Flag Lot: (6)		4 ft	4 ft	5 ft
(i) Minimum Rear Yard Setback - (5)				
Standard Lot:		7.5 ft	15 ft	15 ft
Flag Lot and Cul-De-Sac Lot:		7.5 ft	15 ft	15 ft
Adjacent to Alley: (13)		7.5 ft	10 ft	10 ft
(j) Minimum Open Space	Private:	250 sf N/A	20% net ac	400 sf/du
	Common:	None N/A	N/A	30% net ac
(private and common):				
(k) Minimum Landscape Coverage:		20%	15%	25%
(l) Minimum Building Separation				
(between primary and accessory buildings on the same lot):		8 ft	10 ft	10 ft

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SECTION 9.09.030

RESIDENTIAL DEVELOPMENT STANDARDS

(continued)

DEVELOPMENT STANDARDS (1)		RESIDENTIAL ZONING DISTRICTS		
		RMF 14	RMF 22	RMF 30
(a) Minimum Lot Size: (2)		7,500 sf	4,800 sf	4,800 sf
(b) Minimum Lot Width - (2)				
Standard Lot:		45 ft	45 ft	45 ft
Cul-De-Sac Lot (at front setback line):		25 ft	25 ft	25 ft
Flag Lot (for access extension):		25 ft	25 ft	25 ft
(c) Minimum Lot Depth: (2)		100 ft	90 ft	90 ft
(d) Maximum Lot Coverage:		60%	60%	60%
(e) Minimum Land Area Per Unit: (3)		2,600 sf	1,591 sf	1,167 sf
(f) Maximum Height:		28 ft/ (4) 2 stories	28 ft/ (4) 2 stories	28 ft/ (4) 2 stories
(g) Minimum Front Yard Setback - (5)				
From Ultimate Public Street ROW line:		20 ft	20 ft	20 ft
Flag Lot (from connection with access extension):		15 ft	15 ft	15 ft
(h) Minimum Side Yard Setback - (5)				
Interior Side:		5 ft	10 ft	15 ft
Exterior Side:		10 ft	10 ft	15 ft
Flag Lot: (6)		15 ft	10 ft	15 ft
(i) Minimum Rear Yard Setback - (5)				
Standard Lot:		15 ft	20 ft	20 ft
Flag Lot and Cul-De-Sac Lot:		15 ft	N/A	N/A
Adjacent to Alley: (13)		10 ft	15 ft	15 ft
(j) Minimum Open Space (private and common):	Private:	200 sf/du	200 sf/du	100 sf/du
	Common:	30% net-ac	25% net ac	20% net-ac
(k) Minimum Landscape Coverage:		25%	20%	15%
(l) Minimum Building Separation (between primary and accessory buildings on the same lot):		10 ft	10 ft	10 ft

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CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 17, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: APPROVAL OF A CONSULTANT SERVICES AGREEMENT WITH ROMA DESIGN GROUP FOR PACIFIC COAST HIGHWAY AND DEL PRADO STREET IMPROVEMENTS BETWEEN BLUE LANTERN AND COPPER LANTERN

RECOMMENDED ACTION:

That the City Council 1) approve subject Agreement (Action Document A) and 2) authorize the City Manager to execute the Agreement.

BACKGROUND:

On June 3, 2008 the City Council approved the Town Center Plan ("Plan"), culminating years of effort in establishing a framework of public improvements to benefit the City's central commercial area. Among other things, the Plan includes urban design, streetscape, and circulation goals and policies. In order to help fulfill this vision, improvements to public infrastructure are recommended.

To improve traffic circulation in the Plan, the City Council authorized a change to the traffic circulation on PCH and Del Prado from one-way to two-way streets on November 6, 2007.

Therefore, the adopted Plan re-establishes the return to a two-way circulation system for both PCH and Del Prado. The circulation and streetscape design concepts of the Plan call for rebalancing through-movement with local access, calming traffic, enhancing the pedestrian environment and making the Town Center more readily accessible and understandable to residents and visitors. Beyond the circulation and streetscape concepts, the Plan also calls for improvements that would enhance the image and identity of the Town Center as the heart of the community. The repositioning of the Town Center through a program of circulation, streetscape and identity

improvements will help to create a more viable retail district and encourage infill of vacant and underutilized lands to create a vital mixed use center for the city. Further, the Plan encourages design approaches that would reflect the unique coastal environment and create stronger linkages to the natural features of the landscape along the bluff and other destinations, such as the marina.

DISCUSSION:

The proposed initial construction work includes first phase improvements for Pacific Coast Highway between Blue Lantern and Copper Lantern and the ultimate planned improvements for Del Prado between Blue Lantern and Golden Lantern in conjunction with the Copper Lantern and Blue Lantern gateways. This would implement a more limited project scope for PCH which focuses on the required restriping, traffic signal modifications, and the provision of bus stops or other limited improvements necessary for the return to two-way traffic operations. In addition, the more extensive improvements to Del Prado and to the two gateways, as called for in the Town Center Plan would be undertaken.

A map showing the proposed improvements is attached as Supporting Document B. The design period is estimated to require 15 to 18 months.

The detailed scope of required design services and City responsibilities is attached as Exhibit A to the proposed Consultant Services Design Contract (Action Document A). In addition to the development of plans and specifications for the project, the scope includes consultant support for City coordinated group focus meetings with property owners, developers and businesses. This will provide information on the progress of design and construction process (impacts) and will provide a forum to receive input as well as respond to issues and concerns.

The design process is divided into two stages, preliminary design (60%) and final design (100%). The proposal provides for holding public focus group meetings on a block by block basis both at the beginning of the preliminary design and again at the beginning of final design.

It is also proposed that a Town Center Implementation Team, composed of representatives of impacted business owners, developers and residents, be identified and act as a sounding board to help Staff and the City's consultant resolve general issues of community concern that may arise. This team is not a design review committee, but is intended to provide advice on how to best address construction & functional impacts of the design implementation; such as, property and construction access, working hours, temporary parking and directional signage, etc. This approach of inclusion is consistent with that followed in developing the Plan, for which the City received much praise from the Coastal Commission and other interested observers.

At the conclusion of the preliminary design stage the next decision point will be reached. At that time the Consultant is tasked with making a presentation to the City, and providing a realistic cost estimate with design alternatives and their relative costs before proceeding with final design. This will give the City the opportunity to make cost/benefit decisions and evaluate financing options. It is envisioned that decisions on how to address additional public parking needs would be made by that time as well. Recommendations as to the appropriate funding level and financing alternatives would also be requested from the Investment Review Committee at that time.

Staff recommends that Council approve award of the Consulting Services Agreement to the Roma Design Group. The Roma Design Group was initially selected to help the City develop the Town Center Plan. They have an intimate understanding of not only what the Council has approved, but of all the contributions and concerns of Dana Point citizens, having participated throughout the Town Center Subcommittee public process. Not only do they have expertise in urban design concepts, but Roma has experience with successful construction design projects such as the showcase Third Street Promenade in Santa Monica and the downtown Santa Cruz Streetscape. For a more complete list of relevant project experience, please see Supporting Document C.

Staff has asked that Roma team with Psomas Engineering and other respected subconsultants for this project. Psomas Engineering has provided local, successful, design engineering services for many of the Dana Point street improvement projects including City medians and widening projects on Pacific Coast Highway. Their proven track record for detailed professional work and low change order rates is well documented.

This is a very challenging project and Staff not only expects the design to be unique and aesthetically attractive, but also appropriately consider cost/benefit, impacts to businesses, utilities coordination, maintainability, water quality and functionality.

NOTIFICATION/FOLLOW-UP:

Roma Design Group
Psomas Engineering

STRATEGIC PLAN IMPLEMENTATION:

This action is in compliance with the Strategic Plan Initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods.

FISCAL IMPACT:

Council budgeted \$2.3M for this design effort in the FY07/08 and FY 08/09 budget. This fund amount covers the project cost of the public right-of-way design effort proposed by Roma Design Group.

The Roma Design Group's detailed cost proposal is attached as Exhibit B to Action Document A. Where the scope can be clearly identified, a fixed design fee is provided, which is the majority of the cost proposal. Where it is not possible to adequately define the scope, a budget has been established for a time & material basis in accordance with the attached hourly rate schedule. The negotiated fee for this work is \$2,091,410.00. This includes a contingency amount of \$125,000.00 (approximately 5%). This leaves \$208,590.00 from CIP account #1223 for items listed below.

The City is also responsible for providing pre-design information to the consultant such as site survey, underground utility detection (potholing), geotechnical reports, private property design mitigation (conform), etc. The following budget has been developed to provide this information:

Site Survey	\$154,200
Potholing	\$58,710
Geotechnical Report	\$23,820
Agricultural Soils Report	\$6,180
Aboricultural Report	\$15,680
Private Property Conform	<u>\$150,000</u>
TOTAL	\$408,590

Staff will obtain these documents via separate contract or through this design contract on a time and materials basis per the attached schedule.

Funding for this additional work will be provided from the budgeted PCH/Del Prado design funds (#1223) \$208,590.00 and from budgeted PCH Relinquishment funds (#1203) \$200,000.00.

ALTERNATIVE ACTIONS:

1. Other alternatives as determined by the City Council.

ACTION DOCUMENTS:**PAGE**

A. Consultant Services Agreement	6
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SUPPORTING DOCUMENTS:**PAGE**

B. Proposed Streetscape Plan	45
C. Roma Design Group Summary of Street Experience	46

ACTION DOCUMENT A: Consultant Services Agreement**CITY OF DANA POINT****AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and effective as of _____, 200__, between the City of Dana Point, a municipal corporation ("City") and _____, a[n] _____ ***[individual, sole proprietorship, partnership, limited liability partnership, corporation, . . .]*** ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on _____, 200__ and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____, _____, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the above, Section 9 of this Agreement shall survive the term of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant represents it holds the necessary skills and abilities to perform the work as set forth in this Agreement, and City relies upon the skills and abilities of Consultant. Consultant shall perform the work and services under this Agreement in accordance with such heightened standard of work and in accordance with the accepted standards of the professional disciplines involved in the tasks described herein.

