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May 20, 2019

California Coastal Commission
c/o Liliana Roman
Coastal Program Analyst
301 E. Ocean Blvd. Suite #300
Long Beach, CA 90802
562.631.8855
By Email: Liliana.Roman@coastal.ca.gov

Re: Opposition to Proposed Residence at 217 Vista Marina in Designated Coastal Canyon ESHA in the City of San Clemente; Coastal Development Permit Application 5-18-0930 (Graham)

Dear Ms. Roman,

On behalf of our clients Friends of Trafalgar Canyon, we strongly object to the potential approval of the proposed Coastal Development Permit for 217 Vista Marina in the City of San Clemente (City).

IN SUMMARY

- 1. Residential development in Trafalgar Canyon is illegal because encroachment into a coastal canyon is illegal. For 40 years this law has been strictly enforced. Since before passage of the Coastal Act, there has not been a project that intruded into a coastal canyon in San Clemente. The scope of proposed intrusion in a canyon is unprecedented, and would set a precedent for development in canyons.**
- 2. Denying residential development is not a taking: the owner knew development in a coastal canyon was not possible at the time of his acquisition, as the previous owner knew as well, so there could be no reasonable investment backed expectation of being able to build.**
- 3. Development, if allowed, must protect ESHA in the canyon, public access, views, and landforms so must be substantially reduced if allowed at all.**

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This proposed project would be residential development in an area designated in the certified San Clemente Land Use Plan (LUP) as coastal canyon and containing environmentally sensitive habitat area (ESHA). The project is illegal because the City of San Clemente's LUP and Municipal Code prohibit encroachment by new development in coastal canyons and ESHA. Residential development in ESHA or ESHA buffer areas is also prohibited by the Coastal Act. Contrary to the Coastal Act and the Municipal Code, the project would include a 32-foot tall, 5,430 square foot residence, 1,429 square foot garage, 2,377 square foot terrace/deck area, grading and stabilization of the building pad, and a retaining wall surrounding the new development.

We ask that you recommend denial of the project outright. If you do not recommend denial, before the Coastal Commission proceeds any further with review of the project, the project must be referred back to the City for determination of whether or not a variance would be granted from the City Municipal Code's prohibition on development in a coastal canyon and in ESHA. If no such variances will be granted, the project application is moot because it may not legally be built.

A. The Coastal Act and the City's Municipal Code Prohibit Siting New Development, Whether Residential Or Not, in a Coastal Canyon.

The certified San Clemente LUP defines "Canyon Edge" as follows:

24. "CANYON EDGE" The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a step like feature at the top of the canyon face, *the landward edge of the topmost riser shall be taken to be the canyon edge.*

(Refer to Figure 7-1).

(LUP, p. 7-5, emphasis added.) As is apparent from this definition, a bench or riser within a canyon does not constitute the canyon edge, but rather "the landward edge of the topmost riser" is the canyon edge. A "Coastal Canyon" is defined in the LUP as "any valley, or similar landform which has a vertical relief of ten feet or more." (LUP, p. 7-6.)

Topographical maps, prior Coastal Commission CDP approvals for development well behind the canyon edge, illustrations in the LUP, and other sources all prove that the project is proposed within the boundaries of Trafalgar Canyon. (Enclosure 1, Land Protection Partners Report). We are herewith submitting the extensive report prepared by

geomorphological experts at Land Protections Partners. (Enclosure 1.) We ask that you carefully consider this report in preparing your evaluation of canyon boundaries.

1. The Certified LUP and San Clemente Municipal Code Prohibit New Development in Coastal Canyons.

The certified San Clemente LUP clearly states:

New development ... including principal structures and accessory structures with foundations, such as guest houses, pools, and detached garages etc., *shall not encroach into coastal canyons.*

(LUP, p. 5-9, "HAZ-12 Canyon Setbacks," emphasis added.) For your convenience, Enclosure 7 includes relevant excerpts of the certified LUP.

The San Clemente Municipal Code states:

"New development shall not encroach into coastal canyons and shall be set back...."

(SCMC section 17.56.050 subd. (D)(2), emphasis added.)

The project represents a clear encroachment into the heart of Trafalgar Canyon.

2. The Proposed Project is Clearly Within Trafalgar Canyon.

a. The LUP Makes Trafalgar Canyon Boundaries Clear.

The Trafalgar Canyon boundaries are clearly delineated in the LUP. (LUP, pp. 4-8 and 6-7.) The boundaries have been accepted and incorporated into numerous City and Coastal Commission reviews of development in the area.

b. Prior Coastal Commission Approvals Make Canyon Boundaries Clear.

The Commission has approved three coastal development permits on the south side of Trafalgar Canyon in the relevant area that clearly delineate the canyon boundary in a way that proves the project site is wholly within the coastal canyon, and is sited on a bench within the canyon.

These approvals delineating canyon boundaries on the southern edge of Trafalgar Canyon occurred within the following CDP cases:

CDP 5-17-0607 (Worthington) Approved May 11, 2018.
CDP Application 5-06-389 (McKernan)
CDP Application 5-04-436.

(Enclosure 7.)

There can be no reasonable dispute as to the boundaries of the canyon wall as these boundaries have been established by prior Coastal Commission approvals.

The consequences of a canyon boundary determination as requested by the project applicant would be dire. If a canyon edge is determined to be in the depths of Trafalgar Canyon as the project applicant requests, this would have dire consequences for the protection of the rest of Trafalgar Canyon. Previously well settled determinations of boundary edges would be questionable and it is entirely foreseeable that other property owners along the erstwhile edges of the canyon would submit applications for development within the canyon which would no longer be protected by a clear boundary determination. To maintain the protections that coastal canyon designation provides to Trafalgar Canyon, the canyon edge determination must be consistent with past determinations, and not realigned to where the project proponent requests it to be.

**c. Coastal Staff Has Correctly Noted the Project site is
“Wholly Within” the Canyon Boundaries.**

Coastal Commission staff planner Liliana Roman in an email to Brian Swanstrom dated Friday, April 19, 2019, and likely numerous other communications stated “The site appears to be entirely within a coastal canyon.” This assertion of the presence of the project site “entirely” within the coastal canyon is accurate. This is obvious to anyone who visits the canyon.

**d. Applicant Assertions That the Project is Outside
Trafalgar Canyon Boundaries Are Nonsense.**

Contrary to this clear delineation and long history of accepted boundaries, we understand the project proponent’s representative has tried a convoluted explanation of why the project site should not be regarded as being within Trafalgar Canyon. (Mark McGuire email to Liliana Roman dated March 21, 2019.) Reliance on selectively produced historical photos to redefine canyon boundaries is erroneous. The secondhand characterizations of an unnamed geologist’s opinions based upon ambiguous photographs

about canyon boundaries should be disregarded. If historical depictions are used in an attempt to redraw canyon boundaries, more accurate and useful depictions such as the U.S. Coast Survey maintained by the USGS are more informative, clearer, and supportive of the LUP-designated boundaries of Trafalgar Canyon.

The project site is on a bench within Trafalgar Canyon which is “40 feet below the prevailing grade at the top of the canyon.” (LPP Report, [Enclosure 1], p. 21.) It is apparent from email communication that coastal staff also has taken the view that the flat area where the project is proposed is a bench within the canyon boundaries, not somehow the top of a canyon within the canyon. It is not “the topmost riser” which is the definition of the Canyon Edge in the LUP. (LUP, p. 7-5.)

While the City mistakenly approved the proposal “in concept” on September 5, 2018, this approval in concept was a “preliminary approval” that “does not grant the recipient any development rights.” (In-Concept Review Approval (ICRES 18-095), September 5, 2018, p. 1.) The City should not have provided this approval in concept to the project proponent. We note that the ICRES 18-095 did not make a determination that the project was outside the canyon or respected the canyon buffer requirements but instead merely stated “Upon resubmittal, please note the percentage of the depth of the lot and setback as appropriate on the plans.” (ICRES 18-095, p. 3.) The basis for the City in-concept approval was after-the-fact modification of a Toal Engineering topographical survey to note a canyon edge that does not match either of two previously submitted Toal engineering surveys.

The City has not approved the project within canyon boundaries and not made any determination it includes the allowed setback. In fact, the City has not applied over two dozen LUP and municipal code laws that apply to this development.

No development at this location may be approved without several variances from the City. However, the City failed to review the project as was necessary, failed to make findings that might support a variance, failed to conduct adequate environmental review, failed to give the public notice of the pending application, failed to post the grant of the ICRES on the City’s website until February 2019, 5 months after Approval in Concept, and failed take other steps necessary to legally approve the proposed project.

Even so, the current status of the City’s LUP has the Coastal Commission as the regulatory body for approving or denying coastal development. With this and the clear violations of the LUP that the Coastal Commission is duty bound to enforce, a denial by the Coastal Commission is the correct course of action.

If for some reason denial by the Commission at this stage will not happen, the application must be referred back to the City for a determination of whether or not

variances from the City's Municipal Code prohibitions on this development can be granted. It is our understanding that a previously proposed project for the same or nearby site failed to obtain a variance from the City to allow development in the canyon and for that reason the proponent dropped pursuit of the project. This failure to obtain approval occurred in 1999 and ever since then no projects have been approved by the City for development on this parcel. (See Enclosure 9, Application for CDP for 217 Via Marina and subsequent email.)

The applicant's representative Mark McGuire has misinformed you that the City of San Clemente "has NEVER required a variance to be processed for ANY home/project within the City because it "encroaches into a coastal canyon." (McGuire email to Liliana Roman, April 30, 2019.) This is wrong. *The City has consistently denied requests to build in its coastal canyons and required strict setbacks for projects.* These denials or required setbacks include but are not limited to a variance application for a residence at 610 South Ola Vista. (Enclosure 4.) We have reviewed City files as far back as 1980 and the City was already then denying requests to encroach into coastal canyons. Despite multiple prior attempts by previous owners, development has never been approved in Trafalgar Canyon itself and for properties above the canyon, strict setbacks have been enforced with "replacement development" required to be moved further back from the canyon edge. In a very good example, a simple fence was not allowed on the boundary between the property in question and the one above it outside the canyon at 206 Calle Conchita (see enclosure 9 [email stating Calle Conchita placed on hold]). The proposed development has a large wall here. If a fence is not allowed, clearly a wall is not. While there have been City variances for front yard reduced setbacks, and other minor changes, nothing to this point has gone to the Coastal Commission that was inconsistent with the certified LUP.

As another example, a proposal for this very same parcel at 217 Via Marina was submitted to the City in 1999, but then was withdrawn with no action, likely because it would have been denied. (Enclosure 9, CDP application for 217 Vista Marina.) It is our view that the City never would have approved the proposal for construction of a house on the subject parcel if it had gone through the regular process of review. For some reason¹, the City has failed to screen out and stop this Project. A residence in the canyon was apparently proposed, and story poles were erected on the project site with a picture including them taken in 2006 (see enclosure 1, pp. 18-20 and figure 22), but this

¹ It is our understanding that the plans were accepted by a contract temporary employee and the AIC was approved by an intern with limited involvement by a planner who is no longer working for the City. Unlike prior development proposals, there has been no higher-level review of the AIC by responsible City officials, no mail notification to neighbors, and no city hearings.

proposed development in the canyon was never approved. The attached LPP Report states:

Story poles can be seen on the property in 2006 (Figure 22), which gives a good perspective on the grade changes in the area being proposed for development, and a view of just how much the proposed development site is part of the overall canyon topography. A large cluster of scrub vegetation on the flattened area has been removed and is not seen, except for perhaps some resprouting plants, in subsequent photographs in 2008 (Figure 23), 2010 (Figure 24) and 2013 (Figure 25)

(Enclosure 1, p. 20.) No story poles were erected as part of the current application.

The City has consistently denied applications for development in Trafalgar Canyon and the Commission may not legally approve a project that clearly violates the San Clemente LUP and Municipal Code.

B. The Project is Proposed in ESHA, Where the Coastal Act Prohibits Residential Development Because Residential Development is Not a Coastal Dependent Use.

There is no reasonable doubt that the project is proposed in Trafalgar Canyon and that Trafalgar Canyon contains ESHA. It is ESHA because of the presence of endangered Giant Ryegrass and Lemonade Berry. Biological resource experts at Land Protection Partners have opined that ESHA exists on site. (Enclosure 1.) The 25-foot buffer analysis map prepared by Glenn Lukos Associates for the owner depicts practically the entire site would be within the buffer area for this ESHA. (Enclosure 2.) Maps of the proposed project site demonstrate that it is proposed squarely within Trafalgar Canyon. Trafalgar Canyon is clearly designated in the Land Use Plan. (LUP 4-3 [“There are nine coastal canyons in San Clemente, including the two Marblehead Coastal Canyons, Palizada Canyon, Trafalgar Canyon, Toledo Canyon, Lobos Marinos Canyon, Riviera Canyon, Montalvo Canyon, and Calafia Canyon (see Figure 4-3 Coastal Canyons General Location Map)”]; 5-1, 4-14 [Figure 4-3].)

1. The Coastal Act Prohibits Residential Development In ESHA Because Residential Development Is Not A Resource Dependent Use.

One of the primary objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats. (Pub. Resources Code § 30001.5, subd. (a).) Thus, rare and most ecologically important habitats are protected from development. Section 30107.5 of the Coastal Act defines “environmentally sensitive area” as an “area in which plant or animal life or their

habitats are either rare or especially valuable because of their special nature or role in an ecosystem and *which could be easily disturbed or degraded by human activities and developments.*" (*Id.*, emphasis added.) To that end, Public Resources Code Section 30240 mandates:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, the court confirmed that, for ESHA resources, the requirement for protection is "heightened." (*Id.*, at p. 506; see, also, *Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346, 1376.) That protection is guaranteed by imposing "consequences of ESHA status," i.e., "strict preferences and priorities that guide development." (*Sierra Club v. California Coastal Comm'n* (1993) 12 Cal.App.4th 602, 611; *McAllister v. California Coastal Commission, supra*, 169 Cal.App.4th 912, 923.)

"The language of section 30240(a) is simple and direct." (*McAllister, supra*, 169 Cal.App.4th at 928.) As the court stated:

The statute unambiguously establishes *two restrictions* on development in habitat areas: (1) there can be no significant disruption of habitat values; and (2) only resource-dependent uses are allowed. The only potential ambiguity involves the phrase 'those resources,' which does not refer back to a list of resources. However, the context makes it clear that the phrase could only be referring to the resources that make an area a protected habitat—i.e., 'plant or animal life or their habitats [that] are either rare or especially valuable because of their special nature or role in an ecosystem....' (§ 30107.5)

Thus, together, the two restrictions limit development inside habitat areas to uses that are dependent on the resources to be protected and that do not significantly disrupt habitat values. This interpretation not only reflects the plain meaning of the statutory language but also harmonizes the two parts of section 30240(a) in the only way that makes sense, protects habitat areas, promotes the goals of the Coastal Act, and complies with our mandate to construe the Coastal Act liberally to achieve its purposes and objective.

(*McAllister, supra*, 169 Cal.App.4th at pp. 928-929, emphasis added.)

Therefore, the proposed project is prohibited by the Coastal Act because it is a non-resource dependent use proposed in an ESHA and because it would significantly disrupt ESHA habitat values.

2. Even if ESHA is Degraded, Residential Development is Not Allowed in the Area.

Workers have been in the canyon clearing three times in the past month. Prior to that, the type and frequency of clearing since ownership changed in 2017 is unprecedented. The unprecedented type of clearing has workers using string trimmers and creating dust clouds while grinding down canyon soils. Members of Friends of Trafalgar Canyon also have submitted video to Mr. Jordan Sanchez of herbicide spraying that the worker denied doing until told there was video evidence. At that point the worker said he was spraying Roundup. This work accelerated and intensified after a neighbor told the developer that the work was likely illegal under the Coastal Act. We objected to this activity at the Commission's May 8, 2019 hearing when we also submitted a letter of objection. A copy of our May 8, 2019 letter is attached. (Enclosure 3).

The owner/applicant has recently intensified his vegetation removal efforts in order to purposefully degrade the ESHA before the application is considered by the Commission. We have contacted Jordan Sanchez of Coastal Commission enforcement staff to ask that a Notice of Violation be issued immediately, and that all vegetation removal activities, which appear in furtherance of the application that has not been approved yet, immediately cease.

We included photographs from Google Earth that show the extent of vegetation in 2017 before the current owner compared to the much smaller extent of vegetation in 2018 after the owners' vegetation removal activities denuded significant portions of Trafalgar Canyon. The current owner acquired the property on September 22, 2017.

Even if the property owners' vegetation removal activities have degraded areas of ESHA over the past year and a half, these areas of Trafalgar Canyon ESHA must still be protected as ESHA. In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, the court determined section 30240 protects "the area of an ESHA," not just "habitat values," and concluded that residential development could not be allowed in part of a eucalyptus grove even if that part was already degraded. (*Id.* at 507, emphasis in original.)

Futhermore, as Land Protection Partners identifies, a storm drain system that would be installed under the lemonade berry ESHA would disrupt the lemonade berry ESHA. (Enclosure 1.)

C. Project Denial or Requiring Alternative Design of the Project That Protects the ESHA and Does Not Encroach in a Coastal Canyon Would Not be a Taking.

1. Denial of a Project That is Illegal Under the Coastal Act and the San Clemente Municipal Code is Not a Taking.

We have been informed that you have repeatedly responded to numerous public comments objecting to the project with a statement to the effect of:

The site appears to be entirely within a coastal canyon and is a legal lot zoned by the City 'RL' for Residential - Low Density development, apparently created in the original Ol[e] Hanson subdivision. Again, the site is a legally established lot zoned for residential use and because of its location within a coastal canyon, is also subject to the canyon protective policies of the certified San Clemente Land Use Plan. Outright denial of *a residential use* of this private property would be an unconstitutional taking of private property.

(Email of staff dated April 24, 2019.) *Outright denial of the proposed project would not constitute an unconstitutional taking of private property because the project is illegal as proposed.*

2. Federal law demonstrates project denial in this case would not be a taking.

Because the United States Constitution prohibits government from taking property without just compensation, a brief examination of federal law is necessary. Consistent with the United States Constitution's prohibition on taking property without just compensation, governmental regulation of a piece of property will not result in liability for a taking *unless no economically viable use of the property remains*, as long as the action substantially advances a legitimate state interest. (*Lucas v. South Carolina* (1992) 505 U.S. 1003, 112 S. Ct 2886.) Generally, a regulatory taking will not result if the value of a use allowed somewhere on the property, or a remaining right of ownership, is sufficient to allow a beneficial or productive use to the property as a whole. The legal standard for a taking under *Lucas v. South Carolina Coastal Council* (1992) 505 US 1003 is whether the denial would deprive the property owner of "*all economically beneficial use*" of the property. (*Id.* at p. 1019.) A later Supreme Court decision clarified that the *Lucas* standard is whether the regulation "*permanently deprives [the] property of all value.*"

(*Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency* (2002) 535 U.S. 302, 332 [*Tahoe-Sierra*].) The Ninth Circuit more recently confirmed that “*Lucas* plainly applies only when the owner is deprived of all economic benefit of the property. If the property retains any residual value after the regulation’s application, *Penn Central* applies.” (*Horne v. USDA* (2014) 750 F.3d 1128, 1141 n. 17 [internal citation to *Lucas* omitted].)

Substantial diminutions in property values can occur without creating public agency liability for a taking. (*Hadacheck v. Sebastian* (1915) 239 U.S. 394 [92.5% diminution in value]; *William C. Haas Co. v. City of San Francisco* (9th Cir. 1979) 605 F2d 1117 [95% diminution in value].) It is sufficient if there is a “reasonable beneficial use.” (*Williamson County Planning Comm;n v. Hamilton Bank* (1985) 473 U.S. 172, 194.) Moreover, not every land-use restriction, which designates areas on which no development is permitted results in a compensable taking. The governing constitutional authority recognizes that the impact of a law or regulation as applied to a specific piece of property determines whether there has been a compensable taking. Compensation need not be paid unless the ordinance or regulation fails to serve an important governmental purpose or “goes too far” as applied to the specific property that is the object of the litigation. (*Pennsylvania Coal Co. v. Mahon*, (1922) 260 U.S. 393, 415.)

Especially because the 217 Vista Marina property is in a sensitive ecological area with steep slopes that could be unstable, but which provide natural landforms and open space that benefit the entire community by their natural setting, stringent regulation of any potential development is appropriate to protect public health, safety, and welfare. Starting in the 19th century with *Mugler v. Kansas* (1887) 123 U.S. 628, the Supreme Court has demonstrated a reluctance to find a taking where the value of the property has been diminished in an effort to protect the public health, safety and welfare.

“[A]ll property in this country is held under the implied obligation that the owner’s use of it shall not be injurious to the community.”

(*Mugler, supra*, 123 U.S. at 665.) Denial of the Vista Marina project proposal would be in the public interest because the proposal does not conform to the longstanding LUP and San Clemente Municipal Code and has significant unmitigated environmental impacts. Furthermore there is ample evidence that the developer knew or should have known any development on the property was illegal.

- 3. California law demonstrates denial of the project in this case would not be a taking.**

Just as the federal Constitution does not support the conclusion that denial of the project would constitute a taking, neither does the California Constitution. California courts repeatedly have held a public entity is not liable for injury caused by denial of a project when it has discretionary authority to do so. (*Selby Realty Co. v. City of San Buenaventura*, (1973) 10 Cal.3d 110.)

Even where a City Council took several actions apparently with the specific intent of blocking the property owner's proposed project, no liability inured. (*Stubblefield Construction Co. v. City of San Bernardino*, (1995) 32 Cal.App.4th 687.) In *Stubblefield*, despite a series of zoning actions, which targeted, and ultimately significantly impaired the value of the plaintiff developer's land, the appellate court found no violation by the City of the Constitution's guarantees of substantive due process and equal protection. The court found that the developer did not have a vested right to build his project in compliance with the laws applicable at the time of his application to build. (*Id.*, at 708.) Further, the court held that the City Council's zoning actions, which were in response to the concerns of constituents in the affected area, had a rational basis and therefore were not a violation of substantive due process. (*Id.*, at 710.) San Clemente's prohibition of development in coastal canyons is well-founded and protects public health, safety, and welfare. Similarly, the Coastal Act's prohibition of development adversely affecting ESHA protects the public health, safety, and welfare.

The California Supreme Court reversed the Court of Appeal in one of the only California cases where the Court of Appeal mistakenly found governmental liability accrued for denial of a project by the Coastal Commission. (*Landgate, Inc v. California Coastal Commission* (1998) 17 Cal.4th 1006.) In *Landgate*, the Court of Appeal upheld a trial court ruling ordering the California Coastal Commission to pay monetary damages to a property owner who temporarily was deprived of the use of his property through an unlawful permit denial. The County approved a reconfiguration of lots after obtaining an easement through property to build a road. The Coastal Commission did not object to the lot split until a subsequent, bona fide purchaser of one of the lots sought to build a single-family residence. Then the Commission denied the application, stating that the lot split was illegal, but its denial was subsequently shown to be based upon an erroneous legal conclusion. Even upon these extreme facts, the Supreme Court did not impose liability. The court stated "nothing in the record suggests that the Commission would have denied a development that fell within legally recognized, and environmentally more favorable, boundaries." (*Landgate, Inc. v. California Coastal Com'n* (1998) 17 Cal.4th 1006, 1028.) The case shows that denial of the Vista Marina proposed project, or substantial reduction of it to conform with existing legal requirements, would not deny all reasonable economic uses of the property and no taking would be found.

The takings exception that allows approval of a project despite violations of ESHA protection or other Coastal Act policies is “*a narrow exception* to strict compliance with restrictions on uses in habitat areas based on constitutional considerations.” (*McAllister v. Coastal Commission* (2008) 169 Cal.App.4th 912, 939, emphasis added.)

4. **If For Some Reason Commission Staff Incorrectly Identify Permanent Denial As a Taking, No Taking Would be Found in Denial of the Currently Proposed Project Because Alternative Designs and Uses Are Available.**

a. **Alternative Designs and Uses For the Project Site are Possible.**

We understand the applicant asserts the Coastal Commission may not deny use of the project site for residential purposes because it is allegedly a legally created residential lot. Denial of residential development in ESHA is not a taking because other types of development, including coastal dependent and economically viable uses, are permissible. For example, a nature study center or hiking waystation would be permissible uses in an ESHA. Residential uses in an ESHA are not allowed by the Coastal Act. (Public Resources Code Section 30240.)

