

CALIFORNIA COASTAL COMMISSION

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October 20, 2009

Mr. Brad Fowler
Director of Public Works and Engineering Services
City of Dana Point
Public Works & Engineering
33282 Golden Lantern
Dana Point, CA 92629

Re: DANA POINT HEADLANDS
Local CDP No. CDP04-23
Summary of Reconnaissance Survey of Improvements on 10/7/09

Dear Mr. Fowler:

On October 7, 2009, Commission staff, including myself and Mr. Andrew Willis, met with you at the site of the Dana Point Headlands project, approved pursuant to City of Dana Point Master Coastal Development Permit No. CDP04-23. We met, at your invitation, for a reconnaissance level survey of the public improvements that, pursuant to the Local Coastal Program and CDP, are required to be constructed by the developer and ultimately managed by a public entity. I would like to take this opportunity to thank you for the invitation and for meeting with us. We are pleased to see the progress toward completion of the parks, trails, and beach accesses, the funicular, nature interpretive center, and the ongoing habitat restoration efforts. We look forward to the opening of these public benefits which will be enjoyed by so many who recreate along our coastline. However, at the same time, we do have some concerns with the state of some of the improvements and believe the conditions now present will have a long lasting adverse impact to coastal access and resources if they are not corrected. Therefore, this letter also serves to memorialize staff's observations during our meeting and some additional issues staff has identified.

For the sake of completeness, let me also document the circumstances under which we met and those we encountered during our visit. As indicated by you, we observed completed or nearly completed public facilities at the site. We did not seek to conduct, or allow time for, a complete review of all public facilities on the entire site. In addition, we did not review City-approved project plans in conjunction with this meeting. This was, instead, a reconnaissance-level observation of some of the public facilities at the site regarding which you asked staff to identify any concerns that we saw during the site visit.

Commission staff met with you at the top of the North Strand Beach Access stairs, from which we proceeded down the steps to the landing point of the funicular. Access to and use of the funicular or its related facilities was not available at that time as final engineering certification had yet to be completed. From there we walked along the Strand Vista Park, observing conditions in the park from the Salt Creek Parking lot as access into the park was not available due to construction fencing and the absence of any construction personnel to provide entry. We were ultimately able to gain access into Strand Vista Park through an unlocked construction fence at the mid-point of the park, where we proceeded to its easterly end, observing the entry point to the Mid-Strand Vista Park Access and the Central Strand Beach Access, along the way, and ultimately ended that walk at the 'Veteran's Memorial' park. We then went by vehicle to the end of the newly constructed extension of Selva Road that leads to both the entry point to the South Strand Beach Access and the entry to the westerly end of the Headlands Conservation Park loop trail. From there we headed over to the terminus of Scenic Drive, stopping along the way to look at the entry to the steps leading from Green Lantern to the Hilltop Park. We concluded our meeting at the terminus of Scenic Drive in the cul de sac adjacent to the Interpretive Center building and parking lot at the Headlands Conservation Park. These facilities were closed and gated at the time and we did not gain entry to any trails, the parking lot, or the interpretive center.

Following is a summary of the issues we identified with regard to those public facilities we viewed on October 7th and some additional issues that have come to our attention after reviewing our photographs from the site visit and the requirements of the LCP:

1. **Obstruction of Public Views Along the North Strand Beach Access Stairs and the southerly end of the Strand Vista Park.** During our site visit, we observed several rows of vegetation planted along the length of the North Strand stairs that obstruct public views of the ocean and Dana Point Headlands from the stairs. Similarly, there is vegetation planted seaward of the Strand Vista Park walkway at its southerly end that obstructs public views of the ocean and Headlands. For the most part, there is no ocean view with the vegetation planted. Where views are not completely obstructed, it appears that such views will ultimately be obstructed once the vegetation fills in some more. There are numerous policies in the LCP requiring the protection and enhancement of public views to and along the ocean, and of significant landforms like the Dana Point Headlands. There are also very specific narrative, policies and graphics discussing the planned improvement of views from the North Strand stairs and from the Strand Vista Park area. For example, the LCP contains a map, Figure 4.5.3 (Coastal View Opportunities) that describes in detail the view conditions that are required along the North Strand access and the southerly end of the Strand Vista Park access (Planning Area 1), among other locations. In these areas, Figure 4.5.3 shows that views are to be "intermittent", as opposed to "unobstructed" or "no view", in recognition of the fact that homes constructed in the South Strand residential area (Planning Area 2) would create some view obstructions of the ocean and Headlands. The vegetation currently planted along these areas creates a "no view" condition.