4. **CITY MANAGEMENT**

City's _____ shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) Except as otherwise stated herein, the City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Final payment shall be coordinated and conditioned with completion of the tasks set forth in Exhibit A. This amount shall not exceed _____ dollars (\$_____.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement ("Total Agreement Amount").

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include the contract amount, invoice amount to date, and balance remaining. Payment shall be made within thirty (30) days of receipt of each invoice as to all undisputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Prior to signing the Agreement, Consultant shall provide to City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. All of City's monetary obligations set forth in this Agreement are conditioned upon City's receipt of an executed W-9 form from Consultant.

(e) Notwithstanding Consultant's delivery of invoices to City and/or other remedies available to the City, if Consultant has not delivered to the City the required certified insurance policies and endorsements within the time required by Section 10(f) (3) of this Agreement, City has the sole discretion to withhold any and all payments to Consultant until Consultant delivers to the City the certified insurance policies and endorsements required by Section 10 of this Agreement.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5.

(c) Except as otherwise provided herein and prior to the termination date of this Agreement, this Agreement may be terminated by written consent of both the City and the Consultant.

7. **DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time,

the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all final original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

(c) With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the modification or reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. **INDEMNIFICATION**

(a) Indemnification

To the fullest extent permitted by law, Consultant shall protect, indemnify, defend and hold harmless City and any and all of its officials, employees, volunteers, and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions,

arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, , including reasonable attorney's fees and costs, court costs, defense costs, and expert witness fees) to the extent caused by and where the same arise out of, are a consequence of, or are in any way attributable to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees or subconsultants, or any entity or individual that Consultant shall bear the legal liability thereof.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, licensed landscape architects, registered professional engineers, and licensed professional land surveyors, all as defined by current law, and as may be amended from time to time by California Civil Code § 2782.8.

10. **INSURANCE REQUIREMENTS**

Prior to the beginning of and throughout the duration of the Work, Consultant shall maintain insurance in conformance with the requirements set forth below. Consultant shall use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. All Sections of this Agreement and any provision in City's Request for Proposal and Consultant's submitted proposal are subordinate to and superseded by the requirements contained in this Section to the extent that any provision or portion thereof conflicts with or impairs these requirements or any obligation to or right under or pursuant to these insurance requirements. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Commercial General Liability Insurance – Written on the Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition

to limits. There shall be no cross liability exclusion for claims or suits by one insured against another.

- (2) Business Auto Coverage –Written on the ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each person.
- (3) Workers' Compensation/Employer's Liability Insurance - Written on a policy form providing workers' compensation statutory benefits as required by the State of California. Employer's Liability limits shall be no less than one millions dollars (\$1,000,000) per accident or disease. Employer's Liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, its officers, officials, employees, or agents.
- (4) Professional Liability or Errors and Omissions Insurance as appropriate to the Consultant's profession - Written on policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement.

(b) Minimum Limits of Insurance. Consultant shall maintain limits no less than:

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and Property damage.
- (3) Errors and Omissions Liability: The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy

retroactive date shall be on or before the effective date of this agreement. Insurance shall continue to be effective to cover all claims made within three (3) years of the completion of the work in the Agreement.

- (c) Deductibles and Self-Insured Retention. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or the Consultant to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses or other solutions. Any deductibles in excess of ten percent (10%) or self-insured retention must be approved by the City Manager.
- (d) Other Insurance Provisions. The general liability, business auto liability, and any necessary umbrella liability policies are to contain, or be endorsed to contain, the following provisions:
 - (1) General liability and umbrella policies shall cover the City, its officers, officials, employees, agents, and volunteers are to be covered as insureds or additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. Endorsements including the additional insured shall be identified on standard ISO endorsement number CG 20 10, attached to an ISO-CGL policy with an edition prior to 1992, or other form as expressly approved by City, and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project. In no event shall the Consultant use an additional insured endorsement with an edition date of 1992 or later, absent express written authorization by City. Consultant also agrees to require all contractors and subcontractors to do likewise.

- (2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.
- (4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and there shall be no cross liability exclusions that preclude coverage for suits between Consultant and City or between City and any other insured. Consultant expressly waives any claim against City for any covered act or event, and Consultant's insurance policy shall not prevent such waiver. The limits of insurance required herein shall in no way limit the liability of the party providing the insurance. In addition, if the coverage or limits available to Consultant exceed that required by this Agreement, and the loss incurred by the additional insured exceeds the amount required by this Agreement, it is the parties' intent that all such additional coverage and limits available will apply irrespective of the specific coverage or limits required herein.
- (5) No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
- (6) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
- (7) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to

the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.

- (8) For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
- (9) Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
- (10) None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- (11) No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
- (12) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
- (13) The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- (14) Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- (15) Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the

right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers authorized and admitted to do business in California and with a current A.M. Best's rating of A or better and a financial size of VII or greater, unless otherwise acceptable to the City.

- (f) Verification of Coverage and Notice of Cancellation.

- (1) Consultant shall immediately furnish to City certificates of insurance or endorsements, satisfactory to City, evidencing the insurance coverage above required prior to the commencement of performance of services hereunder. These certificates or endorsements shall provide that such insurance is the minimum, is in no way limited by any provision herein, and allows for the application of all coverage available to the additional insureds. Further, the certificates or endorsements shall require thirty (30) days written notice to additional insured City prior to any termination, suspension, cancellation, or non-renewal, or the reduction of available coverage, or any change in the terms of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
- (2) Consultant agrees that if Consultant commences work under this Agreement without first providing City copies of the required insurance certificates or endorsements, that Consultant does so at its own and sole risk. In the event Consultant's insurance is not acceptable to City or copies of insurance certificates or endorsements are not provided, City shall have no obligations to compensate Consultant for such work unless Consultant possesses a notice to proceed from City for this work.
- (3) Within sixty (60) days of the commencement of this Agreement, Consultant shall furnish certified copies of the actual policies and endorsements. Failure to submit such policies shall constitute a material breach of this Agreement entitling City to any and all

remedies at law or in equity, including summary termination of this Agreement. If proof of any insurance required under this Agreement is not delivered as required or if such insurance is canceled at any time and no replacement coverage is provided, City shall have the right but not the duty to obtain any insurance it deems necessary to protect its interests under this Agreement, express or implied, in any way relating to City. Any premium for such coverage shall be charged to and promptly paid by Consultant or, at City's option, may be deducted from sums due to Consultant.

- (4) In the event of the premature termination of this Agreement for any reason, Consultant agrees to maintain the required insurance coverage until City provides written authorization to terminate the coverage following a review and determination that all liability posed under this Agreement as to the party providing the insurance has been eliminated.
- (5) Except as outlined in Section 10(b) (3) above, Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
- (6) Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
- (g) Notice of Claim or Loss. Consultant agrees to provide immediate notice to City of any claim or loss likely to involve City or its employees or agents which exceeds \$2,500 or is likely to exceed that amount arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- (h) Sub-Consultant Insurance Requirements. Consultant agrees to require that all parties, including but not limited to sub-Consultants and additional

Consultants or professional services with whom Consultant enters into contracts or whom Consultant hires pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required here, at a minimum. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Consultant acknowledges and agrees that upon request, all agreements with sub-Consultants and others engaged in the project contemplated by this Agreement will be submitted to City for review. Consultant agrees and acknowledges that such contracts may require modification as to the insurance requirements necessary to properly protect City.

11. **INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. **LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. **UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Dana Point in

connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Dana Point will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with this Agreement.

15. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or sub-Consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or sub-Consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Dana Point
33282 Golden Lantern
Dana Point, California 92629
Attention: City Clerk

To Consultant:

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Dana Point.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or

contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. **SEVERABILITY**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

22. **NO PRESUMPTION REGARDING DRAFTER OF THIS AGREEMENT**

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

23. **ATTORNEY'S FEES**

If any action at law or suit in equity, including an action for declaratory relief, is brought by either party with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, in addition to any other relief to which it may be entitled, and such amount may be added to, and made a part of, such judgment.

24. **WORK SCHEDULE/TIME OF COMPLETION**

The Consultant acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule, as provided in Exhibit D hereto. The City understands, however, that the Consultant's performance must be governed by sound professional practices.

25. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF DANA POINT

By: _____
Doug Chotkevys, City Manager

Attest:

Kathy M. Ward, City Clerk

Approved As to Form:

Patrick A. Munoz, City Attorney

CONSULTANT

By: _____
(Signature)

(Typed Name)

Its: _____
(Title)

By: _____
(Signature)

(Typed name)

Its: _____
(Title)

EXHIBIT A - CONSULTANT'S PROPOSAL**DESIGN PROPOSAL
PCH and DEL PRADO IMPROVEMENTS
Dana Point Town Center
ROMA – June 12, 2008**

Whereas a Town Center Plan was prepared by ROMA Design Group and associated consultants working closely with City staff and a 15-member Town Center Sub-Committee and through an extensive community participation process;

Whereas a Mitigated Negative Declaration was prepared and certified on November 8, 2006;

Whereas the City of Dana Point adopted the Dana Point Town Center Plan on November 8, 2006, and subsequently, following Coastal Commission review and adjustment, approved the Town Center Plan on June 3, 2008;

The adopted Town Center Plan re-establishes the return to a two-way circulation system for both PCH and Del Prado. The circulation and streetscape design concepts of the plan call for rebalancing through-movement with local access, calming traffic, enhancing the pedestrian environment and making the Town Center more readily accessible and understandable to residents and visitors. Beyond the circulation and streetscape concepts, the plan also calls for improvements that would enhance the image and identity of the Town Center as the heart of the community. The repositioning of the Town Center through a program of circulation, streetscape and identity improvements, will help to create a more viable retail district and encourage infill of vacant and underutilized lands to create a vital mixed use center for the city. Further, the plan encourages design approaches that would reflect the unique coastal environment and create stronger linkages to the natural features of the landscape along the bluff and other destinations, such as the marina.