The fact that the project site is zoned for residential use does not absolve the project proponent from having to adhere to the restrictions of the Coastal Act. As stated by the Court of Appeal:

Rather the zoning designation and resource-dependent-use restriction should be read together and the latter understood as a specific exception for areas within a zoning designation that are entitled to heightened protection as habitat areas.

(*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 936.) Thus, the zoning designation as residential does not overrule the heightened protection that is due to ESHA as the project site is within a designated ESHA.

The Coastal Commission’s denial of an application for a residence at 317 La Rambla proposed by Boca Del Canon LLC is analogous. (Enclosure 5.) This application was denied. One of the alternatives that was identified in the staff report was “Reduced Height/Reduced Square Footage/Reduced Lot Coverage.” (Enclosure 5, p. 16.)

b. **The Owner Could Have No Reasonable Investment Backed Expectations of Being Able to Build in the Canyon.**

The City has long prohibited “new development” within coastal canyons. (San Clemente Municipal Code section 17.56.050 subd. (D)(2).) Therefore, the applicant

could have no reasonable investment backed expectations of being able to build new development within a coastal canyon.

Documentary evidence establishes that the current site owner purchased the property for a price approximately 80% below the estimated market value if the property were legally buildable. With this and the public history of the lot, the owner both knew and should have known building here is illegal. Documents in the file for this case show the current owner, Graham Property Management LLC, purchased the property from Steven and Grace Martin for \$1.25 million on September 22, 2017. (Enclosure 6.) The assessed value of the property is noted as “1,250,000” and the Estimated Market Value is noted as “1,307,000.” (Enclosure 6, p. 3.)

As with the proposed house that was denied at 317 La Rambla, the “No Project” alternative “would result in the least negative impact to the environment and also would not have any adverse effect on the value of the property, though it would not, in and of itself, put the property to any productive economic use.” (Enclosure 5, pp. 15-16.)

c. Other Economically Viable Alternative Uses Are Available.

There are other potential economically viable alternatives to residential development of the lot. The owner of the site could sell it for conservation purposes or sell a conservation easement over it, thus enjoying a reasonable economic return and future tax advantages.

It is our understanding that the City has acquired several other coastal canyon parcels and kept those parcels for open space purposes. A public park was one of the alternatives that was identified as an alternative to usage of the 317 La Rambla lot for a private residence. (Enclosure 5, p. 16.) Therefore, public acquisition of the project site parcel is a viable and economically feasible option.

d. An Unpermitted Subdivision Created the Lot at 217 Via Marina.

A coastal development permit is required for the subdivision of property within the Coastal Zone. It is not clear to us that the Project site lot was legally created because it was subdivided after passage of the Coastal Act without the benefit of a coastal development permit. It appears that the lot at 217 Via Marina was subdivided from the lot at 350 Cristobal without having obtained a coastal development permit. The consequence of this unpermitted subdivision was that the 217 Via Marina was created wholly within the coastal canyon. If not for this illegal subdivision, there would be no question but that approval of new development on the 217 Via Marina lot must be denied.

D. Extensive Environmental Impacts in Addition to ESHA and Coastal Canyon Siting Require Extensive Environmental Review and Mitigation.

Additional impacts have been detailed in letters to you submitted by members of Friends of Trafalgar Canyon and other members of the public. We expect to be able to submit additional information regarding water quality impacts, visual and aesthetic impacts, and geological stability issues among others with future correspondence prior to the Commission hearing of this matter. For the moment, we note the impacts below that have been identified in correspondence by knowledgeable local residents.

1. Recreational Impacts Would Be Severe.

The Coastal Act requires proposed development shall not interfere with the public's right of access to the sea, to the shoreline, and along the coast. (Pub. Resources Code section 30210, 30211, and 30212.)

Recreational impacts from the Project would be severe. Currently, there is a widely used public trail that proceeds down the center of Trafalgar Canyon to the nearby beach. This trail would be blocked by the proposed development.

Blockage of a canyon trail was part of the reason for denial of a Coastal Development Permit for Boca Del Canon. (Enclosure 5, pp. 5-12.)

2. Fire Hazards Would Be Exacerbated.

Fire hazards would be exacerbated by the approval of the proposed development. Ms. Ellen Glynn sent you an email dated April 23, 2019 with pictures of a fire that had previously occurred in Trafalgar Canyon. Approving development without sufficient fire access will exacerbate the risks that already exists for all residents currently adjoining Trafalgar Canyon. The applicants claim that the development will enhance fire safety is nonsense. In prior fires a pump fire engine has driven onto the area in question, If built, the proposed development will block this access. Replacing this pump engine access with a fire hydrant will require firefighters to run hundreds of feet up and into the canyon with heavy hoses. This is clearly less safe for the local residents.

3. Visual Impacts Would be Severe.

The Coastal Act requires "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance." (Pub. Resources Code section 30251.) Trafalgar Canyon is visually accessible from public trails and people swimming in the ocean. That visual access would be blocked by the project. The project applicant incorrectly answered "No" to Question 10b in their application. Question 10b

Coastal Commission
c/o Liliana Roman
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asks “Is the proposed development visible from: a. State Highway 1 or other scenic route . . . b. Park, beach, or recreation area.” (Application, question 10b.) The project site is visible from a public easement beach trail down the center of Trafalgar Canyon. The project would block public views to the ocean from this public easement beach trail in Trafalgar Canyon. The project will also obstruct canyon views from a path along the ocean used by one million people each year.

4. Coastal Land Form Alterations Would be Extensive.

Alteration of coastal land forms is prohibited by the Coastal Act as new development may not “require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” (Pub. Resources Code s. 30253.) Contrary to this prohibition, the proposed project would require extensive grading and retaining walls along a coastal canyon bluff (where a simple fence has been denied before).

5. Biological Resource Impacts Have Not Been Properly Assessed.

As identified by Land Protection Partners, several potentially significant biological resource impacts have not been properly assessed. (Enclosure 1, p. 30.) These impacts include degraded water quality and collateral damage caused by rodenticides, lighting and glass walls that pose additional hazards in the confines of the canyon. (*Ibid.*)

Conclusion.

We urge you to deny the CDP application under your City of San Clemente certified LUP enforcement authority. If it is further considered, the CDP should be referred back to the City of San Clemente for clarification of whether or not a variance will be granted to allow development in a designated coastal canyon. Then, if such a variance is granted, the development that is considered must be a coastal-dependent use that does not destroy or degrade ESHA.

Thank you for your consideration.

Sincerely,


Douglas P. Carstens

Enclosures:

1. Land Protection Partners Geomorphology and Biology Report dated May 20, 2019
2. Glenn Lukos Associates 25-foot Buffer Analysis Map depicting Lemonade Berry and Rye Grass areas onsite

3. May 8, 2019 letter of Friends of Trafalgar Canyon to California Coastal Commission
4. Application for Variance No 80-08 for dwelling at 610 South Ola Vista, San Clemente- denied.
5. Coastal Commission denial of dwelling unit proposed by Boca Del Canon LLC at 317 La Rambla (CDP application 5-06-112).
6. Transaction History Report For 217 Vista Marina, San Clemente, CA
7. Relevant excerpts of San Clemente LUP.
8. Prior CDP permits (5-17-0607, 5-04-43, and 5-06-389) approved along south side of Trafalgar Canyon establishing canyon edge boundary.
9. 1999 Application for Coastal Development Permit for 217 Vista Marina and 2008 Correspondence regarding suspension of application for 217 Vista Marina

ENCLOSURE 1



Land Protection Partners

P.O. Box 24020, Los Angeles, CA 90024-0020

Telephone: (310) 247-9719

Geomorphology and Biological Resources of Trafalgar Canyon, San Clemente, California

Travis Longcore, Ph.D.
Catherine Rich, J.D., M.A.

May 20, 2019

1 Introduction

A residence is proposed to be constructed at 217 Vista Marina, San Clemente, California. The Coastal Commission must consider two important topics in considering the proposed project. First, the Commission must determine whether the project site is located within a Coastal Canyon, as defined in the Land Use Plan for the City of San Clemente under the California Coastal Act. Second, the Commission must determine the extent of environmentally sensitive habitat area (ESHA) on the project site and the impacts of the proposed project on any ESHA. This report addresses these two issues in subsequent sections.

2 Analysis of Project Location Relative to Trafalgar Canyon

We demonstrate in the analysis below that the parcel is located in the actual canyon, below the canyon edge, within the overall area known as Trafalgar Canyon. The applicant's agents have argued that the site is not in the canyon. We investigated the history and topography of Trafalgar Canyon and undertook analyses that provide additional, new information relevant to understanding the project site in relation to the Coastal Canyon.

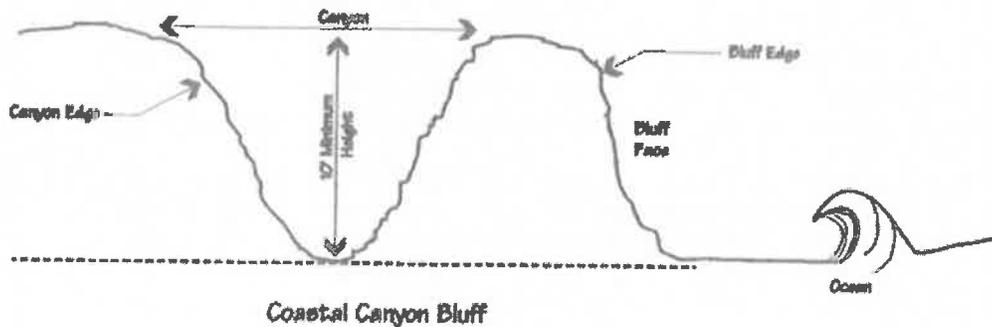
2.1 Policy Context

The Municipal Code for the City of San Clemente regulates development in a Coastal Zone Overlay District (Section 17.56.050). The regulations apply to lots designated in the "Zoning Map" (Section B). The online version of this map identifies the lot at 217 Vista Marina as being part of the Coastal Zone Overlay District and consequently the limits on development in Coastal Canyons apply. It is not disputed that the project site is within the overall area known as Trafalgar Canyon. It would seem obvious that the project site is in fact in the canyon itself because five other lots are located south of the proposed development that are at a higher elevation and have been regulated to be set back from the southern edge of Trafalgar Canyon.

Even so, the applicant has asserted that those properties are not at the top of the natural canyon and that the project site instead is the top of the canyon, thereby attempting to free the project site from restrictions on development in the canyon.

The Municipal Code provides definitions for canyon, edge, and face as they apply to determining the location of the canyon edge (Section 17.88.030).

“Canyon” means any valley, or similar landform, which has a vertical relief of 10 feet or more. See also definition of “edge” and “face.”



“Edge” means the upper termination of a bluff, canyon or cliff. When the top edge is rounded away from the face as a result of erosional processes related to the presence of the steep bluff face, canyon, or cliff face, the edge shall be defined as that point nearest the face beyond which the downward gradient of the land surfaces increases more or less continuously until it reaches the general gradient of the bluff, canyon, or cliff. In a case where there is a steplike feature at the top of the bluff face, canyon, or cliff face, the landward edge of the topmost riser shall be taken as bluff edge, canyon edge, or cliff edge.

“Face” means a sharp or steep face of rock, decomposed rock, sediment, or soil resulting from erosion, faulting, folding, or excavation of the land mass of a bluff, canyon or cliff. The face may be a simple planar or curved surface or it may be steplike in section.

These definitions provide guidance for determining the canyon edge at 217 Vista Marina within Trafalgar Canyon. Three essential elements of this definition will be used in the analysis below. First, canyons are defined and understood in cross-section, with a canyon existing as a “valley” that has greater than 10 feet vertical relief when measured in a cross-section. Second, the canyon area encompasses the entire area with greater than 10 feet vertical relief, which is demonstrated by the figure. Third, the canyon face may have risers, being steplike when viewed in cross-section. By these definitions, a flat area of a steplike face cannot be considered a canyon edge unless it is less than 10 feet below the prevailing topography around it, but rather the canyon edge is located at the “landward edge of the topmost riser.”

It should be noted that the diagram illustrating the definitions of bluff and canyon is exaggerated vertically so that slopes appear steeper than they would be under most natural circumstances. The slopes illustrated appear to be 3:1 (300%) and greater, which would be uncommon in natural coastal canyons.

2.2 Methods

We searched for and obtained historical data describing Trafalgar Canyon, including maps, oblique aerial photographs, and orthogonal aerial photographs. We then obtained recent, high-resolution topographic data collected by the U.S. National Oceanic and Atmospheric Administration (NOAA) and analyzed these data in Geographic Information System (GIS) software. We then produced maps and figures that represent the best available current information about the topography of the project site, its location in Trafalgar Canyon, and the history of the site. Details of these methods follow in the sections below.

2.2.1 Topographic Maps and Data

2.2.1.1 U.S. Coast Survey

U.S. Coast Survey maps were produced in the mid- to late 1800s for the coast of California. They are topographic maps based on field surveys with 20-foot intervals between contours. These maps have been digitized and georeferenced so that they can be overlaid on current maps in a GIS (Grossinger et al. 2011). The map that includes Trafalgar Canyon was produced by surveyor A.F. Rogers in 1886. The maps, known as T-sheets, were produced at an unusually large scale (1:10,000), which means that they provide an extraordinarily high-resolution depiction of the topographic features along the coast (Grossinger et al. 2011). They include over twice the detail of a modern 1:24,000 topographic map produced by the U.S. Geological Survey (USGS). The georeferenced map was downloaded from the website caltsheets.org.

2.2.1.2 U.S. Geological Survey Topographic Maps

Topographic maps produced by the USGS are archived and downloadable at the agency's "Topoview" website. We located and downloaded topographic maps from 1902 onward, at 1:125,000 or finer resolution.

2.2.1.3 U.S. National Oceanic and Atmospheric Administration Digital Coast Data

NOAA has produced extraordinarily high-resolution topographic data for the coast of California, including the lower reach of Trafalgar Canyon. We obtained the 2016 topographic data, which were collected using Light Detection and Ranging ("LiDAR") technology. This technique involves pointing a laser at the ground from an airplane and then measuring the light reflected back to the airplane. The data can be analyzed to describe surface topography as well as vegetation and building heights by comparing the first and last reflected light at a particular location. We obtained data that had been analyzed by NOAA to produce a 0.3-m resolution digital elevation model (DEM) of the ground surface with 0.211 m horizontal accuracy and 0.116 m vertical accuracy (with 95% confidence). Background and technical specifications are available from NOAA:

https://coast.noaa.gov/htdata/raster2/elevation/West_Coast_El_Nino_DEM_2016_6260/west_coast_2016_el_nino_dem_m6260_met.xml.

2.2.2 Historical Photographs

2.2.2.1 Orthogonal Photographs

We obtained a series of orthogonal photographs of the project site by searching appropriate repositories. These included imagery collected by and maintained at the University of California, Santa Barbara aerial photography archive, the California Coastal Records Project (<https://www.californiacoastline.org>), and the NOAA digital coast website.

2.2.2.2 Oblique Photographs

The California Coastal Records Project has taken oblique aerial photographs of the California coast and scanned historical oblique photographs. We obtained permission from the California Coastal Records Project to download and reproduce photographs of the project site, including oblique images from 1972 through 2013.

2.2.3 Topographic Analysis

We compared available maps and data to understand the original (late 1800s) topography of the canyon and the changes to it and the proposed project site over time. We overlaid those maps and images that were georectified on present-day maps to aid interpretation, using ArcGIS Pro (Esri, Redlands, California). The comparisons were made to develop an understanding of the original shape of the canyon as relevant to the City of San Clemente Municipal Code and its Land Use Plan.

Maps were complemented by orthogonal and oblique imagery that allows the user to discern landforms, vegetation, and slope through interpretation of visible features, including shadows.

To better visualize the topography of the site and canyon relative to the definition and diagram in the Municipal Code, we created a series of cross-sectional profiles from the NOAA DEM. The profiles were created by first drawing a 3D line using the “Interpolate Line” tool in ArcMap 10.5 (Esri, Redlands, California), found in the 3D Analyst toolbox. Then the “Profile Graph” tool was used to extract the raw data from the DEM along each cross-section and export it to a text file. We then calculated the slope for the raw cross-sections using an equation in Microsoft Excel (Redmond, Washington) and visualized the profiles in JMP (SAS, Cary, North Carolina). We also used the “Contour,” and “Hillshade” tools in the 3D Analyst toolbox to create raster data containing contours and hillshade data at a 0.3-m resolution. Subsequent maps were created in ArcMap 10.5 or ArcGIS Pro. Parcel data were downloaded from Orange County’s website to properly locate the subject parcel in maps.

2.3 Results

The results of the investigation follow in this section, with discussion of the status of the subject parcel relative to the definition of canyon and canyon edge in Section 2.4.

2.3.1 Topographic Maps and Data

The 1886 topographic map of the coast depicts Trafalgar Canyon clearly (Figure 1). It is extremely detailed and overlays well with the current parcel boundaries. Of particular relevance to interpreting the natural boundaries of the canyon, the contours are symmetrical north and south of the streamline, with the elevation of the canyon edge decreasing steadily on the southern side toward the coastal bluff. If one were to interpret the canyon edge in 1886, it would run smoothly down the southern side (Figure 2).



Figure 1. Detail of 1886 Coast Survey map of San Clemente, California coastline.

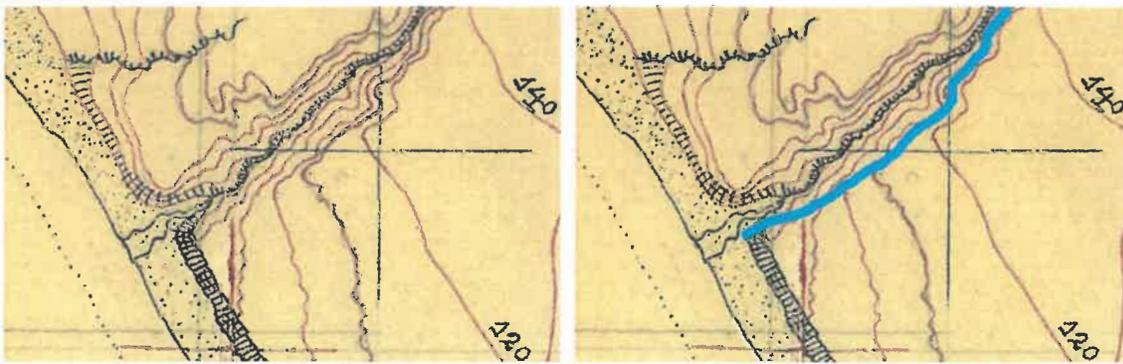


Figure 2. Detail of Trafalgar Canyon, with southern canyon edge added in blue to show the approximate transition between the coastal terrace gently sloping toward the ocean and the canyon edge where the slope is northwest and steeper down into the canyon.

To the south of the blue line the slope is toward the ocean, and therefore not part of the canyon feature (Figure 2). North of the blue line the slope is consistently downward into the canyon. There is no evidence of the flattened areas currently found on either side of the bottom of the canyon, confirming that these are features that were created at a later date through grading and installation of a canyon-bottom drain pipe.

The 1902 USGS topographic map at 1:125,000 scale shows Trafalgar Canyon as a small feature (Figure 3). The shape of the single contour line that outlines the canyon at this scale does show the downward slope of the terraces on either side of the canyon toward the ocean and the shape is consistent with the 1886 Coast Survey map.



Figure 3. San Clemente coastline, including Trafalgar Canyon, on 1902 USGS topographic map.

The USGS produced a 1:24,000 map in 1948, which provides more detail than the 1902 map (Figure 4). The gently sloping coastal terrace is visible and a narrowing of the canyon at the mouth is seen in the topographic lines. Subsequent USGS maps do not update the topographic lines.

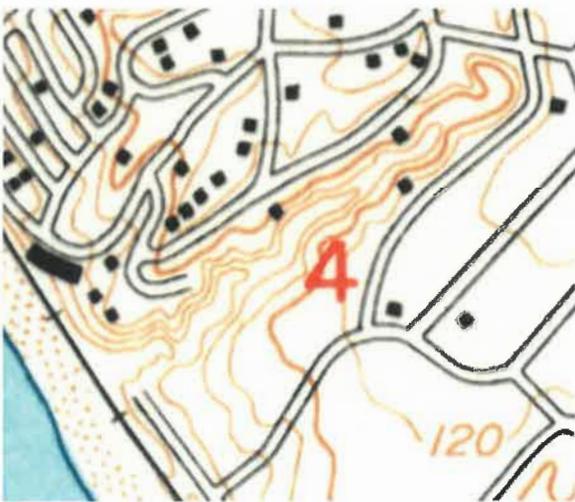


Figure 4. Topographic map from 1948 showing Trafalgar Canyon. Narrowing of the canyon near the mouth is visible in the topographic lines.

The 2016 digital elevation model is at such a high resolution that it can be mapped with the parcel boundaries to show the project location with complete confidence. First, we mapped the elevation of the site with the parcel boundaries, which shows the high resolution of the dataset and the slopes on the parcel (Figure 5).

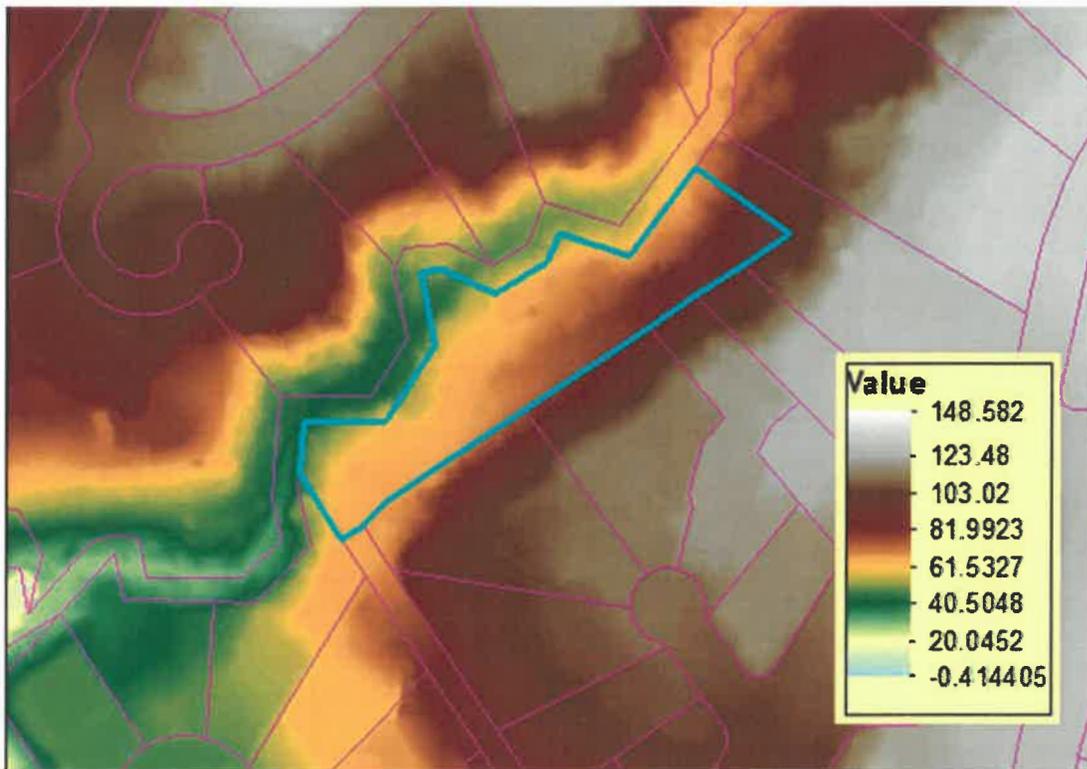


Figure 5. Elevation in Trafalgar Canyon surrounding the proposed development site, at a 1-foot resolution and vertical accuracy of <4 inches.

We then visualized the parcel with a hillshade rendering so that all of the detail of the topography could be viewed (Figure 6).

