



November 5, 2009

Karl Schwing, Supervisor  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, Ca 90802-4302

Re: Dana Point Headlands  
Local CDP 04-23  
Response to Commission Staff Letter of October 20, 2009

Dear Mr. Schwing:

The City is in receipt of the above referenced letter, wherein the California Coastal Commission ("CCC") staff raises concerns regarding the recently completed public improvements for the Headlands project. The City of Dana Point ("City") has reviewed the issues raised and, in general, finds that your concerns are not based on a complete and thorough analysis of the physical characteristics of the site, nor the actual conditions and terms of the underlying Local Coastal Program 01-02 ("LCP") and Coastal Development Permit 04-23 ("CDP"). Our response to the specific issues is found below, formatted in the same order as referenced in your letter. Your letter also makes several reference to requirements of the Coastal Act, however, following the certification of the LCP, the standard of review for the Headlands project has been the certified LCP and not the Coastal Act.

**1. Obstruction of Public Views along the North Strand Beach Access Stairs and the southerly end of Strand Vista Park.**

Your letter states that vegetation (i.e., project landscaping) has created the "obstruction" of public views from the North Strand Beach Access Stairs and the southern end of the Strand Vista Park, or as you put it: "The vegetation currently planted along these areas creates a 'no view' condition." As the attached photographs demonstrate, extensive ocean views (even white water views) are available from both the North Strand Access Stairs and the southerly end of Strand Vista Park in the exact areas you are describing (see Exhibit 1). Ocean views will remain from these locations even after the landscaping matures. Hence, you conclusion that a "no view condition" exists is inaccurate.

More importantly, the suggestion that these specific areas were intended to provide specific public views of the ocean and the Headlands, to the west and the south, is inconsistent with the certified LCP. As noted in LCP Figure

4.5.3, *Coastal View Opportunities*, these areas were designated as having "Intermittent" view conditions. Apparently, your definition of intermittent is at odds with common standards. For example, the 2009 Merriam-Webster Dictionary defines intermittent as: "Coming and going at intervals: not continuous," the synonym given is "occasional." The 2008 American Heritage Dictionary defines intermittent as "Stopping and starting at intervals." Thus the LCP clearly anticipated that in those areas identified as "intermittent" coastal views would not be continuous and, in fact, may not occur at all in certain portions. The fact, as confirmed in Exhibit 1, that numerous ocean views do occur in these areas contradicts your "no view" v. "intermittent" view analysis.

The LCP Figure 4.5.3 also provides an anticipated "Direction of View" for the view opportunities depicted through the use of arrows. This is particularly relevant to areas where "intermittent" views are identified. The requisite arrows as found in Figure 4.5.3 clearly indicate that the views you are claiming, i.e., views of the Headlands, were never intended or required in the referenced areas. For the North Strand Beach Access, the direction of view is west, straight out and parallel to the stairway. No direction of view is shown on Figure 4.5.3 to occur towards the Headlands project or the Headland landform as you allege in your letter, which is to the south. The views to the south in this area were always limited due to the proposed landscaping and height of the homes in the project. Ironically, the views in this area truly exceed those required by the LCP because the neighboring community, Niguel Shores, chose to have us remove the vegetation that blocked the ocean views to the north. Hence, this area actually contains significantly more public ocean views than the LCP required.

The exact same condition exists at the southern end of Strand Vista Park. No view or direction arrows are shown for this area of the Strand Vista Park, and in particular, no arrows designate views to the west or the south as they do along the rest of the Park. Rather, the entire southern section is designated as providing "intermittent" views, which it clearly does as illustrated in the above referenced Exhibit 1, where ocean views occur to the north. View blockage to the west and the south was anticipated and authorized in the LCP. Again, the reason is that the homes, which have a 28' height in this area, will completely obscure the ocean and the Headlands landform, hence no public views to the west or south will ultimately exist.

Hence, a close examination of the facts and underlying approvals, including the attached photographs, reveals that the coastal views afforded from the North Strand Beach Access and the southern end of the Strand Vista Park exceed the requirements in the LCP. Therefore, the City does not agree with your conclusion that the existing conditions are inconsistent with or in violation of the LCP.

**2. Gates and Hours of Operation at the Entryway to the Mid-Strand, Central Strand and South Strand Beach Accessways.**

Your letter raises several concerns regarding the posted public access hours for the Mid-Strand, Central Strand and South Strand Beach Accessways. To clarify matters, the City has established the hours of operation for these public facilities as explicitly authorized by the LCP. Please see LCP Table 4.5.4, *Strand Vista Park/Public Access, Public Access Program Guidelines*. Item 2 from the referenced Table 4.5.4 requires the City to make sure that the Accessways are "open to the public year-round" and further requires that the "City will determine hours of operation." Hence, the LCP clearly and properly gives the right and places the responsibility upon the City to administer the public access program, since the City is the agency that is going to ultimately own, maintain, police, and assume liability for these facilities. To suggest that the City now needs a separate Coastal Development Permit to determine the hours of operation for the parks and public trails is in direct conflict with the certified LCP, which solely authorizes the City to determine the hours, and the approved CDP that authorizes the construction of the parks and trails.