The City now wishes to pursue the implementation of Phase 1 improvements for Pacific Coast Highway and the ultimate planned improvements for Del Prado in conjunction with the Copper Lantern and Blue Lantern gateways. The City intends to implement a more limited project for PCH which focuses on the required restriping and traffic signal modifications and the provision of bus stops or other limited improvements necessary for the return to two-way traffic operations. The City also intends to undertake more extensive improvements to Del Prado and to the two gateways, as called for in the Town Center Plan. The City wishes to design both PCH and Del Prado projects simultaneously to achieve a better balanced approach to the entire budget for the construction effort. It is also assumed that the City will prepare a single bid package for both projects as one construction project with two separate and distinct construction phases. However, it is also acknowledged that during the design process, the City may determine that it is prudent to bid PCH and Del Prado as two separate projects.

CITY RESPONSIBILITIES

Coordination with Community and Specific Property Owners. The City will take the lead in disseminating information and serving as the point of contact for any community concerns and/or communications having to do with the project. In addition, the City will schedule focus group meetings with property owners, developers, businesses and/or community representatives at critical points in the process to provide information on the progress of the design and construction process and to receive input and to respond to issues or concerns.

The City will also be responsible for noticing of meetings, providing the premises where meetings are held and for recording the results of any public sessions. As part of this effort, the City will be responsible for press releases, press briefings, and will utilize its existing Town Center website to establish broad-based communication related to the progress of the project.

Management of the Construction Contract. The City will be responsible for advertising of the construction contract, receiving the bids, evaluating the bids for compliance with requirements in the specifications and in the negotiation and ultimate execution of the contract for construction.

Although the City intends to contract separately for limited Construction Support services from the design consultants, the City will take the lead in the management of the construction contract, including the review and approval of the construction schedule, review and approval of the traffic management plan during construction, provide the clearinghouse for Requests for Information and submittals and for issuing Addenda or Change Orders, if required. In addition, the City will provide on-going regular inspection of the progress and quality of the work for compliance with the Construction Documents and will attend weekly or bi-weekly meetings with the Contractor to discuss the progress of the work and any issues that have been identified and need to be resolved. The City will also be responsible for the review and approval of requests for payment by the Contractor.

Management of the Consultant Contract. The City will be responsible for establishing program requirements, construction budget, schedule and other City objectives for the project. The City will appoint a qualified individual to act as the City's Project Manager who will be the principal contact for the Consultant efforts and with authority to make decisions on behalf of the city and provide single, unified direction to the Consultants. The City Project Manager will coordinate on a regular basis with the Consultants and will oversee the Consultant's progress on behalf of the City during the preparation of the Design Development and Construction Documents. The City Project Manager will also coordinate and schedule meetings with the community and focus groups with the Consultants and solicit their input as issues arise during the design and construction document preparation process. The City Project Manager will coordinate the timely review of Consultant submittals and provide a unified direction on behalf of the City.

Hazardous Materials. Investigation related to hazardous or toxic materials and implementation of remediation and disposal, if required, will be separately undertaken by the City.

Pre-Design. The city is responsible for the predesign site survey, potholing, geotechnical report, arboricultural report, and agricultural report. The City may either provide this information or pay consultant at the established hourly rates. A budget has jointly been established for these items.

CONSULTANT RESPONSIBILITIES

The City intends to hire ROMA Design Group (ROMA) with Psomas as a subconsultant in the preparation of Design Development and Construction Documents for the PCH, Del Prado and Gateway improvements. In addition to these primary consultants, other technical or specialty subconsultants will also be required to complete the work and will be separately contracted for by ROMA and/or Psomas. Although the City intends to also engage the Consultants in providing Construction Support services during construction, these services are not a part of this Agreement because the scope of work is difficult to project at this time.

ROMA, as the prime consultant, will lead the design effort, closely integrating and coordinating all of the work with Psomas and all of the members of the consultant team. Boris Dramov will be the Design Principal in Charge, responsible for overall design direction and leadership and in direct coordination with the focus groups and the community. ROMA will take the lead role in integrating the functional and aesthetic considerations of all aspects into a cohesive design that aims to achieve the community objectives for a vital pedestrian-oriented retail district with a distinctive image and identity that will enhance the opportunity for revitalization of the Town Center as a whole. ROMA will also be the lead landscape architect for the project and will take the lead responsibility for the landscape design and irrigation, lighting design and the Gateway treatments and the pedestrian realm. Bonnie Fisher will be the Landscape Principal for the project, Craig McGlynn will be the Managing Principal for the landscape, lighting, and pedestrianization improvements, including the sidewalks and bulb-outs.

As civil engineers with extensive local experience, Psomas will take the lead on civil engineering aspects of the work effort, sharing responsibilities for grading, storm water management and the integration of Best Management Practices, with ROMA. Psomas will also take the lead on the site surveys, utility coordination, vehicular roadway design, and traffic operations and signalization as well as the preparation of Construction Documents for Phase 1 construction of PCH and plans and specifications for construction traffic management. Anissa Voyiatzes from Psomas will act as the lead Civil Engineer for the civil engineering work effort who will coordinate directly with the Design Principal and the Landscape Principal in the preparation of both Preliminary Design and Construction Documents.

Scope of Work

The following scope of work for Preliminary Design and Construction Documents is based on the previously prepared initial improvement concept for PCH and the ultimate improvement project for Del Prado that was developed during the Town Center planning process and is enclosed herein for reference. It describes the services to be provided by the Consultants and the products related thereto. Some aspects of the design process, in particular in Preliminary Design, need to address both PCH and Del Prado simultaneously, such as those portions of the Town Center where parcels front on both streets and at the gateways. Other portions of the work effort can be separated and can independently address one or the other of the streets. However, because of the different and more limited nature of the improvements along PCH than those of the gateways and Del Prado, beyond the need for shared focused stakeholder meetings, the scope of work is divided into two parts for each street. For each street, the geographic limit of work

includes the entire public right-of-way from Copper Lantern to Blue Lantern within the Town Center and extending as required to conform areas on the cross-streets. The conform requirements to adjacent private properties will also be addressed but the extent of improvements that need to be made related to these cannot be anticipated and determined in advance.

The majority of tasks in the scope of work can be defined and therefore will be completed on a percent complete basis against an established fixed fee. However, certain tasks cannot be fully established at this time and will need to be undertaken on a time and material basis, within an estimated budget. If, for these tasks as identified in the scope of work, the estimated budget is exhausted and additional work efforts are needed or desired, the budget will need to be augmented and mutually agreed to prior to undertaking the additional work effort that is required. Furthermore, if the geographic or substantive scope of the project is expanded beyond that indicated herein, any effort associated with this modification will be undertaken as an additional service within an established budget that is mutually agreed to prior to the initiation of the work.

For budgeting purposes, it is assumed that the entire work effort will require approximately 15 to 18 months to complete. However, within this time frame, the Final Design for PCH can be accelerated and completed earlier, if during the design process the City determines that it wishes to bid and construct that portion of the project separately.

PART 1 – PROJECT COORDINATION AND MANAGEMENT

1.1 Consultant Project Management. ROMA, as the prime consultant, will take the lead in terms of coordination, management and overall guidance for the progress of the integrated and coordinated consultant work effort. This work effort would include preparing detailed subconsultant scopes of work and internal schedules, agendaing and scheduling consultant work efforts and meetings, managing the overall flow of the work, establishing procedures for Quality Control and Quality Assurance (QA/QC) reviews, and administering the consultant contract. In addition, this work also includes holding meetings with the City staff on a regular basis, coordinating Consultant responses to comments from the City on submittals, and on an on-going basis, identifying issues and critical path items requiring immediate attention and overall guidance. ROMA will also be responsible for managing the overall consultant budget, preparing monthly invoices and progress reports and will identify, on behalf of all of the consultants, any potential areas where additional services may be required in advance of undertaking those services.

1.2 Focus Group Meetings. ROMA and its subconsultants will assist the City in reviewing previously prepared plans to establish the final scope of improvements and the City's proposed construction budget and schedule for both street projects (PCH and Del Prado). During this review, focus group meetings will be held with property owners, businesses and developers to receive additional input. After giving due consideration to the input that has been received and recommendations from ROMA and its subconsultants, the City will establish the parameters for the improvement of both streets. A particular concern of this early effort will be the balancing of costs versus benefits, the strategy for maintaining traffic movement and property access during construction and the scheduling and timing of improvements to minimize business disruption.

Focus group meetings are intended to bring the immediate stakeholders into the process to allow for detailed discussions regarding business, property owner and/or developer issues, concerns and to get input on their ideas regarding the improvements to be undertaken. It is anticipated that the focus stakeholder group meetings will be organized into seven geographic groupings of common interest. A preliminary definition of the geographic grouping for the stakeholder meetings is organized as follows:

1. For parcels fronting on both PCH and Del Prado, between Blue Lantern and Ruby Lantern
2. For parcels fronting on PCH and Del Prado, between Ruby Lantern and Amber Lantern
3. For parcels fronting on PCH between Amber Lantern and Violet Lantern
4. For parcels fronting on Del Prado between Amber Lantern and Violet Lantern
5. For parcels on PCH between Violet Lantern and Golden Lantern
6. For parcels fronting on Del Prado between Violet Lantern and Golden Lantern
7. For parcels on PCH and Del Prado, between Copper Lantern and Golden Lantern

It is assumed that up to 16 meetings will be held, including two meetings for each of the seven geographic areas outlined above with an allowance for two additional meetings as needed or for general orientation purposes. The meetings within the geographic groupings will be clustered and held over an intensive and coordinated 3-day period of time at the beginning and at the end of the Preliminary Design process. The specific schedule for all of the meetings will be set forth in concert with the City.