During our site visit you argued that "intermittent" views could mean "no view" in those locations if one 'averaged' in the 'unobstructed' views that were present elsewhere along the Strand Vista Park access. We don't believe such interpretation is reasonable. There are three distinct view condition categories in the LCP: 'unobstructed view', 'intermittent view', and 'no view'. Had the Commission decided it was appropriate to obstruct views along the southerly part of the Strand Vista Park access, it would have applied the 'no view' category instead of the 'intermittent view' category.

Therefore, we believe the vegetation planted along these areas is not compliant with the requirements of the LCP, or the CDP which incorporates the provisions of the LCP. Vegetation should be removed or replaced with vegetation that grows low to the ground, such that individuals using these accessways have the best possible view of the ocean and Dana Point Headlands. If there is a desire to screen the homes with vegetation, this preferably should be accomplished with landscaping on the residential lots and could be reviewed by the City in conjunction with its review of landscape plans for those properties. If that screening isn't adequate, in places where the 'intermittent view' category applies, some vegetation could be used where it will screen views of homes, but only where this can be done without adversely impacting public views of the ocean and Headlands.

2. **Gates & Hours of Operation at the Entryway to the Mid-Strand, Central Strand, and South Strand Beach accessways.** During our site visit we observed that gates had been installed at the entry points to the Mid-Strand and Central Strand beach accessways. Signs posted at the entry state that the hours the public may use these accessways are 8am to 7pm May through September, and 8am to 5pm October through April. You stated that the gates would be locked/opened with a time lock mechanism. In addition, there is a sign indicating 'trail hours' of 7am to Sunset at the South Strand Beach Access and you indicated the City's intent to install a gate at the entry to the South Strand Beach Access if one can be devised that is resistant to vandalism.

Gates and restrictive access hours on dedicated public accessways are contrary to the public access requirements of the LCP and the Coastal Act. The local coastal program expressly prohibits gates or other development designed to restrict public access except in conjunction with the funicular. Furthermore, there is nothing in the City-issued CDP that authorizes gates on the public access entryways. Again, the presence of gates on these accessways is contrary to the public access improvement goals of both the Coastal Act and the Local Coastal

Program. Both a local coastal program amendment and coastal development permit would be needed to authorize such gates. It is Commission staff's position that, based on the inconsistency of such gates with the Coastal Act, it is not likely such gates would be approved by the Commission. In any event, until, authorized, the gates must be removed.

Furthermore, the coastal permit for the Headlands development which was approved by the City and subject to appeal by the Commission did not authorize the establishment of hours of operation for the accessways. The hours identified at the Mid and Central Strand accessways, 8am to 5/7pm, prevent the public from gaining access to State tidelands via these accessways even during daylight hours, which can be as early as 5am and as late as 9pm during some times of the year. In fact these hours are far more restrictive even than the hours listed on the sign for Strand Vista Park, which are 6am to 10pm. We recognize that the LCP states that the City will determine hours of daily operation for the facilities it will own in the Headlands project area. However, it is Commission staff's position that the proposed hours of operation limit public access to a greater degree than anticipated or allowed by the policies of the certified LCP and the public access and recreation policies of the Coastal Act and should not be permitted. Establishment of such a restriction on public access is a change in intensity of use and access to the water and requires a coastal permit.