In determining the hours of operations, the City has reviewed and considered a number of public health, safety and welfare factors to create a comprehensive program. Two of the public trails, the South Strand Beach Access and the North Strand Beach Access are open year round from sunrise to sunset and from sunrise to 12:00 pm, respectively. Therefore, your observations that the public is being restricted from the beach to a "greater degree than anticipated or allowed in the policies of the LCP" are without merit. Exactly what "anticipated" hours are you referencing? The LCP, other than giving the City the specific authorization to set the hours, makes no reference to any hours of operation for the parks and public trails. The Mid-Strand and Central Strand Beach Access, given that they are located within a residential community which potentially creates significant safety issues, are open year round from 8:00 am to 5:00 pm in the winter and from 8:00 am to 7:00 pm in the summer.

Your letter also incorrectly alleges that by not allowing 24 hour public beach access the City has violated the LCP. This comment makes no sense, as it is an established legal right that local agencies routinely limit public beach access via public trails as the potential for crime and criminal activities, as well as public accidents both at the beach and on the trails, goes up exponentially after daylight hours. This is why virtually every city and county in the state of California places restrictions on coastal access.

Your letter also takes issue with the gates that were built in conjunction with the Mid-Strand and Central Strand Access paths. These gates are intended to restrict access during non-operating hours. As such, to clarify the intent we

will have the developer install a feature that requires that the gates remain in an open position during operating hours. However, without the gates to serve as controls for access, hours of operation would be meaningless. This is an important feature for the City and its citizens. Unfortunately, as a beach community, the City and the Headlands site in particular attract some visitors who have little respect for public safety or private property. Over the past several years there have been dozens of instances of vandalism, trespassing, theft, etc. and threats of violence from individuals and groups in regard to the Headlands property. A number of these incidents required police reports, and have occurred as recently as last week. Several of these incidents have involved felonies. It is extremely important that the City have the tools to properly protect its citizens, their safety and welfare, as well as their property. This can be done in a way that also provides public coastal access.

Thus, the public will have several coastal and tidelands access options available throughout the Headlands project (six counting the funicular and the revetment path). The above described City regulations for coastal access are based on clear legal precedents established throughout the State. In fact, the State of California itself sets hours restricting use of State beaches, adjoining parking lots and related facilities, and uses gates and similar structures where required to enforce its regulations. Conspicuously missing from your letter was any acknowledgement that each of the beach access entry signs, besides noting the hours of operation, included two inch bold lettering announcing "Coastal Access." Such signage was designed to openly invite public access, while informing the public that the City has set the hours of operation in a manner that enhances the public health, safety and welfare.

**3. Public Coastal Access Signage in Planning Area 2.**

The City agrees with your observation that additional signage is necessary to clearly depict the public beach access within Planning Area 2. As such, we will require the developer to provide the appropriate Beach Access directional signage. A photograph of such sign is included as Exhibit 2.

You go on to state that public access "may not be restricted" within Planning Area 2, but this allegation misinterprets the LCP and is contradicted by the underlying facts. The section of the LCP that you reference was intended to define the relationship between the gates that restrict public vehicles and the funicular. Planning Area 2 consists entirely of private property, including the streets, except that the City retains a public easement on the sidewalk for public beach access. The easement obviously runs over that portion of the streets that connect the sidewalk. Nothing in the LCP authorizes the public to trespass on private property. Moreover, there is no reason for the public to go outside of any areas that are not specifically designated for public use, as none of these areas provide beach access. Thus, the signs that inform the public of this restriction are proper and consistent with the LCP.

**4. Screen Wall at the Lower Restroom at the North Strand Stairs.**

The letter alleges that the North Strand stairs screen wall next to the showers results in "coastal view" blockage and that vegetation would be a preferable screen. Please see the response provided above in item No. 1. Public views to the south from this location are not required in the LCP. Expansive coastal views to the west and north do occur from this location and will remain. The wall creates an appropriate buffer between the adjoining residential uses and the public shower area. Unlike vegetation alone, the wall will also help attenuate noise and light. Moreover, similar to the conditions in the southern end of the Strand Vista Park, the residential homes directly behind this area will completely obscure all views. Prior to the construction of the wall, the City had the developer's surveyor install story poles and a string line to demonstrate the building envelope of the home on the adjoining lot (see attached Exhibit 3). The allowable height of the home, at 28 feet, exceeds the height of the existing wall by over a foot.

As detailed above, the vast majority of the public amenities and improvements for the Headlands project have been implemented in full conformance with the LCP requirements. In the couple of instances where CCC staff has requested additional clarity, the City will make the requested changes as noted above. However, the City does not agree with the basic premise of the CCC staff letter when it suggests that violations of the LCP have occurred, and that amendments to the LCP or the CDP may be required. As the above response clearly details, these allegations cannot be supported by the underlying facts and permits. Please call if you have any further questions related to these matters.

Sincerely,

Kyle Butterwick  
Director of Community Development

Enclosures

cc: Doug Chotkevys, City Manager  
Patrick Munoz, City Attorney  
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