1.3 City and Consultant Coordination Meetings. It is anticipated that during the design process, ROMA and Psomas will meet with the City on a regular basis and as required to review the progress of the work effort and to discuss issues and receive input on design direction. For budgeting purposes, it is assumed that the Consultants will meet with the City on a monthly basis for Preliminary Design and on a bi-monthly basis for Final Design. For these meetings, topics or items to be placed on the agenda will be exchanged in advance and agendas established before the meetings to make each meeting focused and effective toward obtaining a resolution of issues and to establish design approaches for specific aspects of the project. For budgeting purposes, we have assumed 15 meetings. In addition to these more formal meetings, it is assumed that a biweekly telephone conference call will be held to identify any new information or items that need more immediate attention and to discuss the progress of the work on an on-going basis.

1.4 Utility Coordination. Psomas will assist the City in coordinating with utility companies located within the PCH and Del Prado street right-of-way and providing services to adjacent properties. A preliminary list of these companies includes.

- South Coast Water District
- San Diego Gas and Electric
- The Gas Company (Sempra), Distribution

The Gas Company (Semptra), Transmission
Verizon, Cox Communication and AT&T

A preliminary budget based on past experience has been established for this task, but it is recognized that this work is difficult to project fully and therefore, this task will be billed on a time and material basis within the established budget. If, due to unforeseen circumstances, it is determined that additional work is required beyond what is assumed, the budget will need to be augmented and mutually agreed to prior to continuing the work effort.

PART 2 – PRE-DESIGN (City responsibility)

It is assumed that survey and other existing information is generally sufficient for the design of Phase 1 PCH improvements but that additional information will be required for those portions of Del Prado where full reconstruction of the street is required (that is, between Golden Lantern and Blue Lantern) as well as for the gateways at Copper Lantern and Blue Lantern. The City may provide this information separately or use consultants as noted below in Sections 2.1 through 2.5. These informational needs are described more fully in the following tasks:

2.1 Site Survey. Prior to the initiation of the Preliminary Design and Construction Document effort, Psomas will utilize the existing survey prepared by Bush and Associates and prepare a site survey to augment the existing survey of existing conditions. For PCH, the only additional survey work that is anticipated is at the proposed bulb-outs. For Del Prado, the survey will provide detailed vertical and horizontal information, showing all physical features, topography and spot elevations at all thresholds on Del Prado where significant sidewalk modifications will be made. In addition, all of the existing trees will be accurately located on the survey and a spot grade provided at the base of each tree. The survey will establish the limits of the public right-of-way and delineation of adjacent private ownership and parcelization and will identify any easements and/or title restrictions related thereto. Within the budget, it is assumed that a detailed base map for the project will be prepared and up to 20 title reports will be requested and reviewed to determine more accurately the extent of the right-of-way and its relationship to adjacent property. The size, location, extent, and depth of underground utilities will also be identified based on existing information. The utility information will be augmented by potholing in the field (as described in the subsequent task). Any additional surveying beyond what is described herein, if required, will be undertaken as an additional service.

2.2 Potholing. Psomas will undertake “potholing” to verify the size, location, extent and depth of below-grade utilities. For budget purposes, 50 potholes are assumed. This task will be billed on a time and material basis within an established budget. If any additional potholing above and beyond what is set forth herein is required, an augmented budget will be mutually agreed to prior to initiating the additional work effort.

2.3 Geotechnical Report. Psomas will subcontract with a geotechnical engineer to prepare a geotechnical report with recommendations for both roadway and sidewalk pavement cross-sections adequate for design. The geotechnical investigations is based on the assumption of up to two borings per block for Del Prado only.

2.4 Agricultural Soils Report. ROMA will subcontract with a soils consultant to undertake the testing and analysis of soils within the potential planting areas for agricultural suitability. The agricultural soils investigations is based on an assumption of up to two soil samples per block. Based on this analysis, recommendations will be made for soils amendment, modification and/or replacement to improve the success and longevity of street trees.

2.5 Arboricultural Report. ROMA will contract with certified arborists to prepare an inventory and assessment of the existing trees within the public right-of-way of Del Prado and make recommendations consistent with the improvement plan. The arborists will identify the size (height and caliper), canopy (spread), age, condition and assess the factors affecting future longevity and well-being within the improved streetscape context. Further, the arborists will provide specific recommendations for protection, enhancement, removal or relocation of the trees as appropriate. In particular, issues related to the root encroachment and damage to concrete sidewalks and other paved surfaces will be addressed and potential solutions identified.

PART 3 – FINAL DESIGN - PACIFIC COAST HIGHWAY

The Phase 1 improvements for two way operations on the Pacific Coast Highway include the restriping and traffic signal modifications (5 intersections) and the provision of 2 U-turn pockets at Amber Lantern

3.1 Final Design. Following the focus group sessions as well as input from the bus agency and based on directions provided by the City regarding the extent of improvements for PCH, PCH can proceed directly to Final Design.

It is assumed that Psomas will take the lead in the preparation of the final Construction Documents for the proposed PCH improvements and will coordinate these directly with the City. The Construction Documents will include drawings, details and specifications related to demolition requirements, curb and gutter modifications for cut-outs, storm water inlet modifications, if any are required, sidewalk and roadway paving modifications, the relocation and/or addition of traffic signal poles or light fixtures as required, as well as traffic restriping, signalization and signage requirements related to the conversion to two-way movement on PCH. In addition, traffic management plans during construction for the Phase 1 improvements will be integrated with these documents, so that they can be bid independently or be integrated with the Del Prado improvements into a single bid package. The Construction Documents will also address accessibility modifications only at the proposed bus stops. Any identity or directional signage that may be required will be undertaken within the Del Prado project, as well as any design and construction documents for the gateways. As part of this work, it is assumed that three submittals will be made at appropriate intervals. Construction cost budget estimates will be provided for two of the submittals and technical specifications will be provided at 90% and 100%. One copy each of full size and scalable half-size drawings will be provided in reproducible paper format at each interim submittal and in mylar wet-signed and stamped reproducible format at the final submittal. For a more detailed description of work product format, see Part 5 for Final Design of Del Prado and Gateways.

PART 4: PRELIMINARY DESIGN - DEL PRADO AND GATEWAYS

ROMA, in conjunction with Psomas and its other subconsultants, will undertake Preliminary Design efforts for Del Prado and for the Blue Lantern and Copper Lantern gateways at either end of the streets. This effort will be undertaken in close coordination with the City so as to allow for input and direction on a regular basis throughout this phase of the work. The documents to be developed in this phase will include plans, typical details and a Preliminary Construction Cost Budget Estimate.

Although the City will be involved throughout the entire design process, providing review and comment, the Preliminary Design (60%) submittal will provide the opportunity for a more detailed review and comment by the City. It is assumed that one copy each of full size and scalable half-size drawings will be provided in reproducible paper format of the submittal to the City. It is anticipated that integrated written comments on the submittal will be provided by the City which the consultants will respond to in writing prior to the commencement of Final Design. However, modifications and/or refinements to the Preliminary Design will be taken into account in the subsequent Final Design effort.

During this task, the design of both functional and aesthetic aspects of the street and the gateways will be undertaken in consideration of establishing a viable and vital retail mixed use Town Center. The design effort will include a number of considerations as described more specifically below which will be integrated at the culmination of the design effort into a set of Preliminary Design (60% PS&E) documents.

This scope of work does not anticipate work on cross streets except as necessary to conform to existing grades.

4.1 Vehicular and Bicycle Circulation Design, including dimensional criteria for moving lanes and intersection geometrics as well as considerations for traffic signalization, signing and striping, and traffic management controls. This would include determination as to where 2-way and 4-way stop signs may be used and where signals will be provided. This includes the design of any additional traffic signal modifications not already taken into account in the PCH work effort at the Blue Lantern and Copper Lantern gateways and the traffic signal modifications required at Golden Lantern and Del Prado as well as any traffic striping and signage for the gateway intersections or at Golden Lantern.

4.2 On-Street Parking Design, including on-street parking locations, dimensional criteria and curb parking regulations.

4.3 Driveway Access Requirements, including the location and dimensional characteristics of driveways that need to be maintained and those that can be reconfigured or removed.

4.4 Sidewalk Design, including the width of the sidewalks, the location and configuration of intersection bulb-outs, the use of mid-cross-walks and bulb-outs, the design of the curb ramps and crosswalks, and the use of special flashing lights and/or special visual and audible signals for pedestrian safety. The sidewalks within the public right-of-way need to be designed in

compliance with California Title 24 accessibility standards and/or, as applicable, Federal ADA guidelines and standards. In addition, the sidewalks will also be designed in consideration of storm water drainage requirements, Best Management Practices and other streetscape and landscape considerations.

4.5 Private Property Conform Issues (City funding responsibility) In designing the sidewalks, as discussed in the previous task, conform issues will arise related to adjacent private properties. This will entail work on private property beyond the public right-of-way. In particular, as it relates to both driveways and the provision of accessible entrances to adjacent existing and proposed buildings. In addition, there are existing non-compliant encroachments into the public right-of-way that compromise the potential of achieving accessibility. For example, in some places, existing driveways utilize the public right-of-way as part of the vertical slope transition in a manner that makes the sidewalks non Code-compliant. Furthermore, consideration will also need to be given to the City's policy as described in the adopted Town Center Plan to minimize, to the greatest degree possible, driveways and curb cuts from Del Prado to adjacent properties and in turn to provide vehicular access to properties from the alleys.

In addition to driveway issues adjacent to the public right of way, there are older buildings with building entrances that are not accessible from a Code-compliant point of view. To the greatest degree possible, as long as improvements within the right-of-way can comply with Code requirements, efforts will be made to provide accessible access to adjacent buildings. However, it is anticipated that in many cases this will not be feasible and therefore in order to provide access, either encroachments for access ramps need to be made within the public right-of-way or improvements need to be made on private property either within setbacks or buildings.

Alternative approaches to undertaking accessibility requirements will be evaluated and discussed with the City and negotiated with private property owners to determine which is the most feasible or appropriate approach. For example, if encroachments on public property are needed, the City must determine that they are acceptable and will need to work with the property owners to provide them. If improvements need to be made on private property within setback areas, then the City will need to obtain agreements or easements for construction beyond the existing public right-of-way with appropriate limitations of liability. In addition, the City may determine that the only acceptable solution is for improvements to be made within existing buildings by the property owners in order to achieve accessibility requirements.