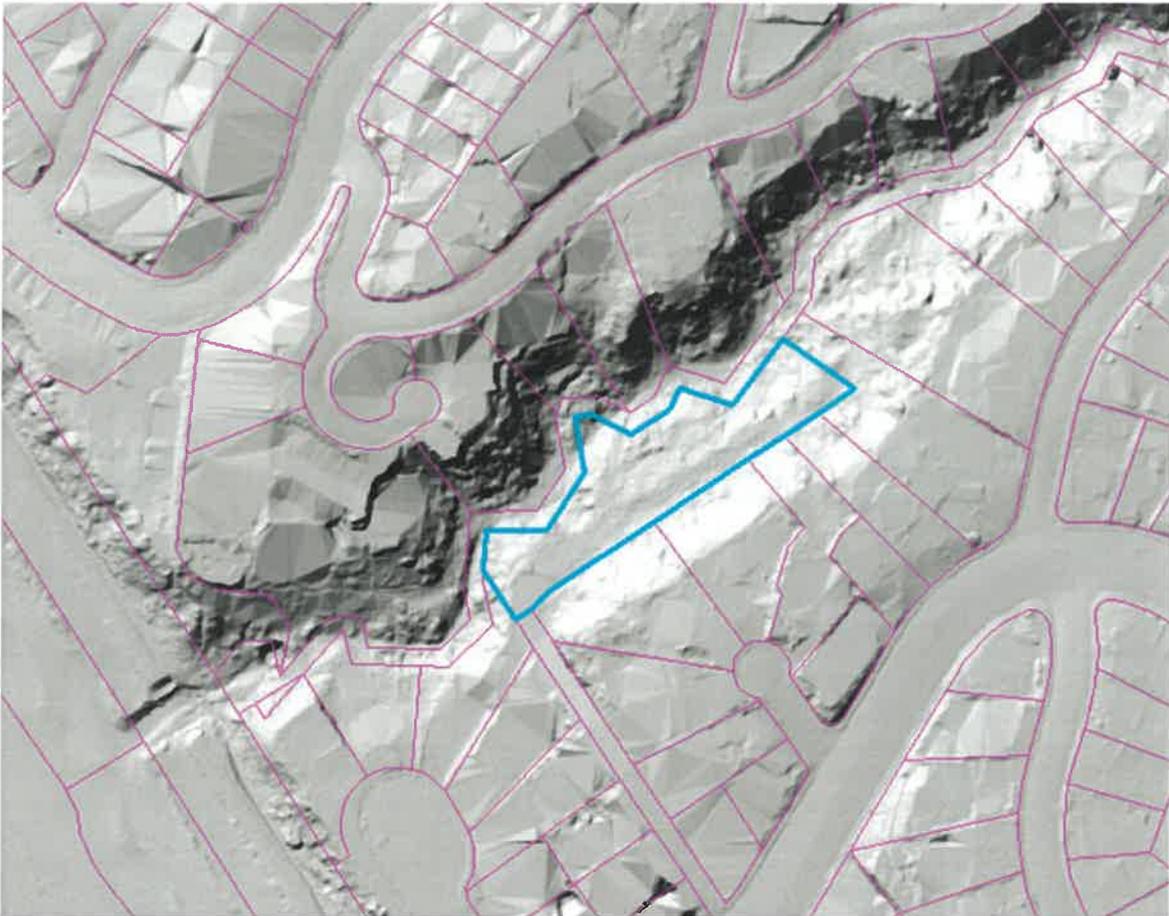


Figure 6. Hillshade representation of 2016 0.3-m resolution DEM for Trafalgar Canyon with parcel boundaries.

A 1-foot resolution topographic map derived from the 0.3-m resolution DEM provides the highest resolution and most accurate representation of the project site available (Figure 7). The graded area on the subject parcel is clearly visible, starting from the paved turnaround at the southwestern corner of the site and extending up-canyon along the southeastern property line, with a separate graded path extending northward into the canyon bottom.

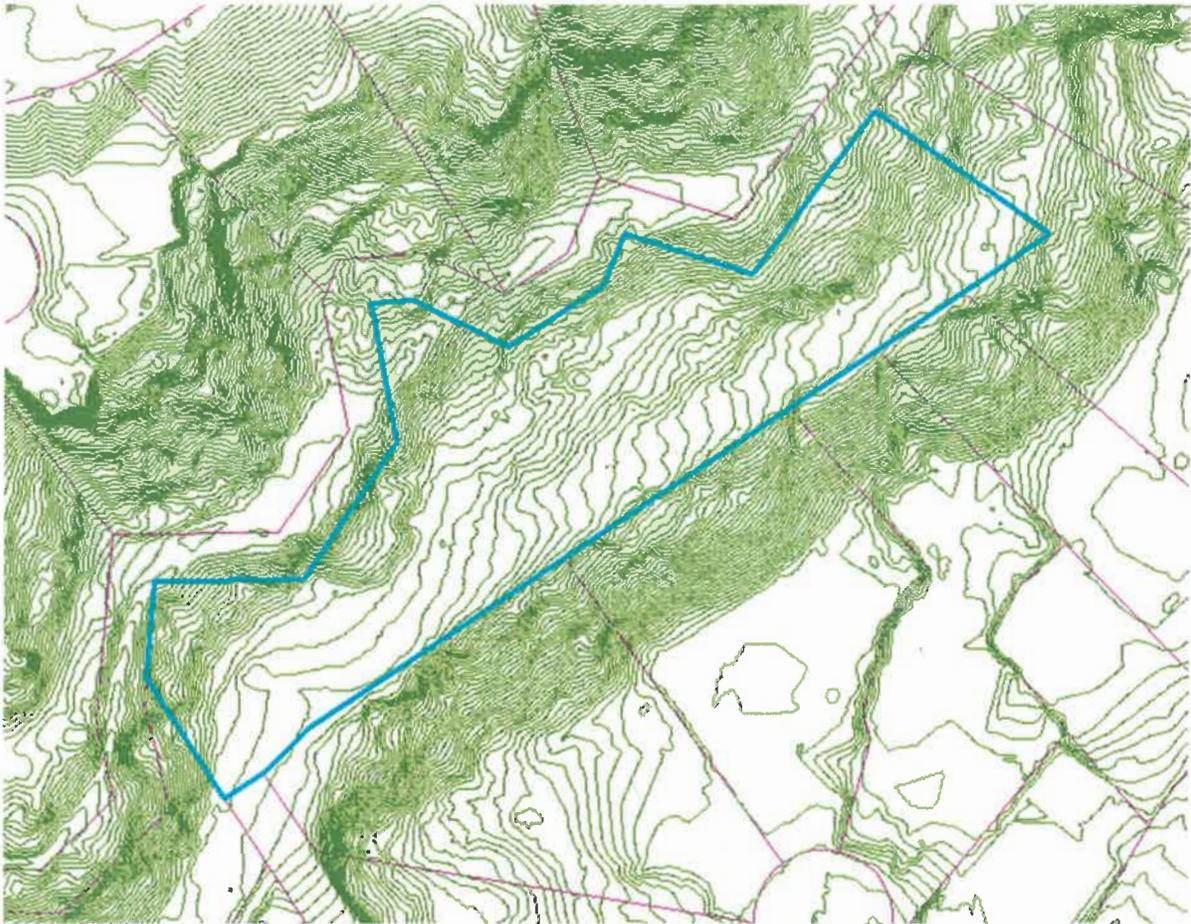


Figure 7. Topographic map of project site and surrounding canyon with 1-foot contours derived from 2016 DEM.

2.3.2 Historical Photographs

Historical photographs of the project site are informative to understand the extent and character of the natural landform. The images also show location of canyon vegetation, which helps to interpret the location of the canyon relative to surrounding marine terraces. The flatter terraces were largely cleared of vegetation by the time aerial photography was being acquired for the area.

2.3.2.1 Orthogonal Photographs

Aerial photographs exist for southern California locations that were flown starting in the 1910s and 1920s. The first photographs that we found were from 1938 (Figure 8). At this point, the streets surrounding Trafalgar Canyon were constructed so the extent of the canyon can be viewed in reference to them. Canyon vegetation, probably lemonade berry and toyon, which are still found in this location, is visible as dark masses in the image. The road accessing the property site is not constructed and there is no evidence of the graded bench that is the proposed development site. The 1941 aerial shows the same features and because of the sun angle the

extent of the north-facing canyon slope can be discerned from the distribution of shadows (Figure 9).



Figure 8. Detail from 1938 aerial photograph showing Trafalgar Canyon (AKX-1938-78-51).



Figure 9. Detail from 1941 aerial photograph showing Trafalgar Canyon (C-6850-44).

The road into the project site (Vista Marina) is not yet built in 1946, and the extent of canyon vegetation is visible (Figure 10). The small spur road (Calle Conchita) has graded pads around it, which extend to the canyon edge. The 1938 and 1941 images do not show any evidence that the slope at the southern edge of the project site was artificially constructed during the grading of the street system as claimed by the applicant's geologist. Although pads are graded on Calle Conchita, the slope is fully vegetated and in the same location as it is currently found. These photographs conclusively show that the original canyon edge was at the elevation of Calle

Conchita, that the slope down from Calle Conchita into Trafalgar Canyon is natural, and that the graded bench where the house is proposed was created later.



Figure 10. Detail from 1946 aerial photograph showing Trafalgar Canyon (GS-CP-7-103).



Figure 11. Detail from 1960 aerial photograph showing Trafalgar Canyon (C-23870-29).

Evidence of grading on the proposed development site, along with the beginnings of the road to access it, are visible in the 1960 aerial photograph (Figure 11). The canyon slope behind the newly constructed buildings on Calle Conchita appears to be intact, and no evidence of

steepening of the slope south of the project site can be seen (vegetation remains apparent on the slope).



Figure 12. Top: Detail from 1967 aerial photograph showing Trafalgar Canyon (HB-KY-39). Bottom: Detail of site of proposed project showing natural grade of canyon edge to the south, meandering creek at the bottom of the canyon, and a graded road cut into the slope. Foot trails are visible down the slope from 205 Calle Conchita to the home at 350 West Paseo De Cristobal.

It was some time during this period from 1946–1960 that the flattened area on the project site was first created. By 1967, a higher-resolution aerial is available and a constructed road on the project site that starts at Vista Marina and is cut into the north-facing canyon wall is visible (Figure 12). The relationship between the coastal bluff and the canyon can also be seen, prior to the installation of the canyon-bottom drain pipe. The home on Paseo De Cristobal adjacent to the project site is on a bluff top relative to the ocean to the west and also on the canyon edge in relation to the curving creek to the north. The flat area that is now the paved northern terminus of Vista Marina is an obvious graded pad in 1967. The houses on Calle Conchita are at a higher

elevation than Paseo De Cristobal with a natural northward-facing canyon edge and a natural step down toward the ocean that was mapped in the 1886 Coast Survey map. The Trafalgar Canyon edge on Paseo De Cristobal is at a lower elevation than the canyon edge north of Vista Marina as it steps up at Vista Marina. The 1968 aerial photograph does not add much additional information, except that the graded areas remain visible (Figure 13).



Figure 13. Detail from 1968 aerial photograph showing Trafalgar Canyon (TG-2400-4-76).



Figure 14. Detail from 1977 aerial photograph showing Trafalgar Canyon (TG-7700-2-13).

Considerable disturbance of the canyon is visible in 1977, including the graded path down to the canyon bottom and extensive additional grading and trails (Figure 14).



Figure 15. Detail from 1986 aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.

The full-color aerial photograph from 1986 allows for easy understanding of the relationship between vegetation and the graded or cleared areas in the canyon. The proposed development site cuts through the canyon vegetation as a graded area. Many of the clumps of canyon vegetation (likely lemonade berry and toyon) are still visible.



Figure 16. Detail from 1993 aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.

The views in 1993 and 2016 are quite similar, with the brown of the graded paths on the project site contrasting with the darker coastal scrub vegetation (Figure 16). The vegetation appears slightly diminished in 2016 in the middle of the project parcel (Figure 17).



Figure 17. Detail from 2016 aerial photograph showing Trafalgar Canyon (NOAA Digital Coast).

2.3.2.2 Oblique Photographs

Unfortunately, the oblique photographs do not include the period before installation of the drain down the bottom of the canyon. The earliest oblique aerials are from 1972, and these show the graded area on the project site, as well as the height differential between Calle Conchita and Paseo De Cristobal (Figure 18). A second angle shows the topography rising up from Paseo De Cristobal closer to Avenida Esplanade to join the elevation at Calle Conchita (Figure 19).



Figure 18. Detail from 1972 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 19. Detail from 1972 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 20. Detail from 1979 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.

Moving forward to 1979, bare graded ground is seen in several parcels at the northern terminus of Paseo De Cristobal, with that bare graded area extending inland up the canyon through the subject property and along the base of the slope northward of the properties on Calle Conchita (Figure 20). The grading for the parking at the end of Vista Marina is obvious, including soil that has been pushed into the bottom of the canyon. The step down toward the ocean of the southern edge of Trafalgar Canyon is seen as well.

The angle of the 1989 oblique aerial photograph shows recovery of vegetation in the canyon (Figure 21) and offers a good perspective on the location of the proposed development site in the middle of the general slope from the bottom of the canyon (lowest elevation) to the houses south of the development site (top of canyon). Vista Marina does not appear to be paved all the way to the project site, and some disturbance of the slope inland to the northernmost parcel on Calle Conchita can be seen. No evidence of alteration of the landform north of the Calle Conchita lots can be seen, except for the remnants of the graded roads and paths.



Figure 21. Detail from 1989 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 22. Detail from 2006 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 23. Detail from 2008 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 24. Detail from 2010 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.



Figure 25. Detail from 2013 oblique aerial photograph showing Trafalgar Canyon. Copyright © 2002–2019 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org.

In the period since 1989, the extent of scrub vegetation on the project site has been reduced, presumably by property owners interested in developing the site. Story poles can be seen on the property in 2006 (Figure 22), which gives a good perspective on the grade changes in the area being proposed for development, and a view of just how much the proposed development site is part of the overall canyon topography. A large cluster of scrub vegetation on the flattened area has been removed and is not seen, except for perhaps some resprouting plants, in subsequent photographs in 2008 (Figure 23), 2010 (Figure 24) and 2013 (Figure 25).

2.3.3 Topographic Analysis

We extracted data for 10 cross-sections of equal length extending from development north and south of Trafalgar Canyon, starting at the northern tip of the proposed development parcel and at equal intervals toward the ocean to Paseo De Cristobal. The transects and associated profiles provide the representation of the data necessary to determine the canyon edge under the LUP. In each profile, blue dots are added at the locations that would meet the criteria of canyon edge (Figure 26).

Profile 1 cuts through the eastern tip of the subject parcel. The top of the slope on either side of the canyon is obvious, and despite some steeper and flatter areas on the southern slope, the edge of the canyon would be placed at the top of the topmost riser on either side.

Profile 2 is also straightforward, placing the edges of the canyon at the point where the slope starts to increase to the average slope between the bottom and top of the canyon on either side. The small riser on the south side represents a graded pad that is less than 10 feet high. Consequently, the small riser is not part of a “valley” geomorphological feature and additionally does not meet the depth criteria for a canyon.

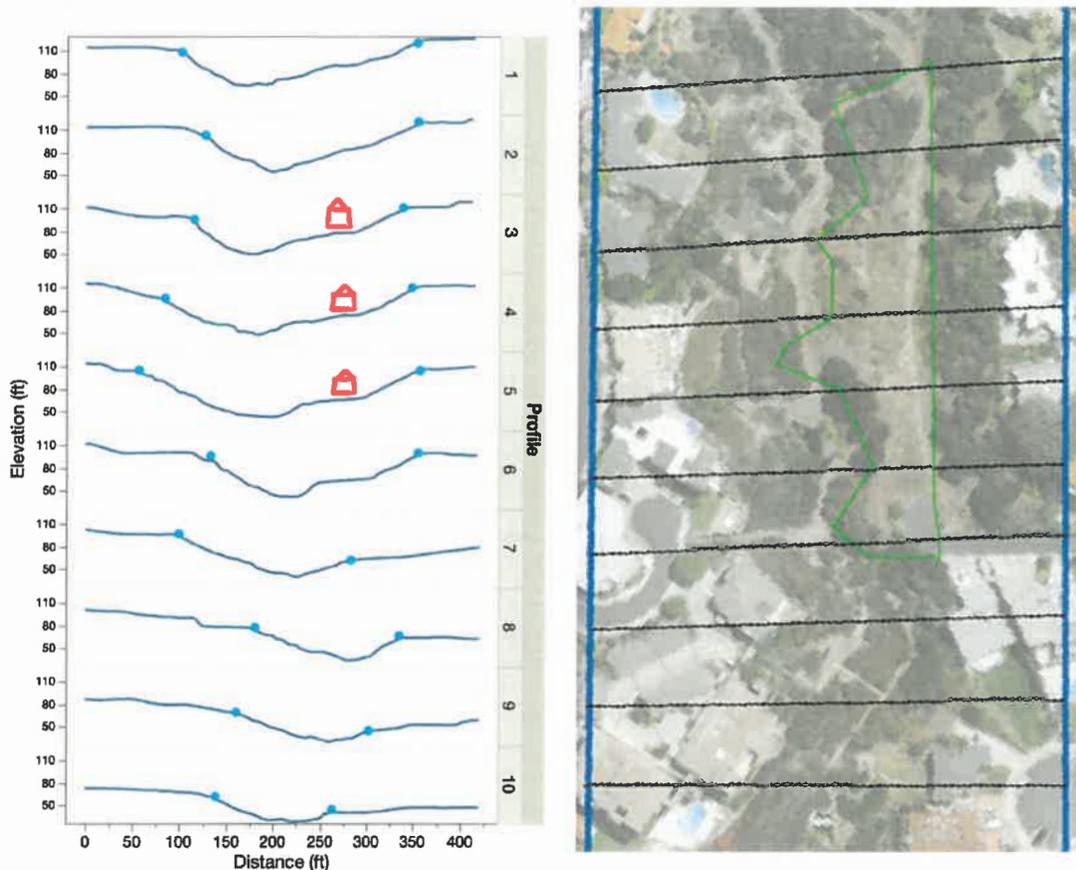


Figure 26. Cross-sectional profiles through Trafalgar Canyon from the proposed development and down canyon. The subject parcel is outlined in green, the approximate location of the proposed residence along the profile is indicated by the sketched red houses (not to scale), and the light blue dots indicate the location of the canyon edges consistent with application of the Municipal Code.

Profile 3 includes the portion of the site proposed for a house. Although one can see the slightly flatter area where the proposed building would be located, the canyon edge is to the south, where the topography slopes downward. Similar to the previous profile, the step up near the southern end of the profile is less than 10 feet and is a graded building pad.

Profile 4 also shows the top of the canyon slope being located above the proposed house location. The proposed house location is a full 40 feet below the prevailing grade at the top of the canyon.

Profile 5 also encompasses the proposed building site, and again it is impossible to conclude that the edge of the canyon is north of the proposed building location. The canyon feature, following the definition in the Municipal Code, extends to the top of the slope south of the building site.

Profile 6 cuts across a portion of the project site that would be used for access. The graded road is apparent, but because that flat area is more than 10 feet below the grade at the top of the slope to the south, it too lies within the canyon.

Profile 7 runs down the access road to the site, Vista Marina. As a result, it is difficult to place the natural canyon boundary; the grade changes visible in the historical aerial photographs have been smoothed out. At this location with the current topography, the canyon edge would be the northern edge of the paved road.

Profile 8 shows why the canyon edge is properly determined to be at the northern side of the development on Paseo De Cristobal. To the south, the coastal bluff is flat, except for some small steps up that are less than 10 feet.

Profile 9 also shows the low coastal bluff that steps up toward the south, with the southern edge of the canyon being farther north than at the project site.

Profile 10 shows the canyon edge even farther to the north as the canyon feature narrows toward the coast and the coastal bluff becomes the dominant geomorphological feature.

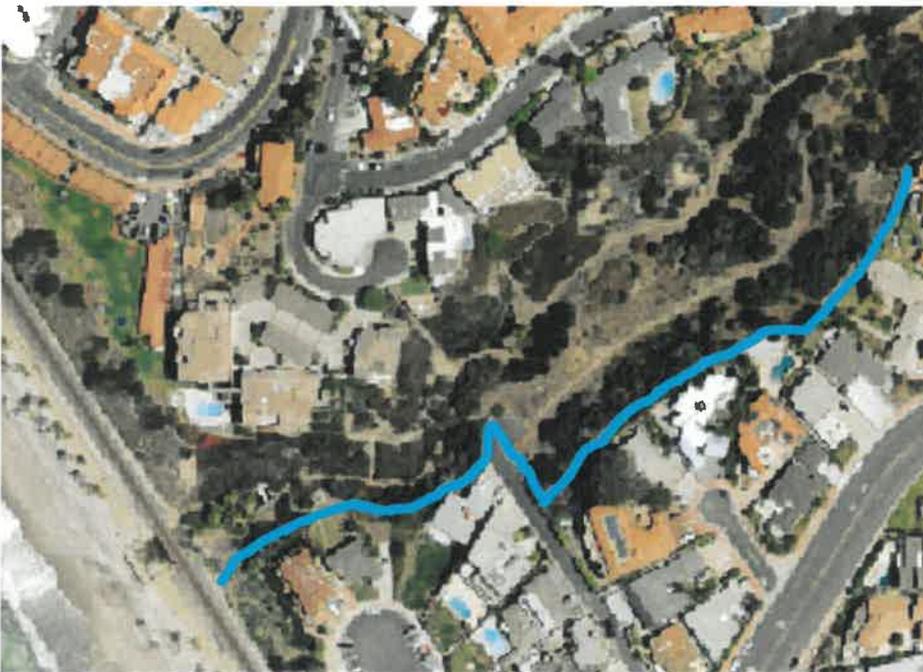
2.4 Discussion

Any fair application of the definitions set forth in the LUP for a Coastal Canyon would conclude that the proposed building site lies within a Coastal Canyon. The applicant's geologists submitted a map that indicated an "edge of canyon" on the project parcel. Such a determination was the result of failing to include the entire valley feature on their map. The map, inexplicably, omitted the 40-foot increase in elevation to the south of the site. Once the entire valley feature is investigated, and applying the appropriate rules, which provide for the eventuality that canyons may be stepped in form, the only rational conclusion is that the building site lies within a Coastal Canyon. The applicant's map, which was presumably used to obtain "approval in concept" from the City of San Clemente, is misleading by omission of the slope to the south. Once that slope is included, and proper cross-sectional diagrams are extracted from the topographic information, a much different, and accurate, picture appears.

The elevation of the canyon edge changes between the subject parcel and the coastal bluff along Paseo De Cristobal. From interpretation of the historical topographic maps and historical photographs, it appears that the slope northward along Vista Marina was once steeper, but has been flattened out through grading. Consequently, the historical canyon edge (well before the Coastal Act) would have been in a different location than it is now. For example, in 1941 the canyon edge might have followed a line like this:



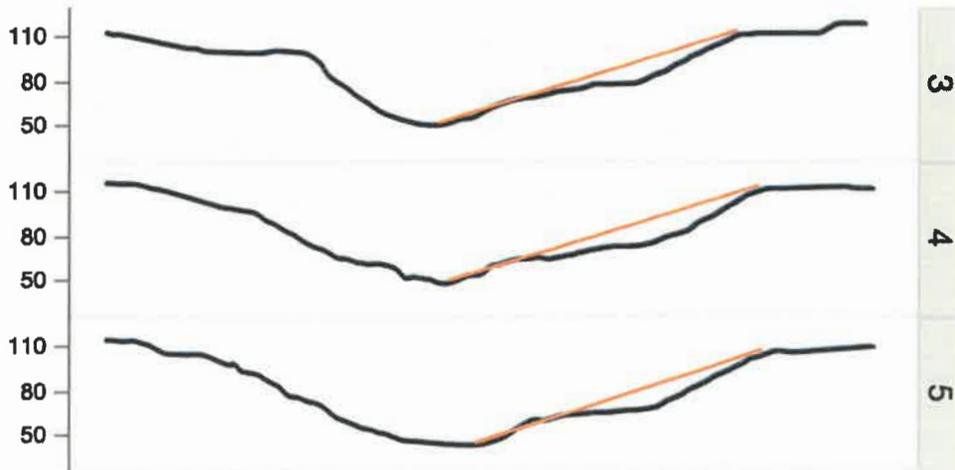
Incorporating the pre-Coastal Act changes in topography, the current edge would look more like this:



Not coincidentally, this is almost exactly the southern extent that was surveyed by biological consultants for the City of San Clemente (Dudek) for potential canyon-associated ESHA resources for the Land Use Plan (in red outline).



The discontinuity in the southern canyon edge between the area around Paseo De Cristobal and the area around Calle Conchita is, however, irrelevant to the application of rules to determine what constitutes a Coastal Canyon under the law. The cross-sectional profiles, by which the Municipal Code defines canyons and which one must consult to determine canyon edges, are unambiguous for the proposed building site. The building site lies within a valley feature greater than 10 feet in depth and beyond the point in that feature where the downward gradient of the land surface starts to increase to meet the general gradient of the canyon. Indeed, a quick visualization of the profiles once again demonstrates this.