Again, the City-issued coastal permit did not authorize the establishment of hours of operation that restrict the public's ability to gain access to the coast seaward of the Headlands development. In addition, the LCP specifically prohibits the residential development from being a gated community for similar reasons. Preferably, there should be no restriction on the hours of operation on a coastal accessway. People wish to access the beach, which there are State tidelands, at all hours for walking, fishing, scuba diving and other such activities. Limiting the operating hours of beach accessways limits public beach access. At this stage, these limitations need to be removed since there is no coastal permit authorizing them. If the City wishes, it may seek a coastal permit for the establishment of hours of use though Commission staff is not encouraging the establishment of such hours.

You stated a concern about safety and a need for lighting to make the accessways safe at night. If this is a concern, then the developer should install the required lighting. However, such lighting should be minimized and directed downward and away from sensitive habitat areas. All applicable coastal permit requirements should be followed.

3. **Public coastal access signage in Planning Area 2.** A comprehensive sign program is a requirement of the LCP. We note that the signs at the Mid and Central Strand accessways, which pass through Planning Area 2, state that coastal access is "limited to sidewalk" and "no trespassing beyond public sidewalk". First, this restriction is confusing and misleading, especially considering the lack of public access signage (e.g. directional signs) within the lower residential area. It is necessary for the public to leave the sidewalk and cross two streets to reach the access point to the beach. Furthermore, this is contrary to LCP requirements which state that "[o]nly public vehicular access may be restricted" in Planning Area 2, if a funicular is installed and operating. The LCP says that "Public pedestrian and bicycle access shall not be restricted" in Planning Area 2 (and 6) (see Section 3.4.A.6, page 3-19). Thus, signs which limits access to the sidewalk only restrict public access in a manner that is contrary to the LCP. These signs should be removed and may be replaced only if coupled with directional public access signage that makes clear where the public is allowed and also protects private property within the Headlands.
4. **Screen wall at the lower restroom/funicular station at the North Strand Stairs.** Near the bottom of the North Strand Stairs, where a new restroom and funicular station were constructed, we pointed out the public view obstructions created by a wall newly installed in the vicinity of the new showers. You explained that the screen wall was necessary to create visual separation between the restroom facilities and the adjacent nearby home site. If screening is necessary, ideally that screening would be located on the home site where public view blockage would be minimized instead of at the North Strand stairs where public view blockage is most extreme. Vegetation in lieu of a wall would also be preferable (planted on the home site). Furthermore, it appears that the wall that was installed obstructs more public view than is

necessary to create a visual separation between the restroom and the home site. If the wall is retained, it ought to be stepped/lowered and/or removed in the areas nearest to the steps where a visual separation is not necessary. Thus, we request that the City revisit the need for this wall for screening purposes and look at alternative methods for creating visual separation between the restroom/funicular and the adjacent home site that minimize/avoid public view impacts.

As you explained in the field, we recognize the City's actions to allow the installation of vegetation and a wall which blocks public views and the identified access limitations were undertaken to address privacy issues and perceived safety concerns. Similar arguments are often made in other areas along our coast where privacy is a concern. However, these actions which favor a few individuals to the detriment of the many members of the public who wish to gain access to the State tidelands is inconsistent with the Coastal Act and the Commission's certification of the LCP which applies to this area. We don't believe the vegetation, gates, and signs that are at issue in this letter are either authorized by a coastal permit or consistent with the local coastal program. Development undertaken without a valid coastal permit constitutes a violation of the Coastal Act and the certified LCP. We hope that you will address these issues immediately so that the public may fully realize all the benefits it was promised when the Headlands project was approved. Also, we have exchanged some correspondence regarding vegetation clearance within ESHA at the Hilltop Park. We will address that with you as a separate matter.

Again, thank you for taking the time to meet with us to review site conditions. Please let me know if you have any questions, or wish to discuss further.

Sincerely,



Karl Schwing
Supervisor, Regulation & Planning

Cc: Kyle Butterwick, City of Dana Point
Sanford Edward, Headlands Development LLC
Andrew Willis, CCC
Teresa Henry, CCC
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