Because of the uncertainty of the number and extent of conform issues that will need to be addressed and the complexity of negotiations and/or approvals, these will be undertaken on a time and material basis within a \$150,000 established budget. If the budget is expended, however, the City and the consultants will need to mutually agree to the appropriate augmentation prior to any further work being undertaken related to this aspect of the design effort.

4.6 Best Management Practices for Storm Water Management. A number of options related to how to handle the storm water will be evaluated, including additional or relocated catchbasins, if required, biofiltration swales, permeable pavement, rain gardens, and pre-manufactured

systems, such as the Filterra or MWS Linear Hybrid Stormwater Treatment System. One or more of these options will be recommended for City consideration for inclusion into the streetscape improvement plan, based on cost effectiveness, maintenance, availability of space and appropriateness to the site and context.

4.7 Tree Preservation. There are a number of existing mature Tipuana tipu trees along Del Prado that need to be considered for potential incorporation into the streetscape improvement plans. Based upon the input of the arborists and their inventory and assessment of the trees together with other streetscape design considerations, a decision will be made as to which trees should be retained and which should be removed and/or relocated. For trees to be preserved, initial concepts for tree protection during construction will be developed and discussions as to cost and feasibility will be initiated for relocation of other trees.

4.8 Landscape Design. Along with the effort regarding tree preservation, an evaluation will be made regarding the potential for new trees and other landscape materials to be incorporated into the streetscape design efforts. These efforts will also be integrated for considerations for Best Management Practices and the creation of more permeable areas. The type, species and size of street trees to be planted will be identified and the appropriate location, spacing and pattern based on initial size and ultimate growth will be established. Availability and suitability to local climate and environment, tolerance of urban conditions and susceptibility to pests and disease will be evaluated and recommendations will be made. In addition, the image and appropriateness of the trees to a retail streetscape environment, such as visibility of storefronts and the ability to enhance the environmental quality aspects, such as shade, heat gain and solar access during winter months, will be considerations.

4.9 Planting Design. The health, growth and longevity of street trees in an urban environment are, to the greatest degree, dependent upon how they are planted and maintained. Based on the agricultural suitability information related to soils and other factors related to available soil volume and root growth, a determination will be made as to whether a continuous trench approach, utilizing either structural soils, soils cells or specially reinforced sidewalk cross-sections, will be considered. In addition to the sub-surface planting conditions, the way in which tree wells and curbside sidewalk areas are treated will be evaluated. Preliminary approaches for consideration of irrigation will be developed and evaluated. The planting design will be integrated with the storm water best management considerations described previously and recommendations of whether to use metal or recycled grates, rubber mats, cobbled paving set in sand, ground cover, and curb protected tree wells will be made for City consideration.

4.10 Utility Improvement Design. Psomas will undertake an evaluation of the existing underground utility systems and those that can remain in their current location, those that need to be relocated and those that need to be improved in conjunction with the streetscape improvement program. In addition, criteria and considerations for the location of fire hydrants, water meters, electric junction boxes, gas service meters, backflow preventers, irrigation controllers and other utility related devices within the street right-of-way will be reviewed. If an additional above-ground transformer is needed, then potential locations will be evaluated along with the service requirements for the transformer prior to making a recommendation for where that might be

located. An evaluation will also be made of lateral connections from the main utility lines serving adjacent properties that may need to be relocated due to conflicts with street trees or other streetscape improvements. In addition, the provision of a 6-inch conduit on either side of Del Prado for future fiber optic cable will be integrated into the utility plan with appropriate locations for pull boxes and connection points.

4.11 Sidewalk Grading Design. A detailed plan will be prepared for grading sidewalk areas in compliance with ADA Title 24 and in consideration of storm water drainage requirements and best management practices established above. A critical aspect of this plan will be the determination of how to most appropriately meet the threshold requirements of adjacent properties. This plan will be developed in an integrated manner with the roadway and intersection grading and will address curb ramps, bulb-outs and other intersection and/or mid-block pedestrian access requirements. In addition, the sidewalk grading plan will determine the boundaries of sidewalk conform requirements at adjacent intersections or related to existing conditions of adjacent properties and/or access requirements.

4.12 Roadway Grading Design. The roadway grading plan will be closely coordinated with sidewalk grading described above as well as with the storm water best management practices and/or other storm drainage measures established for the project. The grading plan will be described in terms of roadway profiles and cross-sections and will include spot elevations for top of curb and flow line of gutter at regular intervals along the street as well as at critical points such as bulb-outs, intersections and storm drain inlets. The integration of the sidewalk and roadway grading at the intersections will be of focused concern in the preparation of this task. The conform to meet existing grade at the sidewalks and roadway will be identified.

4.13 Curb, Gutter, Parking Bay and Intersection Paving Design. A determination will be made from both an aesthetic and functional basis on the appropriate paving treatment of these critical areas. Consideration will be given, for example, to the width of the curb, whether parking bays will be paved in concrete or a different material than the street in order to facilitate storm water flows and/or infiltration, and to intersection paving to provide a more appropriate and distinctive surface for pedestrians and to improve storm water flow at critical junctures. In addition, this will include considerations for the use of color, texture, scoring and other treatments. An appropriate cross-section for the pavement and sub-base will be established based on the geotechnical report recommendations.

4.14 Sidewalk Paving Design. There are probably a number of paving treatments that will be considered for the sidewalk paving design. These paving treatments can also be used to differentiate different zones of activity within the sidewalk areas. The activity zones can include opportunities for café extensions, the main pedestrian promenade zone and the curbside transition zone where street trees, lighting and furnishings are predominantly located and where pedestrians step out of parked vehicles to enter the sidewalk areas. In addition, depending upon the approaches to storm water management, unit pavers or partial paved areas that are landscaped may be integrated into the sidewalk zone. If architectural concrete is to be utilized in the paving, the scoring pattern reflecting the tradition of the 2-foot grid that was originally established by Sydney Woodruff would also be a consideration as well as would the stamped

markings that he utilized for the paving. There may also be opportunities for preservation of some portions of the original paving with the stamped markings that can be integrated into the paving design. Consideration will also be given to the pattern and frequency of expansion joints that may be required and whether an adjustment band is appropriate next to the private property as a way of allowing for adjustments to be made as properties develop and in respond to variations in the adjacent buildings. An appropriate cross-section for the pavement and sub-base will be established based on the geotechnical report recommendations and any requirements for reinforcement of the paving or for use of slip-dowels at expansion joints will also be determined. If clay or expansive soils subject to heaving are found to be prevalent as identified in the geotechnical report, then requirements for removal of a specified depth of soil and the provision of a re-engineered fill may also be required.

4.15 Roadway Paving Design. Various roadway pavement materials will be evaluated, including asphalt, concrete with an asphalt overlay or integrally colored concrete, to determine which is the most cost effective and desirable approach for this street. In this task, the roadway pavement cross-section and the sub-base will be established based on the geotechnical recommendations.

4.16 Lighting Design. There are a variety of approaches that will be considered for the street lighting, including the potential use of an integrated fixture for both pedestrian and vehicular areas, different fixtures for vehicular and pedestrian areas, the use of an efficient fixture for the vehicular areas (both roadway and intersections) while utilizing a replica of the historic lanterns in conjunction with other lighting in the pedestrian areas. In addition, consideration will be given to the pole design for the light fixture and whether the pole will also be utilized as a support for cable-stayed banners across the entire street and/or the use of the light fixture pole for hanging baskets and/or for extended banners from the pole. In addition, consideration will be given in selecting the pole design as to whether directional and traffic signage might be located on the light fixture poles and how they would be located if they were. Furthermore, consideration will also be given to whether the pole should include and, if so, how it will include, festival events and power outlets for holiday lighting. Light level calculations will be undertaken at this time to establish the height, spacing and location of poles. In addition, the location of the pole relative to the edge of the curb and/or its alignment with street trees will be established. In addition to the basic pedestrian and vehicular street lighting that will extend throughout the project, consideration will also be given for special effects and accent lighting in landscaped areas and, most significantly, within the gateways.

4.17 Furnishings Program. Street furnishings, including bicycle racks, trash receptacles, benches, dog fountains, newspaper vending machines, information kiosks, bollards and other elements that may be considered to support street activities will be identified. Specific recommendations will be made for the selection of the manufactured or custom designed elements, and for their location and distribution along Del Prado and/or within the gateway areas.

4.18 Identity, Directional and Business Signage Program. It is assumed that the Dana Point City logo will be augmented to more specifically indicate the Town Center as a special district within the city. In this task, the way in which this logo will be utilized, where it will be utilized

and its size, framing and distribution on the street within the gateways will be established. In addition, unique graphic identity markers for each one of the cross-streets which can be utilized both on Del Prado and PCH will be designed. Also, the need for directional signage that describes major destinations, such as the Marina, Bluff walk, Bluff Look-Outs, Heritage Park and La Plaza, will be identified. For a limited number of selected destinations, special signage will be designed and the location and distribution of the signs will be established. Also in this task, a sign cabinet will be designed which can be used to display a Town Center business listing and location map and/or for public information and events announcements. The design of the map, the identity program and or the public service announcements are not included in the basic scope of services established herein, but can be included as an additional service if desired.

4.19 Banner Design. It is anticipated that a banner program will be developed for the Town Center to add to the festive atmosphere on the street and to celebrate special events and activities. ROMA will design an initial set of banners that will extend across Del Prado on a cable-stayed system from the light poles. It is assumed that four different banner designs will be prepared. The banner designs could be related to special events (such as the Festival of Whales or the annual bicycle race) or to the changes in the season. The design will not only establish the materials, pattern, color, size and configuration of the banners, but also the cable-stayed system that would support them.