A straight line connects the top and bottom of the canyon for Profile 4. Although the slope varies, it cannot create a new “canyon edge” because it is already within a feature greater than 10 feet deep. The only question involved in determining the canyon edge is the location of the point at the top of the slope where the general slope of the canyon is met. Any steplike risers are irrelevant to the determination of the point beyond which the slope at the top of the canyon increases to meet the gradient of the canyon (i.e., the canyon edge). Finally, as shown in the historical photographs and maps, the second riser is not a manufactured slope as asserted by the applicant’s geologist, but rather is part of the natural valley.

All of the data used in this analysis are publicly available and the methods presented are replicable. The cumulative weight of evidence allows the geomorphological position of the project site to be understood and the relevant planning definitions applied. It is our conclusion that the development site at 217 Vista Marina lies within a Coastal Canyon as defined in the City of San Clemente Land Use Plan and Municipal Code.

3 Analysis of Project Relative to ESHA

The determination of whether a geographic area is considered to be an ESHA must follow the definition provided in the Coastal Act for environmentally sensitive areas (Section 30107.5), which reads, “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” As human occupations expand and as scientific understanding advances, more plants and animals become rare, the roles of plants, animals, and habitats in the ecosystem are better understood, and the many pathways by which humans may disrupt natural environments become clearer. More areas now qualify as ESHA than once did — natural habitats are rarer than they were when the Coastal Act was enacted, and science has taught us more about the interrelationships between organisms and their fragility in the face of insensitive human actions.

Components for the ESHA determination are embedded within Section 30107.5. The questions to be asked are:

- 1) Is a plant, animal, or its habitat rare?
OR
- 2) Is a plant, animal, or its habitat especially valuable because of its special nature or role in the ecosystem?
AND
- 3) If either of the first two criteria is met, is the plant, animal, or its habitat easily disturbed or degraded by human activities and developments?

ESHAs must meet two conditions, that a geographic area have species or habitat that is rare or plays a special role in the ecosystem, *and* that the species or habitat is easily disturbed or degraded by human activities and developments.

Nowhere does the definition of ESHA depend on the habitat being native. The language of the ESHA definition therefore allows consideration of habitat function, and not just vegetation type, although both are important. We mention this because it is frequently argued that nonnative vegetation cannot be ESHA. Nonnative vegetation certainly can be ESHA if it serves as habitat for sensitive animal species or plays an important role within a landscape context. Indeed, the California Department of Fish and Wildlife (CDFW) argued that a bluff with a large component of nonnative grasses overlooking a wetland was an ESHA because of its function in the landscape.

The Bluffs are a typically steep area comprised of the interspersed of various essential habitat factors including coastal sage scrub, grassland and rocky outcroppings on a steep slope. The Bluffs provide foraging, roosting and nesting for a diverse assemblage of birds, including raptors, and appropriate habitat for various small mammals and reptiles.

The coastal sage vegetation is a key habitat ingredient of the area. However, it is the combination of the various habitat factors in conjunction with the wetlands immediately below the Bluffs that makes the Bluff area an important one . . . (Letter from California Department of Fish and Game to California Coastal Commission, October 27, 1983).

3.1 Does the Area Support Rare Species or Habitats?

The adopted Land Use Plan for the City of San Clemente offers additional information about the status of ESHA based on biological surveys undertaken to develop that plan. The LUP recognizes that coastal scrub habitats are potentially sensitive and explicitly recognizes that lemonade berry scrub is considered vulnerable (p. 4-3). The LUP also recognizes native grassland communities as “generally” warranting ESHA designation, with reference specifically to giant wild rye grassland (p. 4-4). The California Department of Fish and Wildlife, in its October 15, 2018 update of sensitive vegetation, recognizes both lemonade berry scrub and giant wild rye grassland as being sensitive plant communities. Both of these vegetation types were usually described as components of coastal sage scrub in older vegetation classifications (e.g., Munz and Keck 1949).

The project applicant has submitted a biological report that maps the vegetation communities on the project site at a high resolution (Glen Lukos Associates, July 2018). The report discusses the choice of minimum mapping unit and argues that it is important to map at this high resolution. The result of this choice, however, is that it essentially results in mapping individual plants, and not vegetation associations. The report does not appear to follow the most recent protocols from CDFW, which should guide assessment of sensitive vegetation during environmental review (see *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, March 20, 2018). The survey protocols require mapping according to the *Survey of California Vegetation Classification and Mapping Standards*, also issued by CDFW. Minimum mapping units are discussed in the standards and although they allow for some discretion based on the size of the area mapped, usually the minimum unit is 1–2 acres, with wetlands and special vegetation types mapped at ¼ acre. The reason for this is that habitats do not function as individual plants, but as groups of plants and the spaces between them. For example, for the purposes of assessing conservation value of an oak savanna, one would not map the crowns of the oak trees as one vegetation association and map the grasslands between the crowns as exotic annual grasslands. The presence of the oaks and grasses together make it an oak woodland that is mapped as a single vegetation type. Indeed, the percent cover necessary for a dominant species to define a vegetation association is listed for each association in *A Manual of California Vegetation* on which the classifications are based (Sawyer et al. 2009).

Glen Lukos Associates decided to map the sloping area in the middle of the project site as ruderal and to carve it out from the lemonade berry scrub and giant wild rye surrounding it. Using standard mapping techniques for vegetation, the disturbed area in the middle of the project site would usually be incorporated into the larger extent of scrub surrounding it, if one were mapping with a 1- or 2-acre minimum mapping unit. Excluding the disturbed area as ruderal may also be inappropriate if existing native plants are missed, such as the native plant blue dicks (*Dichelostemma capitatum*), which is reported exactly on the project site from a user in iNaturalist (see <https://www.inaturalist.org/observations/10512585>). Community volunteered observations must always be evaluated critically, but photographic evidence is provided that

indicates that this native species, an indicator of scrub communities, was recently present in the mapped disturbed areas on the project site. Furthermore, local residents have reported that giant wild rye is sprouting in areas within the proposed development footprint (and being removed by the owner on an ongoing basis). Photographic evidence again confirms that giant wild rye is currently (as of mid-May 2019) sprouting within the areas being mapped as ruderal.



Figure 27. Photograph of project site, May 18, 2019, showing what appears to be giant wild rye re-sprouting within the cleared project site.

A reasonable person mapping with a minimum mapping unit of 1–2 acres could map the entire project site, including the disturbed areas and giant wild rye, as lemonade berry scrub. The presence of California boxthorn (*Lycium californicum*), itself a rare species, within this area increases the significance of the lemonade berry scrub as a whole. If a smaller minimum mapping unit is used, then the giant wild rye could be mapped separately, but it should be updated in the field to include any areas where giant wild rye is re-sprouting within the proposed development area (Figure 27).

If one accepts the applicant's choice to map each small patch of different species separately, then the disturbed area would not be rare, but this does not necessarily mean that it is not ESHA, because habitats can be ESHA that *either* are rare *or* are valuable because of their special nature or role in the ecosystem.

The status of other rare species on the site is not known because the length of surveys on the site was insufficient to draw any conclusions. Site visits were made on two days in spring 2018. Only incidental observations were made of any wildlife species. Most of the bat species found in California are considered to be sensitive but no nocturnal surveys with appropriate equipment were undertaken to see if the site was being used for foraging by bats at night. In the absence of any rigorous wildlife surveys, it is irresponsible to assume that no rare species are found at the project site and instead the presumption should be made that the rare habitat (lemonade berry scrub and giant wild rye grassland as constituent components of coastal sage scrub) supports rare species as well. In this instance, absence of evidence is certainly not evidence of absence.

3.2 Do any species or habitats have a special role in the ecosystem?

In addition to the rare vegetation associations on the project site and its surroundings, areas may be found to be ESHA for their special nature or valuable role in the ecosystem.

Nonnative grasslands and ruderal areas can have a special role in the ecosystem if they are foraging areas or part of a larger habitat matrix that is important. The lemonade berry scrub habitat does not stop at the extent of the plants; rather birds and other wildlife that use this habitat also can be found in, and use, ruderal habitats for foraging and movement.

Migratory birds depend on stopover habitat during migration (Seewagen and Slayton 2008). Both rare and common habitats in Trafalgar Canyon play a special role in the ecosystem as stopover habitat for migratory species that prefer shrublands within an urban matrix. Stopover habitat is essential for migratory birds and butterflies and the cumulative undeveloped area within Trafalgar Canyon provides opportunities for foraging and rest. Even if a bird were on its way to other habitats, stopover habitat where birds can forage and rest is important to species survival and long-term population stability (Hutto 2000). The highest rates of mortality for migratory birds are during migration, and stopover habitat helps to minimize that mortality (Sillett and Holmes 2002).

Second, the presence of vegetation in Trafalgar Canyon, especially native shrub species, reduces stormwater runoff and thereby aids water quality. Native shrubland vegetation has deep roots, which reduces erosion and loss of nutrients into stormwater. As a whole, shrubland root systems have deeper and denser roots than plants from almost any other habitat (Canadell et al. 1996), and therefore play a special role in the conservation of soil and reduction of landslides. Shrubland habitat is crucial in maintaining slope stability and native shrub cover is more protective against landslides than exotic annual grasses (Gabet and Dunne 2002). These functions are valuable in the ecosystem because they preserve the integrity of the canyon geomorphology and have off-site benefits in terms of water quality.

3.3 Are Rare Species or Habitats Vulnerable to Disruption?

In addition to being either rare or having a valuable role in the ecosystem, to be considered ESHA an area must be vulnerable to disturbance or degradation by development. A number of factors would degrade the quality of the sensitive habitat within Trafalgar Canyon as a result of the proposed development.

3.3.1 Project Would Encroach on Sensitive Vegetation and Impact Root Zones

The development would be constructed right up against rare vegetation types and encroach on them both aboveground (some) and belowground (more). The root zones of evergreen shrub plants in a Mediterranean climate, like lemonade berry, extend far beyond the aboveground vegetation, sometimes 20–30 feet beyond the foliage (Hellmers et al. 1955, Kummerow et al. 1977). And although lemonade berry and toyon are considered to be hearty shrubs, cutting off large root zone areas and diverting stormwater away from them will have an adverse impact.

3.3.2 Construction Impacts Also Include Undisclosed Excavation Through Sensitive Habitat

Notwithstanding assertions and plans to the contrary, home construction is not an enterprise undertaken with surgical precision, and it is highly unlikely that the home can be constructed without harming the surrounding native vegetation. Construction is a noisy, dusty, and messy business, and the habitat values of the canyon will be compromised, given the complete lack of setbacks from sensitive habitats.

One construction impact that has not been disclosed is the excavation necessary to tie the site drainage into the storm drain at the bottom of the canyon. A drain pipe will be built through an area that is mapped as lemonade berry scrub to the north of the turnaround area at the western edge of the site (Figure 28). This area is where the Glen Lukos Associates report identifies the presence of a California boxthorn plant (which the California Native Plant Society identifies as a species with limited distribution that is “moderately threatened”). The limits of excavation for the pipe are not discussed. The construction of this drain is inconsistent with claims in the Glen Lukos Associates report that the area with the California boxthorn will not be disturbed.

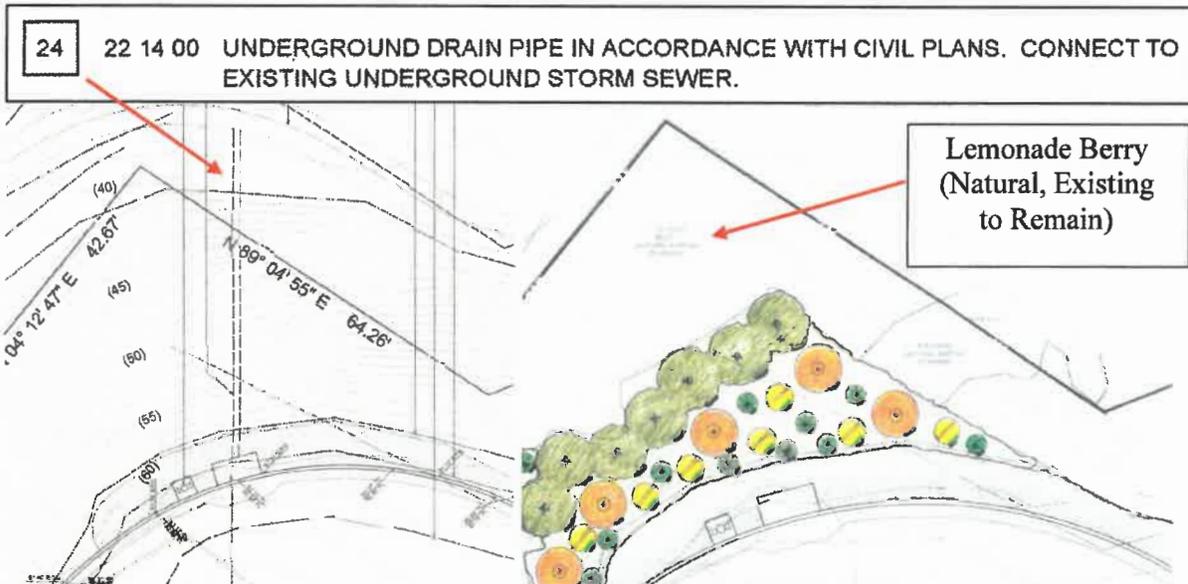


Figure 28. Left: Depiction of drain pipe proposed to be installed down the slope north of turnaround. Right: Detail of landscape plan identifying area as lemonade berry that is to remain. Top: Plan note describing underground drain pipe to be installed through lemonade berry scrub that is “to remain.”

3.3.3 Fuel Modification

Introducing a structure as proposed on the parcel would expand the area that would need to be managed for fire safety. As is well established, fuel modification is harmful to native vegetation including coastal sage scrub (Keeley 2002, Longcore 2003). These impacts extend to plants, which are mechanically thinned or removed, and to birds, insects, and other wildlife (Longcore 2003).

3.3.4 Rodent Control

Appendix G of the applicant's report on geology states, "Rodent activity should be controlled to prevent water penetration and loosening of the soil" (Geofirm, Geotechnical Investigation for New Residence, December 11, 2017). This is inconsistent with development in an ESHA and would harm species there, including native rodents. Rodenticide degrades water quality and bioaccumulates in predator species (e.g., mountain lions, coyotes, hawks, and owls). It is a fact known beyond debate that anticoagulant rodenticides are harmful to wildlife. Wildlife is exposed both directly (wildlife eats poison) and indirectly (wildlife eats poisoned animals) when these poisons are used in any location where poisoned animals end up outside (McDonald et al. 1998, Stone et al. 1999, Brakes and Smith 2005, Lambert et al. 2007, Albert et al. 2010, Dowding et al. 2010, Thomas et al. 2011). Residents surveyed in the foothills of the Santa Monica Mountains admit that they use these poisons illegally by placing them outdoors; even using them indoors can result in poisoned animals being observed outdoors where wildlife can be exposed to the poison (Bartos et al. 2012). The geotechnical specification that rodents should be controlled would result in significant adverse impacts to species supported by the ESHA (native rodents and their predators). This impact has not been analyzed or mitigated and indeed was not even disclosed in the biological assessment.

3.3.5 Lighting Poses an Additional Hazard

The applicant claims that lighting will be "kept to the minimum necessary for residential use and directed downward and away from native habitat areas." This vague assurance will not keep lighting levels in the canyon habitat from increasing. The many windows in the proposed structure and lighting of the landscape (the owners are in the lighting business so it is unthinkable they would not include landscape lighting) will significantly increase ambient light in the canyon. The impacts of lighting on all types of wildlife and plants are now increasingly well known (Longcore and Rich 2004, Rich and Longcore 2006, Gaston 2013, Gaston et al. 2013, Bennie et al. 2016, Longcore and Rich 2017) and would constitute an unavoidable adverse impact on the Trafalgar Canyon ESHA.

3.3.6 Glass Poses a Collision Hazard

Birds that are resident or would use Trafalgar Canyon as stopover or wintering habitat would collide with windows at the proposed structure (Klem 2009, Loss et al. 2014, Cusa et al. 2015). Glass poses the greatest danger to birds when it is located close to trees and other vegetation. Birds do not perceive reflections of vegetation as being obstructions and fly into the glass (Sheppard and Phillips 2015). The large house size and many windows would result in rapid depletion of birds from the surrounding habitats. Having a structure down in the canyon and

immediately adjacent to native vegetation would pose far more danger than the structures around the canyon because of the proximity of windows to habitat (see discussion in Gelb and Delacretaz 2006, Kensek et al. 2016).

3.4 Applicant's ESHA Analysis Is Flawed

The applicant's biological consultant argues that Trafalgar Canyon does not contain ESHA. This conclusion is based on a faulty reading of the Coastal Act.

First, the applicant argues that the canyon is not habitat for rare or endangered species. This is not a sufficient test for ESHA; the question is whether plant or animal life or their habitats are *either rare or valuable*. Two vegetation alliances found in the canyon are sensitive, and the wildlife surveys were so cursory that no conclusion can be drawn about the possible presence of rare mammals (including bats), birds, insects, reptiles, or other wildlife.

Second, the applicant downplays the importance of the two vegetation alliances that are determined to be sensitive by the State of California, lemonade berry scrub and giant wild rye grassland, because they are ranked G3 S3 and are of small extent. State and global ranks of 3 are the cutoff for being considered sensitive habitats by the State. Both alliances are part of the broader coastal sage scrub habitat type that has been reduced 70–90% in the modern era (Noss et al. 1995) so these are exactly the kind of vegetation alliances that should be protected as ESHA.

Third, the applicant argues that the plant species are common and not threatened with extirpation or extinction. This view misses the point of the ESHA policy mechanism, which protects rare plants and animals and their habitats because of their special nature or valuable role in the ecosystem. The ESHA is not the plants alone, but their location and rarity, which may mean that they support other rare species (e.g., insects).

3.5 Conclusion

Within the context of the City of San Clemente, where coastal scrub habitat is rare, and considering the presence of two rare vegetation alliances, the preconditions for mapping Trafalgar Canyon as ESHA exist. The value of the canyon as stopover habitat for migratory birds, and as a stepping-stone habitat for resident birds and mammals, is significant. The rare and valuable resources would be easily disturbed through the introduction of a residential land use within the canyon, immediately adjacent to existing native vegetation and requiring significant landform alteration and construction impacts. The canyon constitutes an ESHA under the Coastal Act definition, and a mapping of the ESHA should extend to include the entire canyon, including those areas being actively disturbed on the project site where giant wild rye would quickly recover if disturbance were stopped. The owners have degraded the ESHA on the project site, but the Coastal Canyon as a whole, including the project site, remains an environmentally sensitive habitat area.

4 Qualifications

Dr. Travis Longcore and Catherine Rich are principals of Land Protection Partners. Dr. Longcore is Associate Adjunct Professor in the Institute of the Environment and Sustainability at

UCLA. He has taught, among other courses, Bioresource Management, Environmental Impact Analysis, Field Ecology, and Ecological Factors in Design. He was graduated *summa cum laude* from the University of Delaware with an Honors B.A. in Geography, holds an M.A. and a Ph.D. in Geography from UCLA, and is professionally certified as a Senior Ecologist by the Ecological Society of America and as a GIS Professional by the Geographic Information System Certification Institute. He is Chair of the Los Angeles County Environmental Review Board. Catherine Rich is Executive Officer of The Urban Wildlands Group. She holds an A.B. with honors from the University of California, Berkeley, a J.D. from the UCLA School of Law, and an M.A. in Geography from UCLA. She is lead editor of *Ecological Consequences of Artificial Night Lighting* (Island Press, 2006) with Dr. Longcore. Longcore and Rich have authored or co-authored over 45 scientific papers in top peer-reviewed journals such as *The Auk*, *Avian Conservation and Ecology*, *Biological Conservation*, *Conservation Biology*, *Environmental Management*, *Trends in Evolution and Ecology*, and *Frontiers in Ecology and the Environment*. Longcore and Rich have provided scientific review of environmental compliance documents and analysis of complex environmental issues for local, regional, and national clients for 20 years.

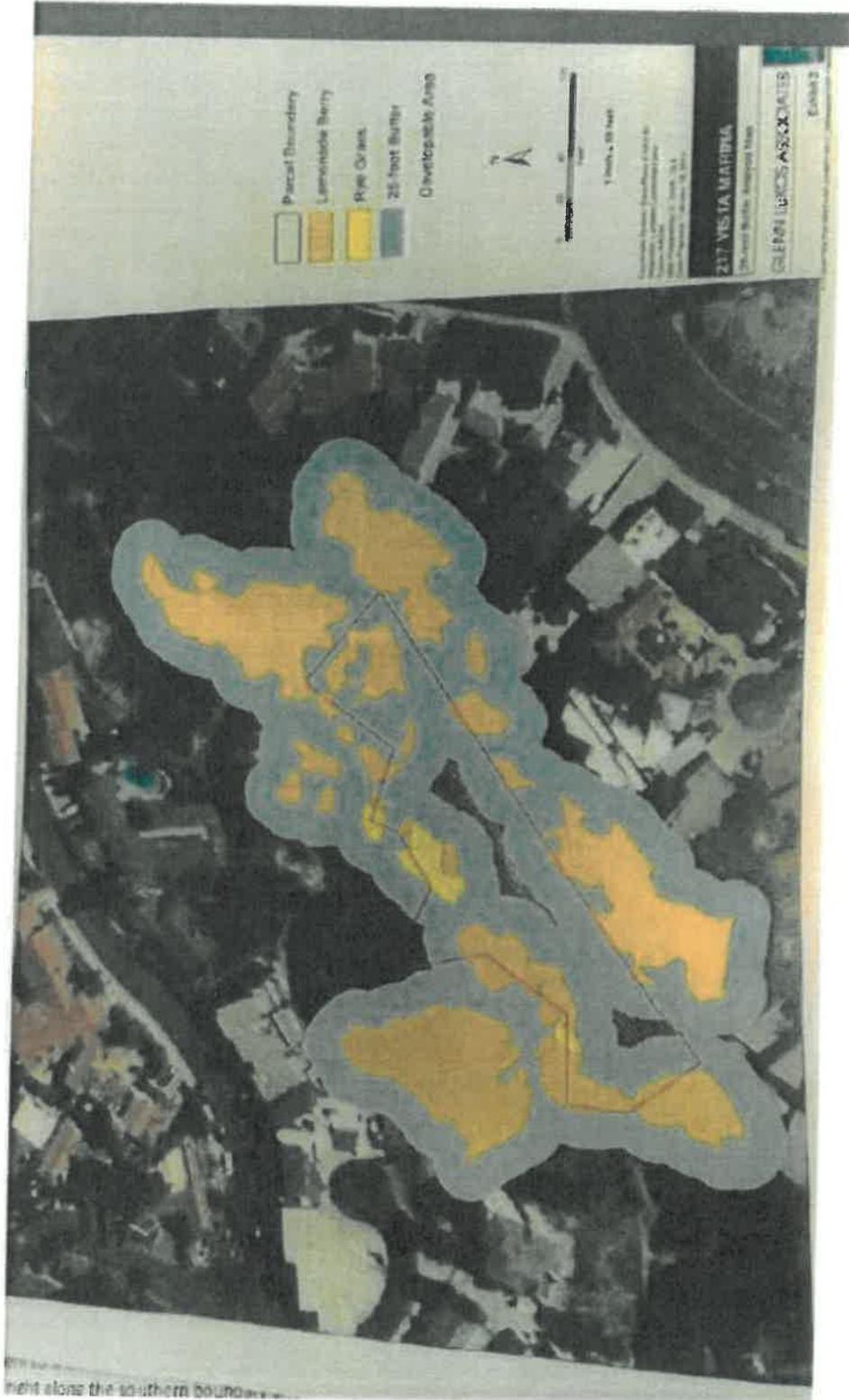
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ENCLOSURE 2



ENCLOSURE 3



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May 8, 2019

California Coastal Commission
301 E. Ocean Blvd. Suite #300
Long Beach, CA 90802
562.631.8855

By Hand

Re: Objection to Vegetation Clearing for Proposed Residence at 217 Vista Marina in Designated Coastal Canyon ESHA in the City of San Clemente prior to Coastal Development Permit; CDP Application 5-18-0930

Honorable Commissioners,

On behalf of our clients Friends of Trafalgar Canyon, we strongly object to the clearance of brush at 217 Vista Marina in the City of San Clemente (City) prior to obtaining a Coastal Development Permit because the brush clearance includes removal of areas of environmentally sensitive habitat area (ESHA). Workers have been in the canyon clearing three times in the past two weeks. Prior to that, the type and frequency of clearing since ownership changed in 2017 is unprecedented. The unprecedented type of clearing has workers using string trimmers and creating dust clouds while grinding down canyon soils. Members of Friends of Trafalgar Canyon also have submitted video to Mr. Jordan Sanchez of herbicide spraying that the worker denied doing until told there was video evidence. At that point the worker said he was spraying Roundup. This work has accelerated and intensified since a neighbor told the developer that the work was likely illegal under the Coastal Act.