4.20 Blue Lantern Gateway Design. A significant amount of land will become available with the reconfiguration of the roadways, particularly at the Blue Lantern intersection. The design of the appropriate treatment of this area will be an important consideration of the overall streetscape program and will help in establishing the identity of the Town Center and to orient vehicular traffic to both Del Prado and Pacific Coast Highway. It is assumed that the traffic design of the intersection is handled as part of the PCH final design and as part of the traffic circulation planning herein. This task will address the special paving, landscaping, lighting, furnishings and special features being specifically designed for this location. It is assumed that the Blue Lantern Gateway will include a unique sculptural identity element to be designed herein or an artistic element to be selected herein but acquired as part of the implementation process.

4.21 Copper Lantern Gateway Design. The Copper Lantern Gateway is an important entry point from the south into the Town Center area, and is also visually significant due to the change in grade. As with Blue Lantern, the traffic design of this intersection will be addressed as part of the PCH final design and as part of the traffic circulation planning herein, however the treatment of the gateway to both provide Town Center identity and directional orientation to Del Prado will be addressed herein. This task will address the special paving, landscaping, lighting, furnishings and special features being specifically designed for this location. It is assumed that the Copper Lantern Gateway may include a unique sculptural identity element to be designed herein or an artistic element to be selected herein but acquired as part of the implementation process.

4.22 Integrated Streetscape Design Plan. Based on all of the above tasks, an integrated site design plan will be prepared that establishes the spatial configuration and location of the roadway, sidewalks, bulb-outs, etc. and the location of all of the elements to be included within

the public right-of-way. This plan would then serve as the base for the preparation of all other plan documents described below.

- **Traffic Circulation Plan.** A traffic striping, signage and signalization plan for the entire street will be prepared. It is anticipated the only signal modification will be for Golden Lantern. The rest of Del Prado will be stop signs.
- **Roadway Grading Plan.** This plan will integrate the grading of the roadway and the intersections with that of the sidewalks and gateways.
- **Sidewalk Grading Plan.** This plan will integrate the grading of the sidewalks and gateways with that of the roadway.
- **Storm Water Management Plan and Typical Details.** This plan will integrate the use of storm water lines and catch basins with landscape and other biofiltration approaches to reduce the rate of run-off and improve water quality.
- **Utility Service Plans and Typical Details.** The utility plan will designate the relocation and/or location for improvements related to wet and dry utilities to serve adjacent properties and streetscape improvements.
- **Roadway Paving Plans and Typical Details.** The paving plan will designate the extent and location of each paving type within the roadway. These plans will also include typical details for curb and gutter, parking bays, pavement cross-sections and intersections.
- **Sidewalk Paving Plans and Typical Details.** These plans will include the extent and location of each paving type within the sidewalk areas as well as the location of all curb ramps and driveways. Enlarged plans will also be prepared for typical intersection and mid-block bulb-outs along with typical cross-sections and typical details for each pavement type and for curb ramps.
- **Private Property Conform Plans and Typical Details.** These plans and details will indicate where and how private property conform to public right-of-way grades and/or how encroachments of private property onto the public right-of-way be accommodated to meet accessibility requirements, particularly related to building entrances and driveways.
- **Tree Preservation Plans and Protection Details.** The tree preservation plan will indicate the trees that are to remain and to be protected as part of the streetscape improvements. Details will indicate the type and method of protection of the trees during construction.
- **Landscape Plan and Typical Details.** The landscape plan will describe the location, type, species and size of street trees and the location and extent of other landscape

improvements along the street and in the gateways. Typical details will show planting, soil preparation and tree preservation details.

- **Lighting Plan and Typical Details.** A lighting plan showing the location of all street, pedestrian and special effects lighting will be prepared, along with typical details as required.
- **Street Furnishing Plan and Typical Details.** This plan will identify the location, distribution and number of the furnishings along the street and typical details as appropriate.
- **Identity, Directional and Business Signage Plans and Typical Details.** These plans will identify the design and location, distribution and number of elements and typical details, as appropriate.
- **Banner Design Plans and Typical Details.** These plans will include designs for four banners, indicating location, size, color, textures and material as well as the cable-stayed systems and attachments needed for their support.
- **Gateway Design Plans.** Enlarged and more detailed design plans for both the Blue Lantern and Copper Lantern Gateways will be prepared and will include a three-dimensional depiction of each of these critical entries into the Town Center.
- **Demolition Plan.** The extent of demolition and removal of streetscape elements will be indicated as well as those elements to be retained and/or preserved or protected within the street.
- **Construction Phasing and Traffic Management Plan.** This plan will designate an initial concept for how the construction of these improvements will be phased and how traffic will be managed during construction.
- **Construction Cost Budget Estimate.** Based on the Preliminary Design drawings, a Construction Cost Budget Estimate will be prepared.

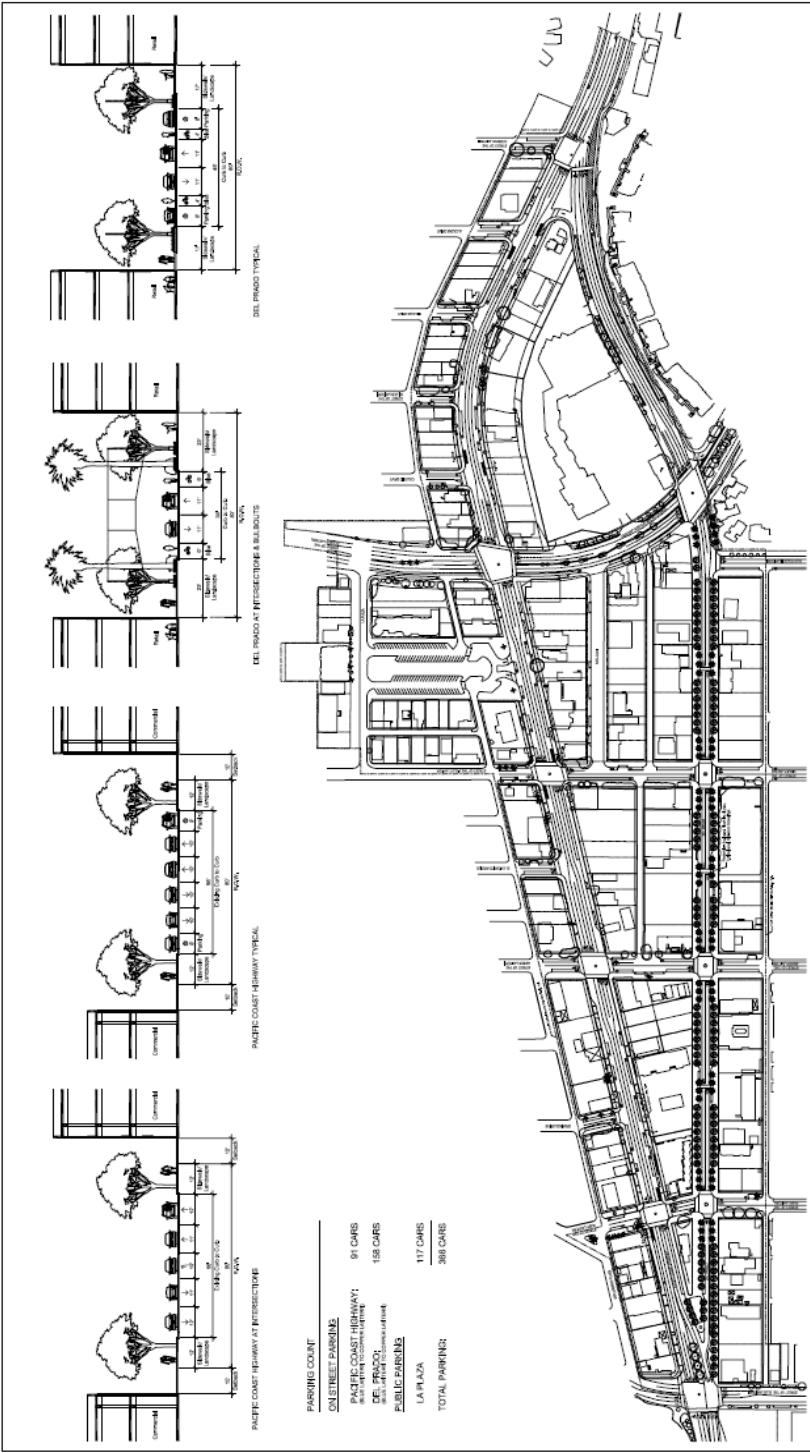
PART 5: FINAL DESIGN - DEL PRADO AND GATEWAYS

The Final Design will be based on the input and direction received on the Preliminary Design effort and will include a 90% and 100% PS&E submittal. Although some refinements and modifications will be undertaken in this effort, the primary goal of Final Design is to create an integrated biddable set of Construction Documents that will be used to guide the construction effort. One copy each of full size and scalable half-size drawings will be provided in reproducible paper format at each interim submittal and in mylar wet-signed and stamped reproducible format at the final submittal. A copy of the electronics (Autocad) of the 100% Final Design for bidding will be provided for the City's records. In addition, hardcopy and electronic

file (Word Format) will be provided of the Contract Specifications, hardcopy and electronic file (PDF) of all Standard Details that are to be incorporated into the Specifications as Appendices, and hardcopy and electronic file (PDF) of any/all other reports, details, exhibits, cut sheets, etc. that are to be incorporated into the Specifications as Appendices will be provided to the City of the 100% Final Design.

The Construction Documents listed below will also include details and specifications to be prepared herein include plans, details and specifications for the following:

- 5.1 Demolition Plans, Details and Specifications.**
- 5.2 Tree Preservation and Protection Plans, Details and Specifications**
- 5.3 Ground Plane Control Plan**
- 5.4 Roadway Grading Plan**
- 5.5 Sidewalk Grading Plan**
- 5.6 Private Property Conform Plans and Typical Details and Specifications**
- 5.7 Storm Water Management Plans, Details and Specifications**
- 5.8 Utility Property Service Plans, Details and Specifications**
- 5.9 Roadway Paving Plans, Details and Specifications**
- 5.10 Traffic Striping, Signing, Signalization Plans, Details and Specifications**
- 5.11 Sidewalk Paving Plans, Details and Specifications**
- 5.12 Planting Plans, Details and Specifications**
- 5.13 Soil Improvement Plans, Details and Specifications**
- 5.14 Irrigation Plans, Details and Specifications**
- 5.15 Lighting Plans, Details and Specifications**
- 5.16 Electrical Service Plans, Details and Specifications**
- 5.17 Furnishing Plans, Details and Specifications**
- 5.18 Identity, Directional and Business Signage Plans, Details and Specifications**
- 5.19 Banner Signs, Plans, Details and Specifications**
- 5.20 Gateway Design Plans, Details and Specifications**
- 5.21 Construction Phasing Strategy**
- 5.22 Construction Traffic Management Plans, Details and Specifications**
- 5.23 Construction Property Access Plans, Details and Specifications**
- 5.24 Packaging of Technical Specifications and Special Provisions**
- 5.25 Construction Cost Budget Estimates**
- 5.26 Preparation of Landscape Maintenance Manual**
- 5.27 Attend Pre-Bid Conference**
- 5.28 Assist the City during Bidding and Contract Negotiations**



PRELIMINARY STREETScape CONCEPT PLAN: TWO-WAY, PHASE 1
PCH/Del Prado Improvement
Prepared for the City of Dana Point by ROMA Design Group
April 28, 2007

EXHIBIT B – Cost Proposal**DANA POINT TOWN CENTER****DEL PRADO AND GATEWAY INTERSECTION IMPROVEMENTS**

June 11, 2008

PROJECT RESPONSIBILITY AND FEE MATRIX					
<div>Key</div> <div>Prime Responsibility</div> <div>Shared Responsibility</div> <div>Supporting Role</div>					
	RESPONSIBILITY		ESTIMATED FEE		
	ROMA	Psomas	ROMA	Psomas	TOTAL
PART 1 - PROJECT COORDINATION & MANAGEMENT					
1.1	Consultant Project Management				
1.2	Focus Group Meetings (T&M)				
1.3	City and Consultant Coordination Meetings (T&M)				
1.4	Utility Coordination (T&M)				
Subtotal: Part 1					
PART 2 - PRE-DESIGN (OWNER RESPONSIBILITY)					
2.1	Site Survey (T&M)				
2.2	Potholing (T&M)				
2.3	Geotechnical Report (T&M)				
2.4	Agricultural Soils Report (T&M)				
2.5	Arboricultural Report (T&M)				
Subtotal: Part 2					
PART 3 - FINAL DESIGN - PACIFIC COAST HIGHWAY					
3.1	Final Design				
Subtotal: Part 3					
PART 4 - PRELIMINARY DESIGN - DEL PRADO & GATEWAYS					
4.1	Vehicular and Bicycle Circulation Design				
4.2	On-Street Parking Design				
4.3	Driveway Access Requirements				
4.4	Sidewalk Design				
4.5	Private Property Conform Issues (Owner Responsibility) (T&M)				
4.6	Best Management Practices for Storm Water Management				
4.7	Tree Preservation				
4.8	Landscape Design				
4.9	Planting Design				
4.10	Utility Improvement Design				
4.11	Sidewalk Grading Design				

DANA POINT TOWN CENTER

DEL PRADO AND GATEWAY INTERSECTION IMPROVEMENTS

June 11, 2008

PROJECT RESPONSIBILITY AND FEE MATRIX													
<table><tr><td colspan="2">Key</td></tr><tr><td>Prime Responsibility</td><td>●</td></tr><tr><td>Shared Responsibility</td><td>◐</td></tr><tr><td>Supporting Role</td><td>○</td></tr></table>						Key		Prime Responsibility	●	Shared Responsibility	◐	Supporting Role	○
Key													
Prime Responsibility	●												
Shared Responsibility	◐												
Supporting Role	○												
	RESPONSIBILITY		ESTIMATED FEE										
	ROMA	Psomas	ROMA	Psomas	TOTAL								
4.12 Roadway Grading Design	○	●		\$10,200	\$10,200								
4.13 Curb, Gutter, Parking Bay & Intersection Paving Design	○	●	\$2,243	\$2,000	\$4,243								
4.14 Sidewalk Paving Design	●	○	\$28,362	\$1,000	\$29,362								
4.15 Roadway Paving Design	○	●		\$2,000	\$2,000								
4.16 Lighting Design	●		\$40,463		\$40,463								
4.17 Furnishings Program	●		\$15,339		\$15,339								
4.18 Identity, Directional and Business Signage Program	●		\$39,878		\$39,878								
4.19 Banner Design	●		\$38,636		\$38,636								
4.20 Blue Lantern Gateway Design	●		\$60,760		\$60,760								
4.21 Copper Lantern Gateway Design	●		\$32,760		\$32,760								
4.22 Integrated Streetscape Design Plan	●	◐	\$24,943		\$24,943								
• Traffic Circulation Plan		●		\$15,095	\$15,095								
• Roadway Grading Plan	○	●		\$10,000	\$10,000								
• Sidewalk Grading Plan	●	◐	\$11,884	\$4,000	\$15,884								
• Storm Water Management Plan and Typical Details	◐	●	\$19,499	\$12,030	\$31,529								
• Utility Service Plans and Typical Details		●		\$10,510	\$10,510								
• Roadway Paving Plans and Typical Details		●		\$36,830	\$36,830								
• Sidewalk Paving Plans and Typical Details	●		\$22,158		\$22,158								
• Private Property Conform Plans & Details (Owner Responsibility) (T&M)	●	◐	\$16,480	\$5,000	\$21,480								
• Tree Preservation Plans and Protection Details	●		\$6,005		\$6,005								
• Landscape Plan and Typical Planting Details	●		\$12,155		\$12,155								
• Lighting Plan and Typical Details	●		\$24,274		\$24,274								
• Street Furnishing Plan and Typical Details	●		\$8,203		\$8,203								
• Identity, Directional & Business Signage Plans & Typical Details	●		\$23,080		\$23,080								
• Banner Design Plans and Typical Details	●		\$13,819		\$13,819								
• Gateway Design Plans	●	○	\$26,680	\$800	\$27,480								
• Demolition Plan	○	●	\$2,261	\$10,150	\$12,411								
• Construction Phasing and Traffic Management Plan	○	●	\$1,357	\$9,720	\$11,077								
• Construction Cost Budget Estimate	○	●	\$2,261	\$9,200	\$11,461								
Subtotal: Part 4			\$699,852	\$173,265	\$873,117								

DANA POINT TOWN CENTER**DEL PRADO AND GATEWAY INTERSECTION IMPROVEMENTS**

June 11, 2008

PROJECT RESPONSIBILITY AND FEE MATRIX													
<table><tr><th colspan="2">Key</th></tr><tr><td>Prime Responsibility</td><td>●</td></tr><tr><td>Shared Responsibility</td><td>●</td></tr><tr><td>Supporting Role</td><td>○</td></tr></table>						Key		Prime Responsibility	●	Shared Responsibility	●	Supporting Role	○
Key													
Prime Responsibility	●												
Shared Responsibility	●												
Supporting Role	○												
	RESPONSIBILITY		ESTIMATED FEE										
	ROMA	Psomas	ROMA	Psomas	TOTAL								
PART 5 - FINAL DESIGN - DEL PRADO AND GATEWAYS													
5.1 Demolition Plans, Details and Specifications.		●	\$2,030	\$9,000	\$11,030								
5.2 Tree Preservation and Protection Plans, Details and Specifications	●		\$21,633		\$21,633								
5.3 Ground Plane Control Plan	●	●	\$34,431	\$4,000	\$38,431								
5.4 Roadway Grading Plan		●		\$60,000	\$60,000								
5.5 Sidewalk Grading Plan	●	●	\$38,686	\$10,000	\$48,686								
5.6 Private Property Conform Plans and Typical Details and Specifications (Owner Responsibility) (T&M)	●	●	\$39,900	\$10,000	\$49,900								
5.7 Storm Water Management Plans, Details and Specifications	●	●	\$23,383	\$25,000	\$48,383								
5.8 Utility Property Service Plans, Details and Specifications		●		\$31,450	\$31,450								
5.9 Roadway Paving Plans, Details and Specifications		●		\$26,810	\$26,810								
5.10 Traffic Striping, Signing, Signalization Plans, Details and Specs.		●		\$30,470	\$30,470								
5.11 Sidewalk Paving Plans, Details and Specifications	●		\$30,208		\$30,208								
5.12 Planting Plans, Details and Specifications	●		\$31,398		\$31,398								
5.13 Soil Improvement Plans, Details and Specifications	●		\$20,691		\$20,691								
5.14 Irrigation Plans, Details and Specifications	●		\$25,320		\$25,320								
5.15 Lighting Plans, Details and Specifications	●		\$38,085		\$38,085								
5.16 Electrical Service Plans, Details and Specifications		●		\$37,000	\$37,000								
5.17 Furnishing Plans, Details and Specifications	●		\$17,626		\$17,626								
5.18 Identity, Directional & Business Signage Plans, Details & Specs.	●		\$16,470		\$16,470								
5.19 Banner Sign Design Plans, Details & Specs	●		\$23,906		\$23,906								
5.20 Gateway Design Plans, Details and Specifications	●	○	\$85,250	\$2,500	\$87,750								
5.21 Construction Phasing Strategy		●	\$2,030	\$7,825	\$9,855								
5.22 Construction Traffic Management Plans, Details and Spec.		●		\$28,720	\$28,720								
5.23 Construction Property Access Plans, Details and Spec.	○	●	\$2,030	\$5,000	\$7,030								
5.24 Packaging of Technical Specifications and Special Provisions		●		\$14,000	\$14,000								
5.25 Construction Cost Budget Estimates	○	●	\$3,654	\$13,000	\$16,654								
5.26 Preparation of Landscape Maintenance Manual	●		\$8,348		\$8,348								
5.27 Attend Pre-Bid Conference	●	●	\$698	\$660	\$1,358								
5.28 Assist the City during Bidding and Contract Negotiations	●	●	\$3,411	\$3,000	\$6,411								
Subtotal: Part 5			\$469,188	\$318,435	\$787,623								

DANA POINT TOWN CENTER**DEL PRADO AND GATEWAY INTERSECTION IMPROVEMENTS**

June 11, 2008

PROJECT RESPONSIBILITY AND FEE MATRIX														
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			Key											
			Prime Responsibility	●										
			Shared Responsibility	◐										
Supporting Role	○													
	ROMA	Psomas	ROMA	Psomas	TOTAL									
Total: All Parts			\$1,346,500	\$980,100										
Direct Costs (T&M)			\$38,400	\$10,000										
GRAND TOTAL			\$1,384,900	\$990,100										

• Owner Responsibility Budget	\$ 408,590
• Design Cost Excluding Owner Responsibility	\$ 2,091,410
• Contingency	\$ 125,000
• Items above are fixed fee unless budgeted as T&M (Time and Materials) as annotated. Hourly rates remain fixed for contract term.	