This proposed project would be residential development in an area designated in the certified San Clemente Land Use Plan (LUP) as coastal canyon and containing ESHA. Residential development in ESHA or ESHA buffer areas is prohibited by the Coastal Act. The City of San Clemente's Municipal Code prohibits encroachment by new development. Contrary to the Coastal Act and the Municipal Code, the project would include a 32-foot tall, 5,430 square foot residence, 1,429 square foot garage, 2,377 square foot terrace/deck area, grading and stabilization of the building pad, and a retaining wall surrounding the new development.

Coastal Commission

May 8, 2019

Page 2

Because we understood staff planned to include the project in your May agenda, we submitted a letter on Thursday, April 25, 2019 asking that staff recommend denial of the project outright. (Enclosure 1.) Following receipt of our letter and extensive public objection, the application was removed from the May agenda and is likely to be placed on the agenda for your June 2019 hearing in San Diego or a future hearing.

We are very concerned that the owner/applicant has recently intensified his vegetation removal efforts in order to purposefully degrade the ESHA before the application is considered by the Commission. We have contacted Jordan Sanchez of Coastal Commission enforcement staff to ask that a Notice of Violation be issued immediately, and that all vegetation removal activities, which appear in furtherance of the application that has not been approved yet, immediately cease.

Our letter dated April 25, 2019 includes a Glenn Lukos Associates 25-foot Buffer Analysis Map prepared for the property owner that depicts Lemonade Berry and Rye Grass areas onsite. We are attaching hereto photographs from Google Earth that show the extent of vegetation in March of 2017 compared to the much smaller extent of vegetation in November of 2018 after the owners' vegetation removal activities denuded significant portions of Trafalgar Canyon. (Enclosure 2.) The current owner acquired the property on September 22, 2017. Even if the property owners' vegetation removal activities have degraded areas of ESHA over the past year and a half, these areas of Trafalgar Canyon ESHA must still be protected as ESHA. In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, the court determined section 30240 protects "the area of an ESHA," not just "habitat values," and concluded that residential development could not be allowed in part of a eucalyptus grove even if that part was already degraded. (*Id.* at 507, emphasis in original.)

We look forward to your consideration of this full letter for the June or other future hearing. For the moment, we ask that you emphasize the direction to enforcement staff that no ESHA removal will be tolerated prior to CDP review and approval.

Thank you for your consideration.

Sincerely,



Douglas P. Carstens

Enclosure:

1. April 25, 2019 Letter from Friends of Trafalgar Canyon to Coastal Commission Staff Analyst Liliana Roman opposing CDP Application 5-18-0930
2. Photograph comparison of extent of Trafalgar Canyon vegetation in November 2017 compared to vegetation extent in November 2018.

ENCLOSURE 1



Hermosa Beach Office
Phone: (310) 798-2400

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Phone: (858) 999-0070
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Douglas Carstens

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April 25, 2019

Liliana Roman
Coastal Program Analyst
California Coastal Commission
301 E. Ocean Blvd. Suite #300
Long Beach, CA 90802
562.631.8855

By Email: Liliana.Roman@coastal.ca.gov

**Re: Proposed Residence at 217 Vista Marina in Designated Coastal Canyon
ESHA in the City of San Clemente; Coastal Development Permit
Application 5-18-0930 (Graham)**

Dear Ms. Roman,

On behalf of our clients Friends of Trafalgar Canyon, we strongly object to the potential approval of the proposed Coastal Development Permit for 217 Vista Marina in the City of San Clemente (City). This proposed project would be residential development in an area designated in the certified San Clemente Land Use Plan (LUP) as coastal canyon and containing environmentally sensitive habitat area (ESHA). Residential development in ESHA or ESHA buffer areas is prohibited by the Coastal Act. The project is proposed in a coastal canyon, where the City of San Clemente's Municipal Code prohibits encroachment by new development. Contrary to the Coastal Act and the Municipal Code, the project would include a 32-foot tall, 5,430 square foot residence, 1,429 square foot garage, 2,377 square foot terrace/deck area, grading and stabilization of the building pad, and a retaining wall surrounding the new development.

We ask that you recommend denial of the project outright. If you do not recommend denial, before the Coastal Commission proceeds any further with review of the project, the project should be referred back to the City for determination of whether or not a variance would be granted from the City Municipal Code's prohibition on development in a coastal canyon. If no such variance will be granted, the project application is moot because it may not legally be built. Furthermore, alternatives to the project such as a smaller residence and deck must be considered because the project may not be approved as proposed. We plan to submit more detailed comments in a future

letter assuming adequate notice will be given,¹ and provide the comments below for your consideration.

A. The Project is Proposed in ESHA, Where the Coastal Act Prohibits Residential Development Because Residential Development is Not a Coastal Dependent Use.

There is no reasonable doubt that the project is proposed in Trafalgar Canyon and that Trafalgar Canyon contains ESHA. It is discussed as likely ESHA in the San Clemente LUP because of the presence of Rye Grass. The 25-foot buffer analysis map prepared by Glenn Lukos Associates for the owner depicts practically the entire site would be within the buffer area for Lemonade Berry or Rye Grass, both of which are ESHA. (Enclosure 1.) Maps of the proposed project site demonstrate that it is proposed squarely within Trafalgar Canyon. Trafalgar Canyon is clearly designated in the Land Use Plan. (LUP 4-3 [“There are nine coastal canyons in San Clemente, including the two Marblehead Coastal Canyons, Palizada Canyon, Trafalgar Canyon, Toledo Canyon, Lobos Marinos Canyon, Riviera Canyon, Montalvo Canyon, and Calafia Canyon (see Figure 4-3 Coastal Canyons General Location Map)”]; 5-1, 4-14 [Figure 4-3].)

1. The Coastal Act Prohibits Residential Development In ESHA Because Residential Development Is Not A Resource Dependent Use.

One of the primary objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats. (Pub. Resources Code § 30001.5, subd. (a).) Thus, rare and most ecologically important habitats are protected from development. Section 30107.5 of the Coastal Act defines “environmentally sensitive area” as an “area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and *which could be easily disturbed or degraded by human activities and developments.*” (*Id.*, emphasis added.) To that end, Public Resources Code Section 30240 mandates:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, the court confirmed that, for ESHA resources, the requirement for protection is “heightened.” (*Id.*,

¹ As of today’s date, the agenda for the May Coastal Commission meeting does not include an item for approval of the project CDP. However, it is our understanding that the item might be added to the agenda and a staff report released around noon on Friday, April 26, 2019. We reserve the right to supplement our comments with future correspondence.

at p. 506; see, also, *Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346, 1376.) That protection is guaranteed by imposing "consequences of ESHA status," i.e., "strict preferences and priorities that guide development." (*Sierra Club v. California Coastal Comm'n* (1993) 12 Cal.App.4th 602, 611; *McAllister v. California Coastal Commission, supra*, 169 Cal.App.4th 912, 923.)

"The language of section 30240(a) is simple and direct." (*McAllister, supra*, 169 Cal.App.4th at 928.) As the court stated:

The statute unambiguously establishes *two restrictions* on development in habitat areas: (1) there can be no significant disruption of habitat values; and (2) only resource-dependent uses are allowed. The only potential ambiguity involves the phrase 'those resources,' which does not refer back to a list of resources. However, the context makes it clear that the phrase could only be referring to the resources that make an area a protected habitat—i.e., 'plant or animal life or their habitats [that] are either rare or especially valuable because of their special nature or role in an ecosystem....' (§ 30107.5)

Thus, together, the two restrictions limit development inside habitat areas to uses that are dependent on the resources to be protected and that do not significantly disrupt habitat values. This interpretation not only reflects the plain meaning of the statutory language but also harmonizes the two parts of section 30240(a) in the only way that makes sense, protects habitat areas, promotes the goals of the Coastal Act, and complies with our mandate to construe the Coastal Act liberally to achieve its purposes and objective.

(*McAllister, supra*, 169 Cal.App.4th at pp. 928-929, emphasis added.)

Therefore, the proposed project is prohibited by the Coastal Act because it is a non-resource dependent use proposed in an ESHA and because it would significantly disrupt ESHA habitat values.

2. The City's Municipal Code Prohibits Siting New Development, Whether Residential Or Not, in a Coastal Canyon.

The San Clemente Municipal Code states:

"New development shall not encroach into coastal canyons and shall be set back..."

(SCMC section 17.56.050 subd. (D)(2), emphasis added.) The project represents a clear encroachment into the heart of Trafalgar Canyon.

The Trafalgar Canyon boundaries are clearly delineated in the LUP. The boundaries have been accepted and incorporated into numerous City and Coastal Commission reviews of development in the area. Contrary to this clear delineation and long history of accepted boundaries, we understand the project proponent's representative has tried a convoluted explanation of why the project site should not be regarded as being within Trafalgar Canyon based upon historical photos from the 1920s. (Mark McGuire email to Liliana Roman dated March 21, 2019.) Reliance on selectively produced historical photos to redefine canyon boundaries is erroneous. The secondhand characterizations of an unnamed geologist's opinions based upon ambiguous photographs about canyon boundaries should be disregarded. If historical depictions are used in an attempt to redraw canyon boundaries, more accurate and useful depictions such as the U.S. Coast Survey maintained by the USGS is more informative, clearer, and supportive of the LUP-designated boundaries of Trafalgar Canyon.

While the City mistakenly approved the proposal "in concept" on September 5, 2018, this approval in concept was a "preliminary approval" that "does not grant the recipient any development rights." (In-Concept Review Approval (ICRES 18-095), September 5, 2018, p. 1.) The City should not have provided this approval in concept to the project proponent.

ICRES 18-095 has no persuasive or legal effect in the Coastal Commission's proceedings. No development at this location may be approved without a variance from the City. However, the City failed to review the project as was necessary, failed to make findings that might support a variance, failed to conduct adequate environmental review, failed to give the public notice of the pending application, failed to post the grant of the ICRES on the City's website until February 2019, and failed take other steps necessary to legally approve the proposed project. Instead, the City has placed the Coastal Commission in the position of having to enforce the City's Municipal Code when the City has failed to do so. The application must be referred back to the City for a determination of whether or not a variance from the City's Municipal Code prohibitions on development in a coastal canyon can or will be granted. It is our understanding that a previously proposed project for the same or nearby site failed to obtain a variance from the City to allow development in the canyon and for that reason the proponent dropped pursuit of the project. The Coastal Commission should not be forced to examine a project that may never be approved by the City if a variance is not granted and that clearly violates the City's Municipal Code prohibition on siting development in a coastal canyon.

The Commission may not legally approve a project that clearly violates the San Clemente Municipal Code.

B. Project Denial or Requiring Alternative Design of the Project That Protects the ESHA and Does Not Encroach in a Coastal Canyon Would Not be a Taking.

1. Denial of a Project That is Illegal Under the Coastal Act and the San Clemente Municipal Code is Not a Taking.

We have been informed that you have repeatedly responded to numerous public comments objecting to the project with a statement to the effect of:

The site appears to be entirely within a coastal canyon and is a legal lot zoned by the City 'RL' for Residential - Low Density development, apparently created in the original Old Hanson subdivision. Again, the site is a legally established lot zoned for residential use and because of its location within a coastal canyon, is also subject to the canyon protective policies of the certified San Clemente Land Use Plan. Outright denial of *a residential use* of this private property would be an unconstitutional taking of private property.

(Email of staff dated April 24, 2019.) *Outright denial of the proposed project would not constitute an unconstitutional taking of private property because the project is illegal as proposed.*

2. Federal law demonstrates project denial in this case would not be a taking.

Because the United States Constitution prohibits government from taking property without just compensation, a brief examination of federal law is necessary. Consistent with the United States Constitution's prohibition on taking property without just compensation, governmental regulation of a piece of property will not result in liability for a taking *unless no economically viable use of the property remains*, as long as the action substantially advances a legitimate state interest. (*Lucas v. South Carolina* (1992) 505 U.S. 1003, 112 S. Ct 2886.) Generally, a regulatory taking will not result if the value of a use allowed somewhere on the property, or a remaining right of ownership, is sufficient to allow a beneficial or productive use to the property as a whole.

Substantial diminutions in property values can occur without creating public agency liability for a taking. (*Hadacheck v. Sebastian* (1915) 239 U.S. 394 [92.5% diminution in value]; *William C. Haas Co. v. City of San Francisco* (9th Cir. 1979) 605 F2d 1117 [95% diminution in value].) It is sufficient if there is a "reasonable beneficial use." (*Williamson County Planning Commission v. Hamilton Bank* (1985) 473 U.S. 172, 194.) Moreover, not every land-use restriction, which designates areas on which no development is permitted results in a compensable taking. The governing

constitutional authority recognizes that the impact of a law or regulation as applied to a specific piece of property determines whether there has been a compensable taking. Compensation need not be paid unless the ordinance or regulation fails to serve an important governmental purpose or “goes too far” as applied to the specific property that is the object of the litigation. (*Pennsylvania Coal Co. v. Mahon*, (1922) 260 U.S. 393, 415.)

Especially because the 217 Vista Marina property is in a sensitive ecological area with steep slopes that could be unstable, but which provide natural landforms and open space that benefit the entire community by their natural setting, stringent regulation of any potential development is appropriate to protect public health, safety, and welfare. Starting in the last century with *Mugler v. Kansas* (1887) 123 U.S. 628, the Supreme Court has demonstrated a reluctance to find a taking where the value of the property has been diminished in an effort to protect the public health, safety and welfare.

“[A]ll property in this country is held under the implied obligation that the owner’s use of it shall not be injurious to the community.”

(*Mugler, supra*, 123 U.S. at 665.) Denial of the Vista Marina project proposal would be in the public interest because the proposal does not conform to the longstanding LUP and San Clemente Municipal Code and has significant unmitigated environmental impacts.

3. California law demonstrates denial of the project in this case would not be a taking.

Just as the federal Constitution does not support the conclusion that denial of the project would constitute a taking, neither does the California Constitution. California courts repeatedly have held a public entity is not liable for injury caused by denial of a project when it has discretionary authority to do so. (*Selby Realty Co. v. City of San Buenaventura*, (1973) 10 Cal.3d 110.)

Even where a City Council took several actions apparently with the specific intent of blocking the property owner’s proposed project, no liability inured. (*Stubblefield Construction Co. v. City of San Bernardino*, (1995) 32 Cal.App.4th 687.) In *Stubblefield*, despite a series of zoning actions, which targeted, and ultimately significantly impaired the value of the plaintiff developer’s land, the appellate court found no violation by the City of the Constitution’s guarantees of substantive due process and equal protection. The court found that the developer did not have a vested right to build his project in compliance with the laws applicable at the time of his application to build. (*Id.*, at 708.) Further, the court held that the City Council’s zoning actions, which were in response to the concerns of constituents in

the affected area, had a rational basis and therefore were not a violation of substantive due process. (*Id.*, at 710.) San Clemente's prohibition of development in coastal canyons is well-founded and protects public health, safety, and welfare. Similarly, the Coastal Act's prohibition of development adversely affecting ESHA protects the public health, safety, and welfare.

The California Supreme Court reversed the Court of Appeal in one of the only California cases where the Court of Appeal mistakenly found governmental liability accrued for denial of a project by the Coastal Commission. (*Landgate, Inc v. California Coastal Commission* (1998) 17 Cal.4th 1006.) In *Landgate*, the Court of Appeal upheld a trial court ruling ordering the California Coastal Commission to pay monetary damages to a property owner who temporarily was deprived of the use of his property through an unlawful permit denial. The County approved a reconfiguration of lots after obtaining an easement through property to build a road. The Coastal Commission did not object to the lot split until a subsequent, bona fide purchaser of one of the lots sought to build a single-family residence. Then the Commission denied the application, stating that the lot split was illegal, but its denial was subsequently shown to be based upon an erroneous legal conclusion. Even upon these extreme facts, the Supreme Court did not impose liability. The court stated "nothing in the record suggests that the Commission would have denied a development that fell within legally recognized, and environmentally more favorable, boundaries." (*Landgate, Inc. v. California Coastal Com'n* (1998) 17 Cal.4th 1006, 1028.) The case shows that denial of the Vista Marina proposed project, or substantial reduction of it to conform with existing legal requirements, would not deny all reasonable economic uses of the property and no taking would be found.

4. No Taking Would be Found in Denial of the Currently Proposed Project Because Alternative Designs and Uses Are Available.

We understand the applicant asserts the Coastal Commission may not deny use of the project site for residential purposes because it is allegedly a legally created residential lot. Denial of residential development in ESHA is not a taking because other types of development, including coastal dependent and economically viable uses, are permissible. For example, a nature study center or hiking waystation would be permissible uses in an ESHA. Residential uses in an ESHA are not allowed by the Coastal Act. (Public Resources Code Section 30240.)

The fact that the project site is zoned for residential use does not absolve the project proponent from having to adhere to the restrictions of the Coastal Act. As stated by the Court of Appeal:

Rather the zoning designation and resource-dependent-use restriction should be read together and the latter understood as a specific exception for areas within a zoning designation that are entitled to heightened protection as habitat areas.

(*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 936.) Thus, the zoning designation as residential does not overrule the heightened protection that is due to ESHA as the project site is within a designated ESHA.

The City has prohibited building of “new development” within coastal canyons. (San Clemente Municipal Code section 17.56.050 subd. (D)(2).) Therefore, the applicant could have no reasonable investment backed expectations of being able to build new development within a coastal canyon. It is our understanding that the site owner purchased the property for a reduced price, which presumably reflected the difficulty or impossibility of building residential development on the site.

There are other potential economically viable alternatives to residential development of the lot. The owner of the site could sell it for conservation purposes or sell a conservation easement over it, thus enjoying a reasonable economic return and future tax advantages.

C. Extensive Environmental Impacts in Addition to ESHA and Coastal Canyon Siting Require Extensive Environmental Review and Mitigation.

Additional impacts have been detailed in letters to you submitted by members of Friends of Trafalgar Canyon and other members of the public. We expect to be able to submit additional information regarding water quality impacts, visual and aesthetic impacts, and geological stability issues among others with future correspondence prior to the Commission hearing of this matter. For the moment, we note the impacts below that have been identified in correspondence by knowledgeable local residents.

Recreational impacts would be severe. Currently, there is a widely used public trail that proceeds down the center of Trafalgar Canyon to the nearby beach. This trail would be blocked by the proposed development.

Fire hazards would be exacerbated by the approval of the proposed development. Ms. Ellen Glynn sent you an email dated April 23, 2019 with pictures of a fire that had previously occurred in Trafalgar Canyon. Approving development without sufficient fire access will exacerbate the risks that already exists for all residents currently adjoining Trafalgar Canyon.

Liliana Roman
April 25, 2019
Page 9

Conclusion.

We urge you not to schedule the hearing of this CDP for the May Coastal Commission hearing. Instead, the CDP should be referred back to the City of San Clemente for clarification of whether or not a variance will be granted to allow development in a designated coastal canyon. Then, if such a variance is granted, the development that is considered must be a coastal-dependent use that does not destroy or degrade ESHA. Considering the CDP application at the May Coastal Commission meeting would be premature unless your recommendation is to deny the application outright.

We plan to submit further comments and information prior to next week and hope you will be able to include that information in the supplemental staff report if the matter is not continued to a future Commission hearing.

Thank you for your consideration.

Sincerely,

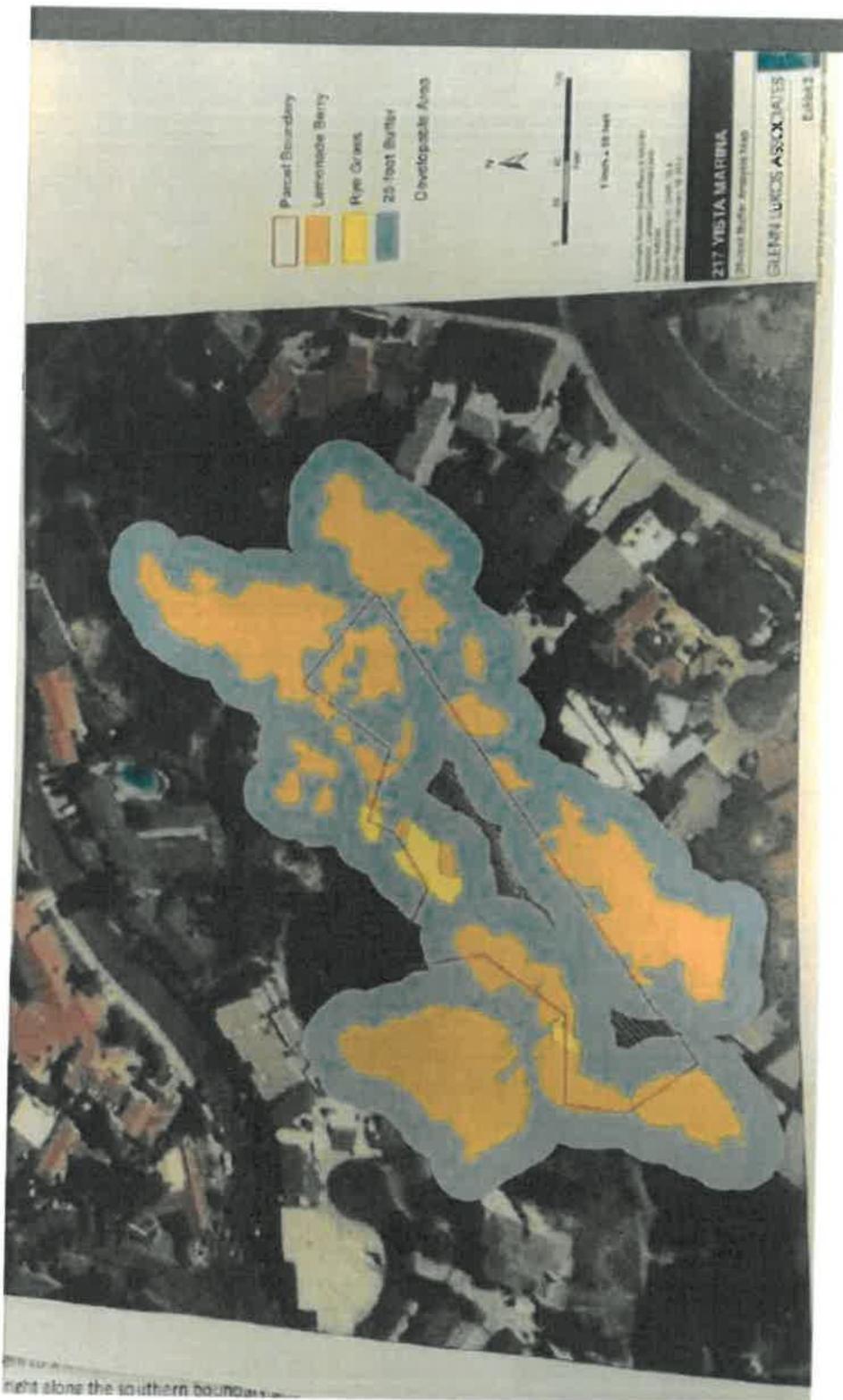


Douglas P. Carstens

Enclosure:

1. Glenn Lukos Associates 25-foot Buffer Analysis Map depicting Lemonade Berry and Rye Grass areas onsite.

ENCLOSURE 1

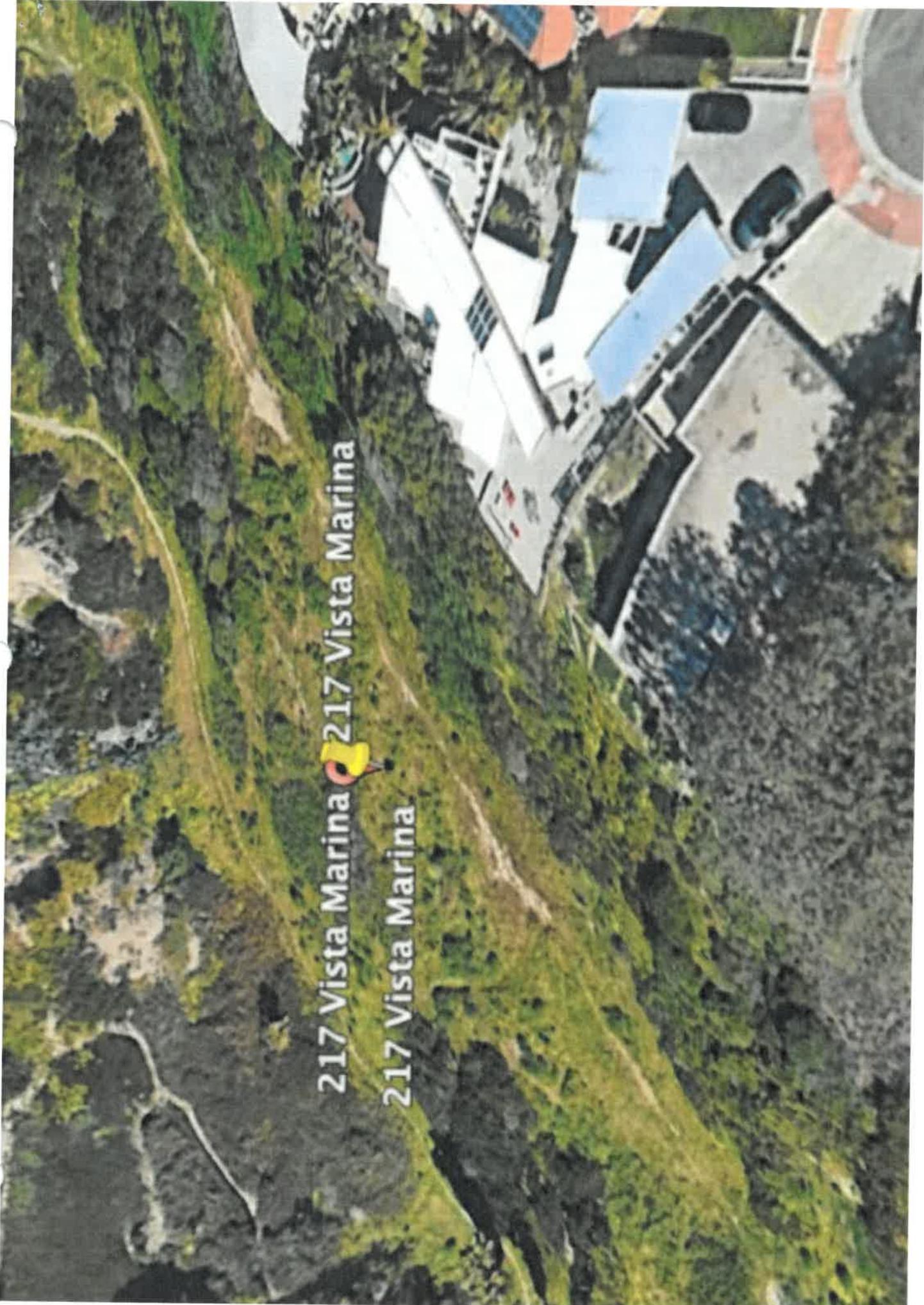


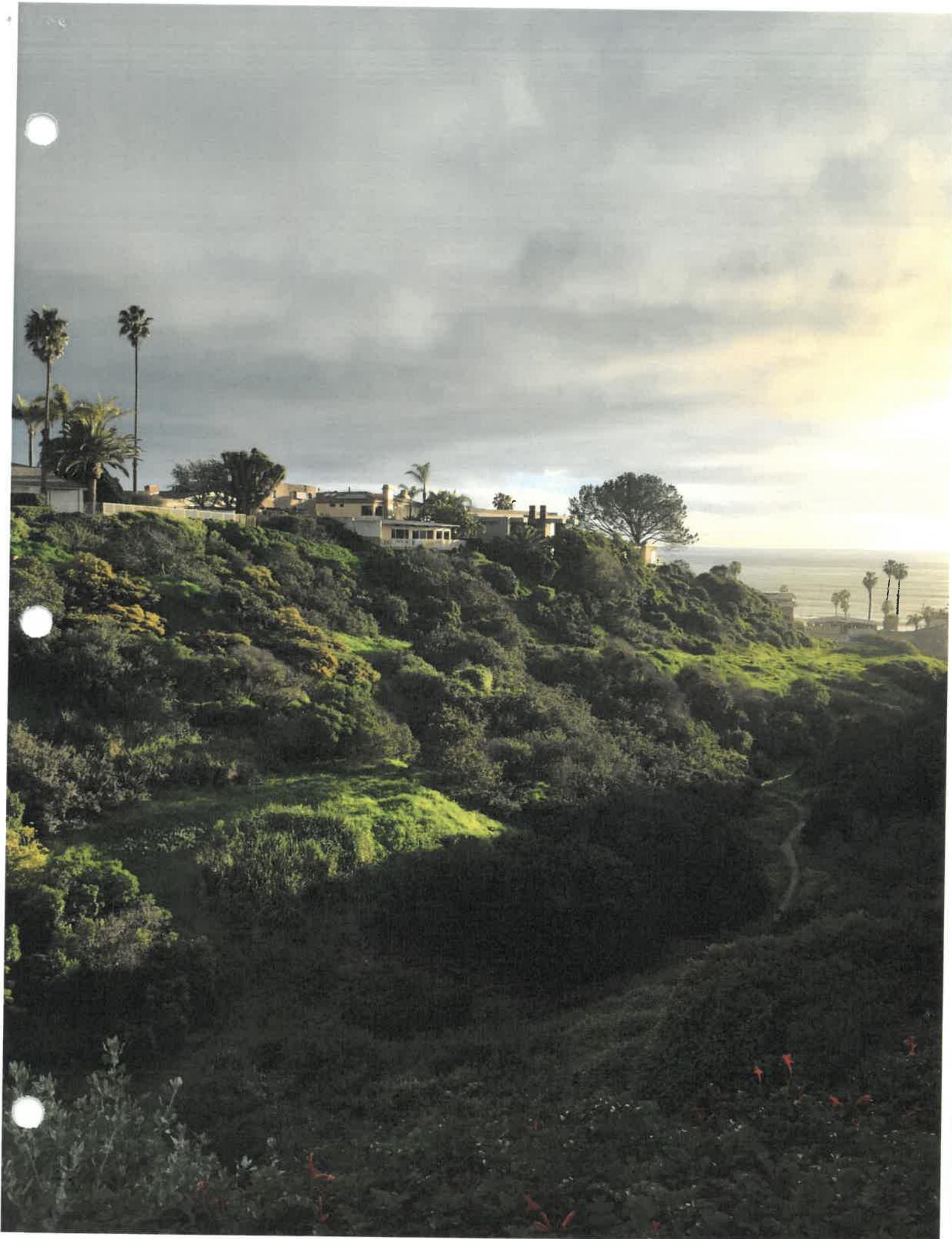
...right along the southern boundary...

ENCLOSURE 2

217 Vista Marina  217 Vista Marina

217 Vista Marina





ENCLOSURE 4

CITY OF SAN CLEMENTE
BUILDING DEPARTMENT
SAN CLEMENTE, CALIFORNIA

34428

DATE May 15 19 80

RECEIVED OF _____

OWNER Robinson LOT 2 BLK 10 TR 822

BUILDING PERMIT NO. _____ \$ _____
ELECTRIC PERMIT NO. _____ \$ _____
PLUMBING PERMIT NO. _____ \$ _____
S.M.I.T. _____ \$ _____
Reg. Fee _____ \$ 150.00

TOTAL RECEIVED \$ 150.00

PLEASE PAY CASHIER

J. T.
BUILDING INSPECTOR

1585707 A00150.00

PROJECT CHECKLIST

PROJECT TITLE Variance 80-08

RECEIVED _____ BY _____

REFERENCE:

DATE

ZONING AMENDMENT No. _____

GENERAL PLAN AMENDMENT No. _____

TENTATIVE PARCEL MAP No. _____

TENTATIVE TRACT MAP No. _____

USE PERMIT No. _____

VARIANCE No. _____

ARCHITECTURAL REVIEW No. _____

ENVIRONMENTAL REVIEW: *neg. Dec.*

INITIAL ASSESSMENT COMPLETED MAY 13, 1980

NEGATIVE DECLARATION GRANTED MAY 16, 1980

NOTICE OF EXEMPTION _____

NOTICE OF PREPARATION _____

NOTICE OF DETERMINATION _____

DRAFT IMPACT REPORT No. _____

AGENCY DISTRIBUTION _____

STATE CLEARINGHOUSE REVIEW PERIOD _____

NOTICE OF COMPLETION _____

CERTIFICATION OF E.I.R. _____

AGENCY SCHEDULING:

SUBDIVISION COMMITTEE _____

ZONING ADMINISTRATOR *referred to Planning Commission* 5/27/80

PLANNING COMMISSION *denied* 6/17/80

CITY COUNCIL *(applied by applicant)* 8/6/80

COMMENTS: _____

HISTORY OF VARIANCE NO. 80-08

1. Application was made to vary from Section 5.26 (Canyon Setback) of Ordinance No. 397 "The San Clemente City Zoning Ordinance," to allow an encroachment of 24 to 26 feet into a 28 to 33 foot canyon setback with a proposed Single Family residence, on property being a portion of Lot 2, Blk. 10, Tr. 822, also being Parcel 1 of Parcel Map 79-841, which was approved by the City Council on January 3, 1980. Submitted by Mr. & Mrs. William H. Robinson.
2. Application was assigned Variance No. 80-08 and set for public hearing before the Zoning Administrator on May 27, 1980.
3. On May 27, 1980, this Variance was heard. At this hearing, the applicant spoke in favor of his request. He noted he is the owner of both of these new parcels and indicated they were restricted to a maximum height of 15 feet above the street curb line. Mr. Andrew Seabol of 703 So. Ola Vista, spoke in opposition to the request. A letter written by Janet Radford of 157 Trafalgar Lane, also voiced opposition.

It was pointed out to the applicant that the plans as presently drawn would require a variance to the front yard setback and a 20 foot setback is required by code. It was further noted that the front yard setback request could be included in the present request, but would have to be readvertised. Action was then taken to send Variance 80-08 on to the Planning Commission for its final determination because:

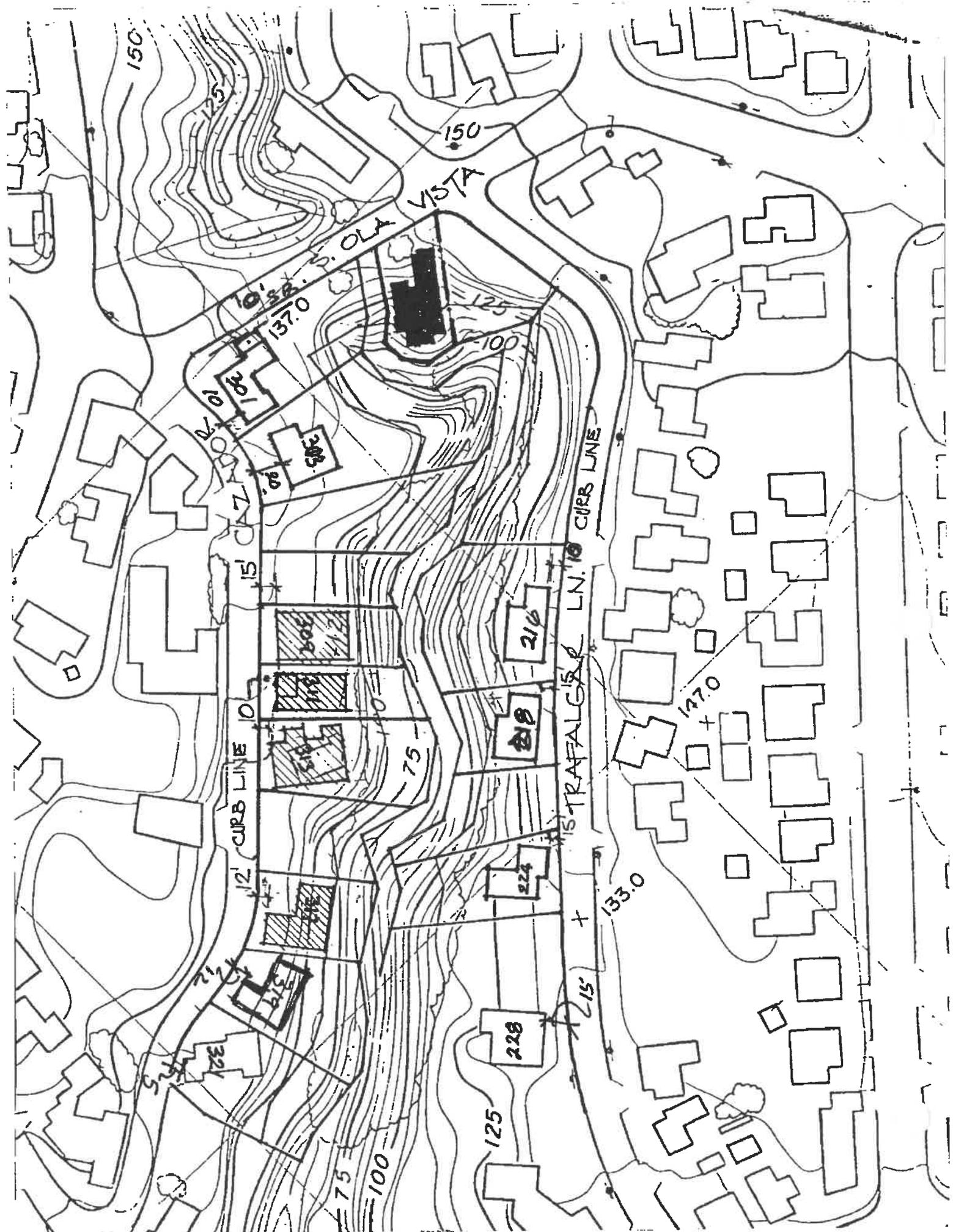
1. When this property was subdivided, the Parcel Map was processed through the Planning Commission with certain statements made as to how it would be developed. The Commission should now have the right to review the development plans.
2. Section 5.30.3 provides that the Zoning Administrator may choose not to make the final determination, and may send it to the Planning Commission for their consideration.
3. This hearing should readvertised because of the front yard setback encroachment as well as the requested rear yard encroachment.

On June 17, 1980, Variance No. 80-08 was heard by the Planning Commission to request:

1. An encroachment of 24 to 26 feet into an approximately 33 foot wide rear yard setback with a single family residence.
2. An encroachment of ten feet into a required 20 foot wide front yard setback with an attached two car garage.

Mr. Richard Dodd, Architect, and Mr. Robinson, the applicant, spoke in behalf of their request answering questions relative to their development.

At the close of the public hearing, IT WAS MOVED BY COMMISSIONER MORGAN, SECONDED BY COMMISSIONER GELLATLY AND CARRIED UNANIMOUSLY to deny Variance No. 80-08, as it is contrary to the intent of the Zoning Ordinance and because no special hardship has been shown or proved at the hearing; that strict application of the ordinance would not result in a hardship upon this applicant and/or deprive this property of privileges enjoyed by other properties in the vicinity and in similar zoning districts. THE MOTION WAS SECONDED BY COMMISSIONER GELLATLY AND CARRIED UNANIMOUSLY.



File

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: Planning Commission

Copy to: Richard H. Dodd
✓ Building & Planning Director
City Manager

Meeting of the City Council, City of San Clemente, California, held Sept. 10, 1980

Present: COUNCIL MEMBERS - LANE, LIMBERG, MECHAM, O'KEEFE, AND KOESTER

Absent: COUNCIL MEMBERS - NONE

Subject: 112 - Resolution No. 67-80 Denying Variance Request No. 80-8.

IN RE: Resolution formally denying Variance No. 80-8.

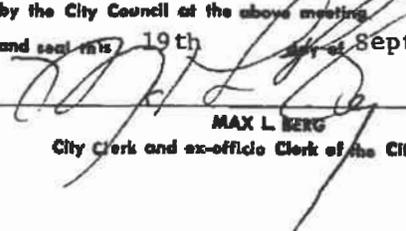
Upon motion of Councilman Limberg, seconded by Councilman Lane, and unanimously carried, RESOLUTION NO. 67-80, BEING A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA DENYING VARIANCE REQUEST NO. 80-8, was regularly introduced, passed, and adopted.

STATE OF CALIFORNIA,
COUNTY OF ORANGE,
CITY OF SAN CLEMENTE,

} SS.

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of Sept. , 1980


MAX L. BERG
City Clerk and ex-officio Clerk of the City Council

(SEAL)

RESOLUTION NO. 67-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA DENYING VARIANCE REQUEST
NO. 80-8.

WHEREAS, William H. Robinson, hereinafter referred to as
the applicant, did make application to vary from Section 4.1 of
Ordinance No. 397 (the zoning ordinance) to permit the following:

- (1) An encroachment of approximately twenty six feet into
a thirty three-foot wide rear yard canyon setback; and
- (2) An encroachment of ten feet into a required twenty-
foot front yard setback; and

WHEREAS, the real property for which the variance request
was made is located at 610 South Ola Vista, being more particularly
described as a portion of lot 2, block 10, tract 822; and

WHEREAS, the matter was considered by the city's zoning
administrator on May 27, 1980, and thereafter referred to the plan-
ning commission for consideration pursuant to section 5.30.3 of the
zoning ordinance; and

WHEREAS, the planning commission did conduct a public
hearing on June 17, 1980, and at said time received evidence and
testimony regarding the request and did unanimously deny the appli-
cation; and

WHEREAS, the applicant did file an appeal with the city
clerk within the time allowed by section 8 of the zoning ordinance
from the action of the planning commission denying variance no. 80-8;
and

WHEREAS, the city council did conduct a public hearing on
August 13, 1980 to consider the matter and to receive evidence and
testimony in connection therewith; and

WHEREAS, after hearing all evidence and testimony relating
to this application, this city council is now ready to take final
action on the appeal.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Clemente as follows:

Section 1. The above recitals are all true and correct, and the same are incorporated by reference as though fully set forth herein.

Section 2. The appeal on behalf of William H. Robinson from the action of the planning commission denying variance no. 80-8 is denied, and the decision is affirmed based on the following findings:

(1) The applicant has failed to show any special circumstances applicable to the subject property which, upon strict application of the zoning ordinance, are found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zoning classifications;

(2) An approval of this variance request would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located;

(3) The subject property is a canyon lot, which is subject to the 30% setback requirement which is contained in section 5.26 of the zoning ordinance. This section was adopted to protect and preserve canyons and canyon vistas, which are considered by this city council to be an important natural resource;

(4) The granting of the request for encroachment into the canyon setback would allow a development which would be out of character with the existing neighborhood;

(5) The hardship, if any, shown by the applicant is self-induced and was brought about by the applicant's previous request to divide the existing parcel into two separate lots. At the time said request was considered by the planning commission and city council, the applicant was made aware of the potential problems involved in developing the property as a result of the fact that the resulting

two lots were adjacent to a canyon and contained only slightly more than the minimum square footage required in the R-1 zone;

(6) The applicant has failed to show any special circumstances applicable to the subject property which would justify an encroachment of ten feet into the required twenty-foot front yard setback. The need, if any, for such encroachment is personal to the applicant and was brought about by the applicant's request to divide the existing parcel into two separate lots.

Section 3. For particulars, reference is made to the minutes of the meetings and hearings before the zoning administrator, planning commission and city council all relating to variance no. 80-8, which said minutes are incorporated by reference as though fully set forth herein.

APPROVED, ADOPTED and SIGNED this 10th day of Sept., 1980.

Karolyn Koester

MAYOR, City of San Clemente

(SEAL)

ATTEST:

Max L. Berg
CITY CLERK of the City
of San Clemente

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF SAN CLEMENTE)

I, MAX L. BERG, Clerk of the City of San Clemente, California, hereby certify that the foregoing is a true and correct copy of a Resolution of the City Council of said City numbered 67-80, adopted by the City Council of said City on the 10th day of September, 1980, and was so passed and adopted by the following stated vote, to wit:

AYES: Council Members - LANE, LIMBERG, MECHAM, O'KEEFE, KOESTER
NOES: Council Members - NONE
ABSENT: Council Members - NONE

and was thereafter on said day signed and approved by the Mayor and City Clerk.

-3-

ATTEST:

Max L. Berg
CITY CLERK of the City of
San Clemente, California

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: City Attorney

Copy to: Richard Dodd
Planning Commission
✓ Building & Planning Director
City Manager

Meeting of the City Council, City of San Clemente, California, held Aug. 20, 1980

Present: COUNCIL MEMBERS - LANE, LIMBERG, MECHAM, AND KOESTER

Absent: COUNCIL MEMBERS - O'KEEFE

Subject: 112 - Proposed Resolution Denying Variance Request No. 80-8.

IN RE: Proposed Resolution denying variance request No. 80-8.

Councilman Lane questioned the wording in section 4 of the resolution following which IT WAS MOVED BY COUNCILMAN LANE, SECONDED BY COUNCILMAN MECHAM, AND UNANIMOUSLY CARRIED to continue the matter to the meeting of 9-3-80.

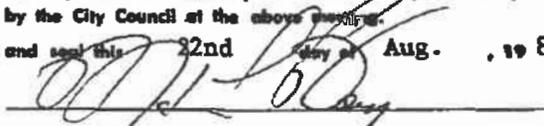
STATE OF CALIFORNIA,
COUNTY OF ORANGE,
CITY OF SAN CLEMENTE, }

SS.

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of Aug. , 19 80

(SEAL)


City Clerk and ex-officio Clerk of the City Council

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: Richard H. Dodd

Copy to: Planning Commission
✓ Building & Planning Director
City Manager

Meeting of the City Council, City of San Clemente, California, held Aug. 6, 1980

Present: COUNCIL MEMBERS — LANE, LIMBERG, MECHAM, O'KEEFE, AND KOESTER

Absent: COUNCIL MEMBERS — NONE

Subject: 112 - Variance No. 80-8 (William H. Robinson).

IN RE: Public Hearing to consider an appeal to the Planning Commission's denial of Variance No. 80-8, being a request to vary from Section 4.1 of Ordinance No. 397, known as the "San Clemente City Zoning Ordinance", to permit: (1) an encroachment of 24 to 26 feet into an approximately 33-foot wide rear yard canyon setback with a single family residence; and (2) an encroachment of 10 feet into a required 20-foot front yard setback with an attached two-car garage on this same single family residence. Legal description being a Portion of Lot 2, Block 10, Tract 822, also known as being Parcel 1 of Parcel Map No. 79-841; more commonly known as 610 South Ola Vista. Appeal submitted by Richard H. Dodd on behalf of his clients, Mr. and Mrs. William H. Robinson.

The Mayor opened the public hearing and Marlene Fox, representing the applicant, noted that the topography of the lot does not match the rest of the neighborhood; that the proposed single family dwelling unit will comprise about 50% of the lot; that they feel this is not a canyon lot but a level lot; and that there is not one unit on the street that has a 20' setback in the front yard.

Discussion followed regarding setbacks, canyon requirements, how the lot came into being; whether the lot was filled and flattened and grading work performed over the years; and that a lot split would create two minimum lots of 6,000 square feet each.

Richard Dodd, architect, noted that if there was a lot split the applicant would stick to a 15' height limitation, however, with only one buildable lot a building could be constructed to 25'; that the house placed on the lot will not block anyone's view; and requested a possible compromise of a 25' canyon setback with the approval of the variance for the front yard setback.

The Zoning Administrator then reviewed the front yard setbacks on Trafalgar and Cazador Lanes and how they came about.

The public hearing was closed and it was determined that the applicant failed to show any special circumstances applicable to the subject property which would deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning ordinances; that the property is a canyon lot which is subject to the 30% setback requirements which is to protect and preserve the canyons and canyon vistas, and that no hardship has been shown.

IT WAS THEN MOVED BY COUNCILMAN LANE, SECONDED BY COUNCILMAN LIMBERG, AND UNANIMOUSLY CARRIED to concur with the Planning Commission's denial of Variance request No. 80-8.

The City Attorney advised he would bring a resolution to the next meeting covering the findings for denial of the variance.

STATE OF CALIFORNIA, }
COUNTY OF ORANGE, } SS.
CITY OF SAN CLEMENTE, }

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of Sept. , 19 80

Max L. Berg

MAX L. BERG

City Clerk and ex-officio Clerk of the City Council

By Marjorie L. Hill, Deputy

(SEAL)

jb

PF

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: ✓ Planning Commission

Copy to: Richard H. Dodd
Building & Planning Director
City Manager



Meeting of the City Council, City of San Clemente, California, held Sept. 10, 1980

Present: COUNCIL MEMBERS -- LANE, LIMBERG, MECHAM, O'KEEFE, AND KOESTER
Absent: COUNCIL MEMBERS -- NONE

Subject: 112 - Resolution No. 67-80 Denying Variance Request No. 80-8.