EXHIBIT C – Roma Design Group Fee Schedule

ROMA

**HOURLY RATE SCHEDULE – DANA POINT
FOR PROFESSIONAL SERVICES****2008**

Boris Dramov	\$250
Bonnie Fisher	\$220
Craig McGlynn	\$180

ANNUAL RATE ADJUSTMENTS: The above rates shall remain in effect for the calendar year indicated. Thereafter, the rates may be subject to annual adjustment.

METHOD OF PAYMENT: Professional services are billed monthly and payment is due 30 days following date of invoice. Invoices unpaid after 30 days are subject to a service charge of one and one-half percent per month. ROMA reserves the right to suspend work on this project if payment is not received within 45 days from invoice date.

REIMBURSEABLE EXPENSE: Actual expenditures for the Project are reimbursable at cost plus ten percent of coordination and processing, and will be billed in addition to professional service fees. Examples of reimbursable expense are transportation and living expenses while traveling in connection with the Project, long distance

EXHIBIT D – Psomas Fee Schedule**P S O M A S****Public Works
Fee Schedule**

Effective January 1, 2007 – December 31, 2008

CLASSIFICATION	RATE (\$)
Principal-in-Charge	\$160 - \$190
Senior Project Manager	\$150 - \$180
Project Manager	\$145 - \$180
Project Engineer	\$125 - \$155
Staff Engineer	\$ 90 - \$130
CAD Designer	\$ 85 - \$115
Engineering Intern	\$ 45 - \$ 60
Administrative Assistant/Analyst	\$ 60 - \$ 85

Expert Witness Testimony – two times normal rate

Hourly rates include direct labor, overhead, fringe benefits and fee.

NOTE: RATES ARE SUBJECT TO CHANGE AFTER JANUARY 31, 2008**REIMBURSABLE EXPENSES**

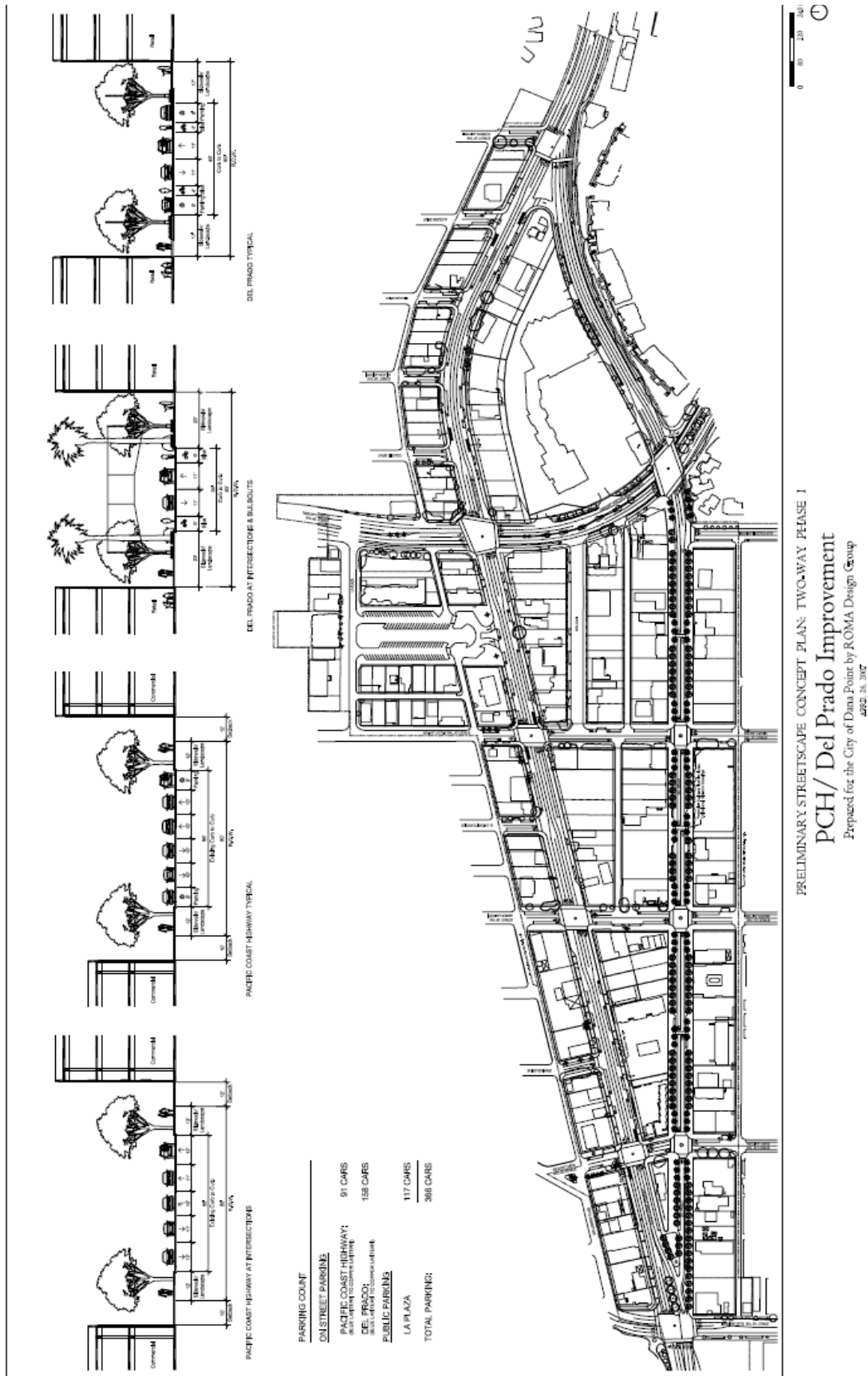
Mileage for field travel is charged at .50\$/mile and parking expenses incurred by office employees are charged at cost. Prints, messenger service, subsistence and other direct expenses will be charged at cost plus ten percent. The services of outside consultants or contractors will be charged at cost plus fifteen percent.

SPECIAL EQUIPMENT

Standard computer and technology costs are incorporated into the hourly rates shown above.

Survey and other specialty equipment will be charged at a per unit per day rate.

SUPPORTING DOCUMENT B: Proposed Conceptual Two-Way Plan



SUPPORTING DOCUMENT C: Roma Design Group Summary

Roma Design Group Summary of Street Design Experience

ROMA Design Group is an interdisciplinary firm comprised of architects, landscape architects and planners that has, over the years, established a reputation for excellence in the design of the public realm of cities. In particular, the firm is noted for its groundbreaking work in reconceiving the role of the street in repositioning downtown areas and sparking revitalization of retail, dining and entertainment districts. ROMA is well known for its project experience in California, such as the award-winning Santa Monica Third Street Promenade, the Embarcadero Roadway and Open Spaces on the downtown San Francisco waterfront, Pacific Avenue in downtown Santa Cruz, and the Park/Bay linkage – Park Boulevard – in downtown San Diego. In addition, the firm has worked on streets and boulevards across the US and around the world, including Orchard Road in Singapore, one of the leading shopping streets in Asia, and Makati and Ayala Boulevards in Makati, downtown Manila. ROMA is proud of its track record of implemented projects which amount to several hundred million dollars of investment into main streets, the heart of the community and the center of commercial retail districts.

Much of ROMA's street design work focuses on integrating pedestrian, bicycle and transit movement while balancing the needs for vehicular movement and access. In many cases, the success of a single project has catapulted the firm into a successive series of projects over a sustained period in a selected number of cities. Many years ago, ROMA designed the 16-block Downtown Transit Mall that was, at the time of implementation, the largest public works project that San Jose had undertaken in its history. Following several years of success on the two transit streets, ROMA continued on to design the upgrade of the transit facilities and the modifications needed at each platform for the low-boarding vehicles. In Santa Monica, ROMA began work that has spanned nearly two decades, beginning with design of the successful Third Street Promenade in Downtown and planning the downtown transit streets and other streetscape improvements to help extend the success of Third Street into the rest of the Downtown and to improve the pedestrian environment and accessibility by transit. In Union City, ROMA has undertaken numerous related projects having to do with the Intermodal Station (including the design of BART Station improvements, site and street improvements, bus intermodal facilities and transit plaza as well as planning for a new transit-oriented development adjacent to these facilities).

Within San Francisco, ROMA has worked for many years on the transformation of the Embarcadero from a single purpose movement corridor into an attractive recreational and transit-oriented boulevard that accommodates cars, transit, bicycles and pedestrians. After the Loma Prieta earthquake, we redesigned the Embarcadero within the central area in front of the landmark Ferry Building, including the pedestrian promenades and the transit plaza, and the transit stop for the historic F-line trolleys.

Currently, ROMA has a number of street projects that are under construction or nearing construction or were just recently completed, including the main street of downtown Isla Vista, and entrance to UC Santa Barbara (Pardall Road), the 11th Street connection into a transit/mixed use district in Union City, and planning for the extension of the Third Street Promenade to create an open-air connection which is now

being built through the existing enclosed shopping mall to Colorado Street and the Civic Center in Santa Monica.