IN RE: Resolution formally denying Variance No. 80-8.

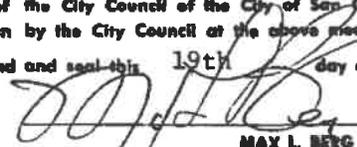
Upon motion of Councilman Limberg, seconded by Councilman Lane, and unanimously carried, RESOLUTION NO. 67-80, BEING A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA DENYING VARIANCE REQUEST NO. 80-8, was regularly introduced, passed, and adopted.

STATE OF CALIFORNIA, }
COUNTY OF ORANGE, }
CITY OF SAN CLEMENTE, }

SS.

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of Sept. , 1980



MAX L. BERG
City Clerk and ex-officio Clerk of the City Council

(SEAL)

RESOLUTION NO. 67-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA DENYING VARIANCE REQUEST
NO. 80-8.

WHEREAS, William H. Robinson, hereinafter referred to as the applicant, did make application to vary from Section 4.1 of Ordinance No. 397 (the zoning ordinance) to permit the following:

- (1) An encroachment of approximately twenty six feet into a thirty three-foot wide rear yard canyon setback; and
- (2) An encroachment of ten feet into a required twenty-foot front yard setback; and

WHEREAS, the real property for which the variance request was made is located at 610 South Ola Vista, being more particularly described as a portion of lot 2, block 10, tract 822; and

WHEREAS, the matter was considered by the city's zoning administrator on May 27, 1980, and thereafter referred to the planning commission for consideration pursuant to section 5.30.3 of the zoning ordinance; and

WHEREAS, the planning commission did conduct a public hearing on June 17, 1980, and at said time received evidence and testimony regarding the request and did unanimously deny the application; and

WHEREAS, the applicant did file an appeal with the city clerk within the time allowed by section 8 of the zoning ordinance from the action of the planning commission denying variance no. 80-8; and

WHEREAS, the city council did conduct a public hearing on August 13, 1980 to consider the matter and to receive evidence and testimony in connection therewith; and

WHEREAS, after hearing all evidence and testimony relating to this application, this city council is now ready to take final action on the appeal.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Clemente as follows:

Section 1. The above recitals are all true and correct, and the same are incorporated by reference as though fully set forth herein.

Section 2. The appeal on behalf of William H. Robinson from the action of the planning commission denying variance no. 80-8 is denied, and the decision is affirmed based on the following findings:

(1) The applicant has failed to show any special circumstances applicable to the subject property which, upon strict application of the zoning ordinance, are found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zoning classifications;

(2) An approval of this variance request would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located;

(3) The subject property is a canyon lot, which is subject to the 30% setback requirement which is contained in section 5.26 of the zoning ordinance. This section was adopted to protect and preserve canyons and canyon vistas, which are considered by this city council to be an important natural resource;

(4) The granting of the request for encroachment into the canyon setback would allow a development which would be out of character with the existing neighborhood;

(5) The hardship, if any, shown by the applicant is self-induced and was brought about by the applicant's previous request to divide the existing parcel into two separate lots. At the time said request was considered by the planning commission and city council, the applicant was made aware of the potential problems involved in developing the property as a result of the fact that the resulting

two lots were adjacent to a canyon and contained only slightly more than the minimum square footage required in the R-1 zone;

(6) The applicant has failed to show any special circumstances applicable to the subject property which would justify an encroachment of ten feet into the required twenty-foot front yard setback. The need, if any, for such encroachment is personal to the applicant and was brought about by the applicant's request to divide the existing parcel into two separate lots.

Section 3. For particulars, reference is made to the minutes of the meetings and hearings before the zoning administrator, planning commission and city council all relating to variance no. 80-8, which said minutes are incorporated by reference as though fully set forth herein.

APPROVED, ADOPTED and SIGNED this 10th day of Sept., 1980.

Karolnie Koester

MAYOR, City of San Clemente

(SEAL)

ATTEST:

Max L. Berg
CITY CLERK of the City
of San Clemente

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF SAN CLEMENTE)

I, MAX L. BERG, Clerk of the City of San Clemente, California, hereby certify that the foregoing is a true and correct copy of a Resolution of the City Council of said City numbered 67-80, adopted by the City Council of said City on the 10th day of September, 1980, and was so passed and adopted by the following stated vote, to wit:

AYES: Council Members - LANE, LIMBERG, MECHAM, O'KEEFE, KOESTER
NOES: Council Members - NONE
ABSENT: Council Members - NONE

and was thereafter on said day signed and approved by the Mayor and City Clerk.

-3-

ATTEST:

Max L. Berg
CITY CLERK of the City of
San Clemente, California

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: City Attorney

Copy to: Richard Dodd
✓ Planning Commission
Building & Planning Director
City Manager

Meeting of the City Council, City of San Clemente, California, held Aug. 20, 1980

Present: COUNCIL MEMBERS — LANE, LIMBERG, MECHAM, AND KOESTER

Absent: COUNCIL MEMBERS — O'KEEFE

Subject: 112 - Proposed Resolution Denying Variance Request No. 80-8.

IN RE: Proposed Resolution denying variance request No. 80-8.

Councilman Lane questioned the wording in section 4 of the resolution following which IT WAS MOVED BY COUNCILMAN LANE, SECONDED BY COUNCILMAN MECHAM, AND UNANIMOUSLY CARRIED to continue the matter to the meeting of 9-3-80.

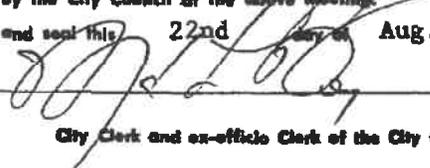
STATE OF CALIFORNIA,
COUNTY OF ORANGE,
CITY OF SAN CLEMENTE,

} SS.

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

(IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of Aug. , 19 80

(SEAL)


City Clerk and ex-officio Clerk of the City Council

ACTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA

Addressed to: Richard H. Dodd

Copy to: Planning Commission
Building & Planning Director
City Manager

Meeting of the City Council, City of San Clemente, California, held Aug. 6, 1980

Present: COUNCIL MEMBERS — LANE, LIMBERG, MECHAM, O'KEEFE, AND KOESTER

Absent: COUNCIL MEMBERS — NONE

Subject: 112 - Variance No. 80-8 (William H. Robinson).

IN RE: Public Hearing to consider an appeal to the Planning Commission's denial of Variance No. 80-8, being a request to vary from Section 4.1 of Ordinance No. 397, known as the "San Clemente City Zoning Ordinance", to permit: (1) an encroachment of 24 to 26 feet into an approximately 33-foot wide rear yard canyon setback with a single family residence; and (2) an encroachment of 10 feet into a required 20-foot front yard setback with an attached two-car garage on this same single family residence. Legal description being a Portion of Lot 2, Block 10, Tract 822, also known as being Parcel 1 of Parcel Map No. 79-841; more commonly known as 610 South Ola Vista. Appeal submitted by Richard H. Dodd on behalf of his clients, Mr. and Mrs. William H. Robinson.

The Mayor opened the public hearing and Marlene Fox, representing the applicant, noted that the topography of the lot does not match the rest of the neighborhood; that the proposed single family dwelling unit will comprise about 50% of the lot; that they feel this is not a canyon lot but a level lot; and that there is not one unit on the street that has a 20' setback in the front yard.

Discussion followed regarding setbacks, canyon requirements, how the lot came into being; whether the lot was filled and flattened and grading work performed over the years; and that a lot split would create two minimum lots of 6,000 square feet each.

Richard Dodd, architect, noted that if there was a lot split the applicant would stick to a 15' height limitation, however, with only one buildable lot a building could be constructed to 25'; that the house placed on the lot will not block anyone's view; and requested a possible compromise of a 25' canyon setback with the approval of the variance for the front yard setback.

The Zoning Administrator then reviewed the front yard setbacks on Trafalgar and Cazador Lanes and how they came about.

The public hearing was closed and it was determined that the applicant failed to show any special circumstances applicable to the subject property which would deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning ordinances; that the property is a canyon lot which is subject to the 30% setback requirements which is to protect and preserve the canyons and canyon vistas, and that no hardship has been shown.

IT WAS THEN MOVED BY COUNCILMAN LANE, SECONDED BY COUNCILMAN LIMBERG, AND UNANIMOUSLY CARRIED to concur with the Planning Commission's denial of Variance request No. 80-8.

The City Attorney advised he would bring a resolution to the next meeting covering the findings for denial of the variance.

STATE OF CALIFORNIA, }
COUNTY OF ORANGE, } SS.
CITY OF SAN CLEMENTE, }

I, MAX BERG, City Clerk and ex-officio Clerk of the City Council of the City of San Clemente, California, do hereby certify the foregoing to be the official action taken by the City Council at the above meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of Sept. , 19 80

Max L. Berg

MAX L. BERG

City Clerk and ex-officio Clerk of the City Council

By Margaret L. Well, Deputy

(SEAL)

jb



CITY OF
SAN CLEMENTE



July 18, 1980

✓ Honorable Chairman and Members of the
Planning Commission

Re: Variance No. 80-8

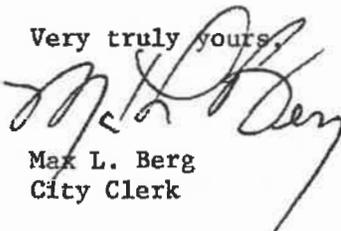
Gentlemen:

This is to officially advise that in accordance with the provisions of Section 8 et seq. of Zoning Ordinance No. 397, Richard H. Dodd, Architect, in behalf of his clients Mr. & Mrs. William H. Robinson, has filed an appeal to the Planning Commission's denial of Variance No. 80-8.

Public Hearing before the Council on said appeal has been set for 7:00 P.M., August 6, 1980.

In accordance with Section 8.3 of said Ordinance No. 397, it is requested that you prepare a report of the facts pertaining to the decision of the Commission and submit such report to the Council along with the reasons for your action.

Very truly yours,


Max L. Berg
City Clerk

MLB:jb

cc: Richard H. Dodd

PF

ACTION OF THE PLANNING COMMISSION
CITY OF SAN CLEMENTE, CALIFORNIA

TO: File

COPY TO: Mr. & Mrs. William H. Robinson

A regular meeting of the Planning Commission of the City of San Clemente, California, was held on June 17, 1980, at 7:00 P.M.

Commissioners Present: Berger, Gellatly, Morgan, Saunders, Wulfeck
Absent: None

SUBJECT: Variance No. 80-8 (Mr. & Mrs. William H. Robinson)

A referral from the Zoning Administrator for Variance No. 80-8, being a request to vary from Section 4.1 of Ordinance No. 397 to permit (1) an encroachment of 24 to 26 feet into an approximately 33-foot wide rear yard canyon setback with a single family residence; and (2) an encroachment of 10 feet into a required 20-foot front yard setback with an attached two-car garage on this same single family residence. Legal description being a Portion of Lot 2, Block 10, Tract 822, also known as being Parcel 1 of Parcel Map No. 79-841; more commonly known as 610 South Ola Vista. It was noted that in compliance with the California Environmental Quality Act, a Negative Declaration was granted for the project on May 13, 1980.

Mr. Thiele reviewed the subject variance and denoted the geographical location of the subject property. A discussion and question period followed with Commissioners asking specific questions regarding setbacks, canyon requirements, etc. Mr. Richard Dodd, architect, spoke on behalf of the applicants and requested approval. Specific questions were directed to Mr. Dodd by the Commission relative to size and square footage of the dwelling proposed for the property.

IT WAS MOVED BY COMMISSIONER MORGAN to deny Variance No. 80-8 as it is contrary to the intent of the Zoning Ordinance and because no special hardship has been shown and proved at this hearing; that strict application of the ordinance would not result in a hardship upon this applicant and/or deprive this property of privileges enjoyed by other properties in the vicinity and in similar zoning districts. THE MOTION WAS SECONDED BY COMMISSIONER GELLATLY AND CARRIED UNANIMOUSLY.

OFFICE OF THE ZONING ADMINISTRATOR

CITY OF SAN CLEMENTE
CALIFORNIA

Addressed To: Richard H. Dodd, Architect
201 Shipyard Way
Berth "A", Cabin "F"
Newport Beach, Ca. 92663

Copy To:

A regular meeting of the Zoning Administrator of the City of San Clemente was held
May 27 1980, at 10:00 A.M.

SUBJECT

PUBLIC HEARINGS

1. VARIANCE 80-08

Applicant: Mr. & Mrs. William H. Robinson
Address: 610 So. Ola Vista
Legal: Parcel 1, Parcel Map 79-841
Environmental Assessment: Negative Declaration granted May 13, 1980

A request to allow an encroachment of 24 to 26 feet into an approximately 33 foot rear yard, canyon setback with a proposed single family residence.

Hearing was opened and Richard Dodd, Architect, spoke in favor of the request noting Mr. Robinson, the applicant, was unaware of any canyon setback when he purchased this property. Mr. Dodd noted front yard setbacks on Trafalgar and Cazador Lanes which exceed the required front yard setback.

Mr. William Robinson, applicant, also spoke in favor of this request noting a condition of the approval of Parcel Map 79-841 limited any building constructed on either parcel to a maximum height of fifteen (15) feet above the street curb line. Mr. Robinson stated that he owns both of these new parcels.

Mr. Andrew Seabold of 703 So. Ola Vista, spoke in opposition to this request commenting about traffic and street conditions in this area.

A letter from Janet Radford of 157 Trafalgar Lane, voiced opposition to the request, stating the lot was recently split into two parcels, and now the owner of this one parcel is saying it is too small because of the setback.

General discussion followed. It was pointed out to the applicant that as the plans are presently drawn, a variance would also be required for the front yard setback of ten feet. It was further noted that the front yard setback could be included in this request, but the hearing would have to be re-advertised.

Dated: May 30, 1980

Gene Schulte, Zoning Administrator

Minutes not official until approved by the Planning Commission and City Council

Action of the Zoning Administrator
Page 2

Variance 80-08
Mr. & Mrs. William H. Robinson

- b. When this property was subdivided, the Parcel Map was processed through the Planning Commission with certain statements made as to how it would be developed. The Commission should now have the right to review the development plans.
- c. Section 5.30.3 provides that the Zoning Administrator may choose not to make the final determination, and may send it to the Planning Commission for their consideration.

Hearing was closed, and the options on the disposition of this variance were discussed. ACTION WAS THEN TAKEN to send Variance No. 80-08 on to the Planning Commission for its final determination.

Reasons for action taken:

- a. This hearing should be re-advertised because of the front yard setback encroachment, as well as the requested rear yard encroachment.

June 11, 1980

Planning Commission
City of San Clemente



Dear Commissioners,

We are writing in regard to
variance # 80-08 at 610 So. Old Vista.

We were puzzled at the time
that the request was made to split the
lot because it appeared to be too
small for two lots. Now after the City
Council granted the request, Mr. and Mrs.
Robinson are asking for a variance to build
because the lot is too small - It makes
you wonder -

We hope the variance will be
denied because that is a busy corner
and having two houses there will only
add to the congestion and traffic problems.

Sincerely,

Janet and Bob Radford
157 Trafalgar Ln
San Clemente

May 26, 1980

Honoring Administrator
City of San Clemente,

We are writing in regards
to variance # 80-02 at 610 So. Old Vista.

We were puzzled at the
time that the request was made to split
the lot because it appeared to be too
small for two lots. Now since the
City Council granted the request, Mrs.
and Mr. Robinson are asking for a
variance to build because the lot
is too small. -- It makes you
wonder. . . !

We hope the variance will be
denied because that is a busy corner and
having two houses there will only add
to the congestion and traffic problems.

7 Tra falgar Ln.
San Clemente

James Radford
Robert Radford

VAR
80-08

TO BE PUBLISHED June 6, 1980

NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT PUBLIC HEARINGS WILL BE HELD BY THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RELATIVE TO THE FOLLOWING:

1. Use Permit No. 80-13: To consider an appeal to the Zoning Administrator's action of denial of Use Permit No. 80-13, being a request under Section 7 of Ordinance No. 397, known as the "San Clemente City Zoning Ordinance", to permit a motion picture theater to be established in an existing building with seating for approximately 448 patrons. Legal description being Lot 6, Tract 4577, more commonly known as 2727 Via Cascadita. Submitted by Diversified Properties Inc.
- ✓ 2. Variance No. 80-08: A referral from the Zoning Administrator for Variance No. 80-08, being a request to vary from Section 4.1 of Ordinance No. 397, known as the "San Clemente City Zoning Ordinance", to permit: (1) an encroachment of 24 to 26 feet into an approximately 33-foot wide rear yard canyon setback with a single family residence; and (2) an encroachment of 10 feet into a required 20-foot front yard setback with an attached two-car garage on this same single family residence. Legal description being a Portion of Lot 2, Block 10, Tract 822, also known as being Parcel 1 of Parcel Map No. 79-841; more commonly known as 610 South Ola Vista. Submitted by Mr. & Mrs. William H. Robinson.

NOTICE IS FURTHER GIVEN THAT said Public Hearings will be held at the meeting of June 17, 1980 at 7:00 P.M. in the Council Chambers, Civic Center, 100 Avenida Presidio, San Clemente, California. All interested persons are invited to attend said hearing or by written communication to the Planning Commission express their opinion for or against these requests. For further details you are invited to call at the office of the Planning Commission Secretary of the above address where information is on file and available for public inspection.

Michael Thiele, Secretary
San Clemente Planning Commission

AGENDA OF THE MEETING
OF THE
ZONING ADMINISTRATOR

SAN CLEMENTE, CALIFORNIA
MAY 27, 1980 - 10:00 A.M.

CALL TO ORDER

PUBLIC HEARINGS

1. VARIANCE 80-08

Applicant: Mr. & Mrs. William H. Robinson
Address: 610 So. Ola Vista
Legal: Parcel 1, Parcel Map 79-841
Environmental Assessment: Negative Declaration granted May 13, 1980

*Dick Dodd, Jr. C.
Andrew Lebol*

43

A request to allow an encroachment of 24 to 26 feet into an approximately 33 foot rear yard, canyon setback with a proposed single family residence.

2. USE PERMIT 80-03

Applicant: Rampart Research
Address: 101 Coronado Lane
Legal: Lots 1, 2 and 3, Blk. 11, Tr. 785
Environmental Assessment: Negative Declaration granted March 18, 1980

A request to permit a five unit condominium complex on this R-4 (Multiple Residential) District zoned property.

HOME OCCUPATIONS

3. H.O. 80-20 (Interior Design)

Applicant: Etta Heinz, 318 Avenida Constanso, San Clemente

Held over from meeting of April 22, 1980. Requested applicant to obtain a letter from the Seascape Village Homeowners' Association. Applicant has now moved to a different location - 318 Avenida Constanso.

4. H.O. 80-32 (Mfg. Representative)

Applicant: Glendon L. White, 3919 Calle Abril, San Clemente

5. H.O. 80-33 (Business Consultant)

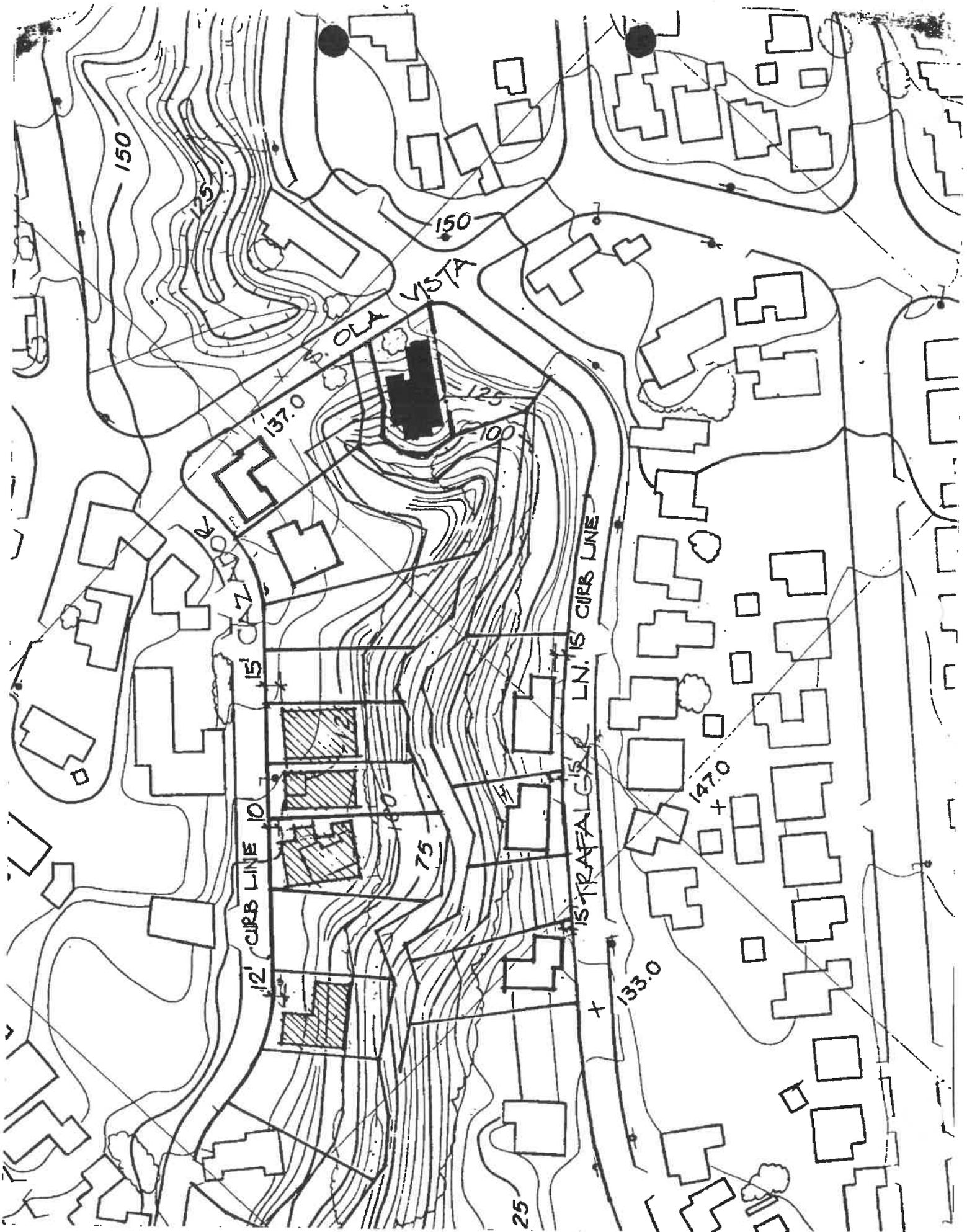
Applicant: John Majuri, 218 Avenida Santa Barbara, San Clemente

6. H.O. 80-34 (Spiritual Counselor)

Applicant: Reverends Wilfred D. and Doris J. Rondeau, 432 Calle Vista Torito,
San Clemente

ADJOURNMENT

EWS:bk



ENCLOSURE 5

CALIFORNIA COASTAL COMMISSION

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

W25b

Filed: June 2, 2006
49th Day: July 21, 2006
180th Day: November 29, 2006
Staff: Karl Schwing-LB
Staff Report: November 2, 2006
Hearing Date: November 14-17, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-06-112

APPLICANTS: Boca del Canon LLC, Attn: David Schneider & Carl Grewe

AGENTS: Stephan Cohn, Attorney
David York, Architect

PROJECT LOCATION: 317 La Rambla (Lot No. 5, Tract No. 4947)
San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a 4,468 square foot, 26 foot high, single family residence including 1,040 cubic yards of grading on a vacant parcel of land.

LOCAL APPROVALS RECEIVED: City of San Clemente Approval in Concept, dated March 13, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan (LUP)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **DENIAL** of the proposed project due to adverse impacts upon public access and visual resources. The subject site is one of 9 vacant lots located seaward of the first public road inland of and parallel to the sea ("first public road"), at the mouth of Toledo Canyon, along coastal bluffs within and adjacent to the La Ladera residential community in the southerly area of the City of San Clemente. Seven (7) of these nine lots, including the subject site, were identified on Tract No. 4947, which was filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. Two (2) of the nine vacant lots (part of separate Tract No. 822) were once developed with single family residences, but those residences were destroyed in a landslide in 1966, and the lots have remained vacant since that time. The entire nine-lot area and the privately owned street, Boca del Canon, is the subject of an ongoing prescriptive rights survey. Surveys submitted to date show substantial public use of the subject site, the other eight lots, and Boca del Canon, for the past several decades for access to the beach and ocean. The survey also indicates substantial public use of these properties for public viewing to and along the bluffs, beaches and ocean (i.e. visual access).

Public use across the subject site (Lot No. 5, Tract No. 4947) follows a pathway that roughly bisects the property lengthwise. The proposed residence would be constructed in a location that would completely remove this existing pathway, and would have significant, direct adverse impacts upon public access.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway

to the La Ladera residential community. The subject site is located to the right side (west) of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, not only does the subject lot provide a corridor through which the public can view the ocean, but there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. However, the proposed development of this lot will significantly and adversely affect the public's perception regarding their ability to access the coast and will degrade existing public views. The existing views across the lot toward the bluffs and beach/ocean beyond would be eliminated. Thus, there would be significant adverse impacts upon public physical and visual access and the visual quality of the area. Alternatives are available that would address these adverse impacts, as discussed in Section II.E. However, the range of alternatives is sufficiently large that Commission staff does not recommend a conditional approval of this project, which would require selection of a specific alternative among the many available options. Therefore, Commission staff is recommending denial of the current proposal.

There are several constraints associated with the development of the subject lot, as well as the other eight vacant lots. These constraints include the need to reserve areas to accommodate the existing and historic public use of the properties for public access and viewing and the need to address adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices to accommodate new development. Commission staff believes that these issues would be best addressed in the context of a comprehensive development plan that involves all of the undeveloped lots. The current effort to seek development approvals for each individual lot will significantly limit the range of alternatives that need to be considered in order to achieve a plan that is consistent with all Coastal Act policies. However, if the applicant insists on proceeding with an application to develop a single lot, as it is doing here, Commission staff did not believe it could decline to file that application.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente has only a certified Land Use Plan (one component of a Local Coastal Program) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity, and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LIST OF EXHIBITS:

1. Vicinity Map
2. Parcel Map
3. Aerial Photo
4. Site Plans/Elevations
5. Photographs
6. Lot Size and Coverage
7. Excerpts from Certified LUP/Coastal Access Map
8. Summary of Results from Prescriptive Rights Survey as of October 31, 2006

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-112 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description, Location and Background

The subject site is located at 317 La Rambla, in the City of San Clemente, Orange County (Exhibits 1 & 2). The subject lot is roughly rectangular (6,890 square feet) and is designated for residential use ("RL" (4.5 units/gross acre)) in the certified Land Use Plan. The lot is located southwesterly of the intersection of La Rambla street and Boca del Canon street. La Rambla follows the northerly and westerly boundaries of the lot, and Boca del Canon runs along the easterly property boundary. The lot contains a relatively level pad that drops off to the east toward Boca del Canon.

The proposed project is the construction of a 4,468 square foot single family residence, plus 750 square foot attached garage (5,218 square feet total). The structure will have two floors, one of which will be a partial basement. The maximum height of the structure will be 26 feet; however as viewed from the centerline of the portion of La Rambla that fronts the property, the structure would be 14 feet high above existing (natural) grade, and 14'7" as viewed from the road centerline. Both floors would be visible when viewing the site from Boca Del Canon and vantages along La Rambla as one approaches the property. According to the precise grading plan, 1,040 cubic yards of excavation are required for the basement level, plus an additional 300 cubic yards of grading to accommodate other construction requirements; 100 cubic yards of fill is proposed, with the remainder to be exported off site.

History of Land Division and Ownership

The subject site is one of 9 vacant lots located at the mouth of Toledo Canyon along coastal bluffs in the southerly area of the City of San Clemente. All of these lots were once part of Tract No. 822

that was filed with the County in 1927. The subject site appears to have been a portion of Lot No.s 27 and 28 of Tract No. 822. These lots (27 and 28) were further divided with the filing of Tract No. 4947 (discussed below). Lot No. 29 and a remainder portion of Lot No. 28 of Tract No. 822 were once each developed with single-family residences that were destroyed in a landslide in 1966 and have remained vacant since that time.

Seven (7) of the nine vacant lots (Lot No.'s 5 through 11), including the subject site (Lot No. 5), were identified on Tract No. 4947 filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. These lots (along with title to the private road Boca del Canon) were held in common ownership by Olga C. Tafe and/or her husband Theodore Tafe from prior to the 1963 subdivision until 2002, when they were transferred together to Theodore Tafe, as trustee of a 1973 trust. Theodore Tafe subsequently transferred them, again as single block, to Boca del Canon LLC in 2005. In April 2006 (i.e. after submittal of the subject application but before it was deemed 'filed'), Boca del Canon LLC simultaneously transferred Lot No.s 6 through 11 to six differently named limited liability companies (LLCs). Boca del Canon LLC retained Lot No. 5 (the subject lot) and title to the private road that bears its name. These other LLCs appear to be related to Boca del Canon LLC in that the Grant Deeds for each of these transfers in April 2006 state that "The Grantors and Grantees in this conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property." The Grant Deed claims a \$0.00 documentary transfer tax, and cites a section of the Revenue and Taxation Code (11923), which appears to confirm that this \$0.00 transfer tax is authorized because these entities are not different. It is also noteworthy that the first named principal for Boca del Canon LLC, as reported in Westlaw's Corporate Record, is also the principal for every one of the LLCs, that has a principal listed in that same source, and the second named principal for the subject lot is listed by Westlaw as the registered agent for the LLC-owner of those other lots.

History of Effort to Create Public Park

There is at least one written proposal, *La Rambla Park - A Proposal for Coastal Public Access in the City of San Clemente* (by Derehajlo et. al.), for a park design that would include the entire nine-lot area. The proposal is for a view park with parking, trails and native landscaping. In this design, the subject site, Lot No. 5, would have a small parking lot for the proposed park, a trail head, and landscaping.

In the late 1980's a group of local citizens approached the City of San Clemente regarding the purchase of at least three bluff top lots within the nine-lot area that includes the subject site for park purposes. Funding difficulties at the time prevented such acquisition from occurring. However, the City expressed interest in the park concept provided a source of funding could be identified. It is unknown whether subsequent efforts have been made to identify funding.

Prior Recent Commission Actions

On August 8, 2006, the Commission approved Coastal Development Permit 5-05-412 for the removal of an existing mechanized vehicular gate and construction of a new gate across the privately owned Boca del Canon street at the entrance to the La Ladera private neighborhood, between 311 La Rambla and 317 La Rambla (the subject site). The Commission imposed five (5) special conditions, which require: 1) submittal of revised plans showing reduction in project scope; 2) submittal of a signage plan; 3) that future development obtain Commission approval; 4) recordation of a deed restriction; and 5) clarifying that the Commission's approval of the project does not constitute a waiver of any public rights that may exist on the property. The sidewalks and

gutters are currently unobstructed and are proposed to remain unobstructed such that the existing pedestrian access currently in use would remain available. However, the applicant did not offer to formalize the existing access (i.e. through dedication or other legal instrument). In addition, the Commission did not identify sufficient nexus between the limited gate project and public pedestrian access to mandate formalized public access over the privately owned street (Boca del Canon), in part, due to insufficient information regarding the nature of the existing public access.

Since the Commission's action, a prescriptive rights survey has been initiated that includes Boca del Canon and the nine vacant lots between this road and the beach. Survey submissions to date provide a strong indication of continuous public use of Boca del Canon and the other nine lots over the last several decades to gain physical access to the beach and visual access to the ocean. Thus there is strong evidence that a public right of access acquired through use has developed (i.e. that an implied dedication has occurred).

B. Public Access

Section 4 of Article X of the California Constitution states, in part:

No individual, partnership, or corporation, claiming or possessing the frontage...of a...navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states,

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

Section 30212 of the Coastal Act states, in pertinent part,

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

San Clemente Land Use Plan, Section 295, describes access in the subject area as follows:

Access Point 11: La Boca del Canon

This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations.

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), states:

IX.4 The maintenance and enhancement of public non vehicular access to the shoreline shall be of primary importance when evaluating any future public or private improvements in the Coastal Zone.

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.12, states:

A resting/viewplace should be provided at appropriate accessways near the inland entry point. Such facilities would be of benefit to older people or others who would find negotiating steep accessways tiring, and would capitalize on the panoramic coastal views available from the bluff edges.

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.15, states, in part:

New developments lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.

a. *Any new development proposed by the private communities listed below shall be required to provide an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line....The access easement shall measure at least 10 feet wide. Development permits will require public vertical access for new development at the following private communities: ...La Ladera (La Boca del Canon)*

b...

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.17, states, in part:

For the purpose of determining when a project is required to provide access, the following shall be considered:

a. ...

b. *The provision and protection of public access to the shoreline can be considered a "legitimate governmental interest." If the specific development project places a burden on this interest, then the City may have grounds to deny the development or impose conditions on the development to alleviate the burden.*

The following questions should be addressed to determine whether or not a development project places a burden on public access which would justify either requiring the dedication of public access or recommending denial of the project:

1...

2. *Does the project interfere with public access rights that have been "acquired through use"?*

Example - Is there reasonable evidence that the project may block a prescriptive easement?

If there is evidence of a prescriptive easement, then the City may recommend postponing the project until the landowner establishes clear title. If a prescriptive easement exists, then the City may deny the project or require that the project be modified to preserve the access easement.

3...

4...

5...

6...

Assuring public access to the shoreline, including the protection of existing public access, is one of the strongest mandates of the Coastal Act. Section 30604(c) of the Coastal Act requires that any approval of a permit application for development between the nearest public road and the shoreline of any body of water within the coastal zone shall include a finding that the project is consistent with the public access and recreation policies of the Coastal Act, even in an area with a certified LCP. The proposed development is located between the first public road and the sea at the convergence of a coastal bluff and coastal canyon inland of the beach, bluff face and Orange County Transit Authority (OCTA) railroad tracks.

The subject site (Lot No. 5) and surrounding vacant lots, as well as the privately owned and gated (to vehicles) street, Boca del Canon, appear to have been used extensively for at least the past several decades, and continue to be used today, by the public as informal modes of vertical access to the adjacent bluff top, beaches and ocean below. There are several pathways across these lots that offer different modes of access. For example, the informal footpath that crosses the subject site leads to a bluff top view point of the beaches and ocean as well as to a network of other footpaths that eventually lead down the bluff to the beach and ocean. There are presently no physical obstructions to individuals using these footpaths. Another mode of access is to utilize the existing paved gated street (Boca del Canon) and narrow sidewalks that descend from La Rambla down a steep incline to an informal footpath that crosses Lot No. 11 to the beach. Individuals using the road must navigate around the existing vehicular gate at the entryway to the street to utilize this access. The route down Boca del Canon and the dirt path that crosses Lot No. 11 is listed as a secondary access point in the City's certified Land Use Plan, but identifies this as a 'private access'. None of these informally used modes of access have been secured for public use through any formal means such as a written declaration of public rights or a judicial determination of an implied dedication for public use.

The preservation of these accessways is important due to their historical use, as well as their future use as a means of connecting to the San Clemente Coastal Trail. The San Clemente Coastal Trail (approved by the Commission April 2004 and currently under construction) is a three-mile long pedestrian accessway that passes in front (seaward) of the La Ladera private neighborhood. The footpaths described above would provide direct access to the Coastal Trail. For these reasons, and because of the statutory mandates listed above, the goal in this circumstance must be to—at minimum—protect the existing access and prohibit development that would increasingly privatize the area.

The nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, which is accessible from Calle de Los Alamos. However, this accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find.

In order to more fully investigate potential public use of the subject site, Commission staff distributed a "Prescriptive Rights Study Public Use Questionnaire and Declaration" to City staff in the Planning Division, the San Clemente Sun Post News, the South Orange County Chapter of the Surfrider Foundation, members of the public who requested the form, among others. The questionnaire and accompanying documents were also posted on the Coastal Commission's website at <http://www.coastal.ca.gov/access/BocadelCanon.pdf>. (A summary of results submitted to date are included as Exhibits 8a to 8c.) The Sun Post News printed a brief write-up on August 3, 2006 informing readers of the prescriptive rights analysis underway.

In order to approve the proposed project, the Commission would have to find the project, as submitted or as the Commission would condition it, to be consistent with the policies of Chapter 3 of the Coastal Act, including the public access policies outlined in Sections 30211 and 30212 listed above. However, for the reasons listed below, the Commission cannot find the proposed project consistent with these policies, and the Commission believes it would be imprudent, at best, to attempt to condition it to make it so. As stated in the Summary of Staff Recommendation above, there are a range of possible alternatives and a conditional approval would require selection of a specific alternative among the many available options; therefore, at this time the project must be denied. The project's inconsistency with each of these policies is described below.

1. Inconsistency with Section 30211

Section 30211 states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use.*" Applicants for coastal development permits must demonstrate that the proposed development is consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act, the permitting agency, in this case the Commission, must consider whether a proposed development will interfere with public access to an area used by the public for access to the sea. If the agency finds that there may be such an interference, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because the authority to make the final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule relates to the statute of limitation after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California, the statute of limitation, and thus the prescriptive period, is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a) The public has used the land for a period of five years or more as if it were public land;
- b) Without asking for or receiving permission from the owner;
- c) With the actual or presumed knowledge of the owner;
- d) Without significant objection or bona fide attempts by the owner to prevent or halt the use, and
- e) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with Section 30211, the Commission cannot determine conclusively whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, the Commission must review the available evidence and make its own assessment of whether there is substantial evidence of such use. Where there is substantial evidence that such use has occurred, and thus that such public rights exist, the Commission must ensure that proposed development would not interfere with any such rights.

An exception to the need to assess the evidence of an implied dedication exists when an applicant proposes public access as part of the project. If the applicant were to propose public access, the Commission could evaluate the extent to which the proposed public access elements are equivalent in time, place and manner to any public rights that *may* exist. To the extent any proposed dedication of access is equivalent, proposed development is considered not to interfere with any existing public access rights. Thus, an exhaustive analysis of the existence of an implied dedication would not be necessary. Here, however, no dedication of public access is proposed, and an analysis of public rights of access is required to determine whether the project is consistent with Section 30211.

a. Potential for Development to Interfere with Public's Access to Sea Across this Lot

As described previously, the applicant's proposed project involves the construction of a new two-story single-family residence with attached garage and associated landscaping and hardscape. The proposed structure would be sited on a vacant lot, which members of the public contend has been used for coastal access. As depicted on many of the questionnaires returned, the lot has typically been crossed beginning from the northeasterly corner of the lot and subsequently across the lot via an alignment that roughly bisects the property lengthwise. A review of available photographs also shows a path crossing the lot in this manner. Construction of a house on the lot would obstruct this access across the site.

b. Nature of Any Implied Dedication of Access

Substantial evidence has been provided that indicates that public rights of access to the sea exist across the subject site. The Commission has before it a variety of information regarding the presence of an implied dedication over the subject property. The format of the information suggesting that an implied dedication may have taken place includes 1) 134 responses to the questionnaire described on page 8 indicating more than 5 years use of the area as if it were public, and 2) the previously described photographs.

The survey responses from the public indicate that the writers had used the subject site over the years for access to the beach, ocean viewing, viewing of fireworks on the Fourth of July and dog walking. The time periods specified in the letters range from before the 1960's to the present. A few questionnaires indicate that some fencing was placed around the area several years ago but that fence was removed as a result of Commission enforcement action.

Commission staff continue to receive surveys. As of the date of this staff report, of the 171 responses received (Exhibits 8a - 8c), all but one of said they have used the general area. Moreover, only 3 said they had permission (though four others did not respond to the question about whether permission for their use had been granted (see Exhibit 8c)), so 164/171 (96% of the responders) said they had no permission. Of those 164, 30 reported use for less than the prescriptive period or did not indicate the length of use (Exhibit 8b), leaving 134 (over 81% of the 164) who reported use for at least the prescriptive period (Exhibit 8a). Of those 134, about 33% (44) specifically said that they crossed over the subject site (Lot 5), and the other 67% did not specify. Of the 44 who clearly indicated crossing the subject lot, 66% (29 responders) were from the neighborhood, 20% (9 responders) were from elsewhere in the City, 9% (4 responders) were from elsewhere in the County, and 5% (2 responders) were from elsewhere in the state. Of the entire 134 who may well have crossed over Lot 5, 63% (84 responders) were from the neighborhood, 25% (33 responders) were from elsewhere in the City, 7% (10 responders) were from elsewhere in the County, and 5% (7 responders) were from elsewhere in the state.

Based on the survey responses received by the Commission, it appears that many people have been using the subject property for public access purposes without the express permission of the property owner for the prescriptive period, and, although the numbers predictably drop as users from farther away are tallied, a substantial portion of the users have nevertheless been from outside the immediate geographic area, and a significant number have been from quite far away.

c. Sufficiency of Landowner Attempts to Negate Implied Dedication of Access

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been satisfied. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, the owner must either affirmatively prove he/she has granted the public a license to use the property or demonstrate that the owner made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g. permission) are not considered to be using the area as the "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to form in the public interest. If only a small number of people from a definable group have used the land, those persons may be able to claim a personal easement, but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

The applicant has not provided any information to date regarding efforts to prevent public use of the property.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1000 yards from the Pacific Ocean and its bay and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1000 yards of the sea; therefore, the required five year period of use need not have occurred prior to March of 1972 in order to establish public rights.

In addition, it is important to note that Section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the statute (March 2, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of Section 1009 or utilization of application procedures set forth in the section is sufficient to establish public rights in the property.

d. Provision of Public Access Equivalent in Time, Place and Manner

As noted previously, where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, the Commission may deny a permit application under Public Resources Code Section 30211. However, the Commission could also consider alternatives that would preclude the interference or adverse effect through modification or relocation of the development and/or an offer of public access that is equivalent in time, place and manner.

In this case, that applicant has made no offer with regard to modification or relocation of the development to preclude the interference or adverse effects upon a public right of access that may have been acquire through use of the property. Nor has the applicant offered public access that is equivalent in time, place and manner. Were the applicant to offer to modify or relocate the development, the Commission would need to assess whether the project was consistent with Section 30214 of the Coastal Act, which directs the Commission to implement the public access policies of the Act in a manner that balances various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Therefore, the Commission must evaluate the extent to which an area protected or offered for access is in fact equivalent in time, place and manner to the use made of the site in the past. If the Commission determines that the protected or offered area is, in fact, equivalent in time, place, and manner to the access use made of the site in the past, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists, because regardless of the outcome of the investigation, the Commission could find the project as a whole consistent with Section 30211. However, again, no such offer has been made in this case.

With an appropriate offer, even if an investigation indicated substantial evidence of an implied dedication, the project would not interfere with such public rights because it protected an area which is equivalent in time, place and manner to the access previously provided in the area subject to the implied dedication. As such, the Commission could find the proposed project consistent with Section 30211. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could also find that the proposed project could be consistent with Section 30211.

The letters and survey responses submitted by members of the public about prior public use of the site provide an indication of the time, place and manner of public access use that has occurred. The responses from the public indicate that the site has been used for access to the beach, view of fireworks, viewing of the ocean, and walking dogs. The responses contain no indication that the uses made of the site were limited to certain days of the week or times of day. It appears that people used the lot anytime they wanted. According to responses received, no permission to use the property had been requested by or granted to the vast majority of the users.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway to the La Ladera residential community. The subject site is located to the right side of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. Any alternative access proposed would need to address this issue as well.

2. Analysis of Project with regard to Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast must be provided in conjunction with new development projects except where 1) it would be inconsistent with the protection of fragile coastal resources or 2) adequate access exists nearby. The Commission notes that Section 30212 is a separate section of the Act from Section 30211, the policy which states that development shall not interfere with the public's right of access to the sea where acquired through use. The limitation on the requirement for the provision of new access imposed by Section 30212 does not pertain to Section 30211. Even if public prescriptive rights of access have accrued over trails in areas near other public access, so that one could argue that preservation of those trails would be duplicative, Section 30211 requires that development not be allowed to interfere with those rights. As such, the presence of formal public access in the vicinity of the subject site would not preclude the potential for public rights on the subject site requiring Commission protection.

In this case, the nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass with stairs leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, that provides access to the beach from Calle de Los Alamos via a steep stairway. This accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find. Both accessways contain stairways that are more difficult to use by those of limited mobility.

According to the City's certified Land Use Plan, the subject site is located within an area of the City that individuals tend to prefer for beach access due to the presence of support facilities and more direct accessibility from major transportation routes than other areas within the City. The subject site is accessible from Paseo de Cristobal, which is one of a few streets that provide easy accessibility to the beach from the El Camino Real/Interstate 5 freeway exits. Clearly, adequate formalized public access does not exist to serve existing recreational demand, as evidenced by the significant informal use of the site for access. In this case, and particularly where there is substantial evidence of an implied dedication over the subject lot, 30212 requires that access across the lot be provided in connection with the new development. The proposed project offers no such access. Therefore, the proposed project must be denied.

3. Conclusion

As discussed previously, the Commission cannot approve development that is inconsistent with the public access policies of the Coastal Act. Substantial evidence has been presented to indicate that prescriptive rights of access to the ocean have been acquired at this site and would be adversely impacted by the proposed development at this location. As proposed, development at the subject site would interfere with the public's right of access over this site. Therefore, the Commission hereby denies the proposed project based upon inconsistency with Section 30211 and 30212 of the Coastal Act.

C. Geology/Hazards

Section 30253 of the Coastal Act states, in pertinent part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Development upon property near coastal bluffs is inherently hazardous. Development that requires a bluff or shoreline protective device or that may require one in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, natural landforms, and shoreline processes.

The subject site is an inland site located along a steep slope approximately 15 feet high that descends in an easterly direction to the street Boca Del Canon, which runs along the bottom of a coastal canyon. The majority of the site is flat, having been raised by the addition of a large wedge of artificial fill to the level of the street, La Rambla, which borders the north and west sides of the site. The fill is underlain by marine terrace deposits, and the bedrock is the Capistrano Formation.

There is a large landslide in close proximity to this site. In May of 1966 a large block slid on a clay seam in the Capistrano Formation approximately 52 feet below the ground surface, destroying several houses which were located on the west-facing bluffs southwest of the subject site. According to the 10 February 2006 Lawson and Associates geotechnical report entitled "Geotechnical Grading Plan Review Report for Lot 5 of Tract 4947, Boca Del Canon, City of San Clemente, California," the headscarp of this landslide lies 128 feet south of the subject site. The subject site was not involved in the landslide. Although redevelopment of many of the lots that were affected by the landslide may be problematic from a geologic and Coastal Act perspective, the subject site presents no such difficulties and is probably the easiest lot in the subdivision to redevelop from a geologic point of view.

The proposed development consists of a two story house, with the lowest story fronting on Boca del Canon and being excavated below the grade of La Rambla. The large wedge of artificial fill will be removed to make room for this story. Since the undocumented fill may not be properly compacted, there will be additional excavation below the finished grade in order to completely

remove the artificial fill and recompact it to establish a safe pad to support the foundations. Excavations will be as great as 16 feet below the current ground surface.

The excavations associated with the development will need to be maintained in a safe condition by a temporary shoring system during construction. Specifications for the shoring system are presented in the 10 February 2006 Lawson and Associates report, and structural calculations have been prepared to these specifications and reviewed by the City. The finished development will consist of combined retaining walls/basement walls to support the western side of the site and La Rambla.

Because it is not clear what future development may take place off-site to the south, and to isolate the site from potential future slope movement should the buttressing effect of the landslide mass be removed through erosion, a row of caissons or a retaining wall will be constructed along the southern property boundary.

The site is not subject to wave run-up or to the direct effects of coastal erosion. No known faults traverse the site, and seismic design criteria are provided in the 10 February 2006 Lawson and Associates report. The Commission's staff geologist has reviewed the submitted information and visited the site, and concurs that the proposed development would assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs as required by Section 30253 of the Coastal Act.

Although the proposed project could be found consistent with Section 30253 of the Coastal Act, the Commission notes that allowing development to proceed at the subject site at this time, without consideration, in a comprehensive manner, of the type and intensity of development potential on the adjacent vacant lots, would prejudice alternatives that cluster development in the stable areas and protect the public's right to physical and visual access to the shoreline. Development of the subject lot in the manner proposed will likely reduce and or foreclose options that would otherwise be available. Therefore, the Commission encourages the owners of these various lots to consider a comprehensive development plan that considers and addresses all of the constraints present.

D. Public Views

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

San Clemente Land Use Plan, Section 305 A (Coastal Visual Resources Goals and Policies), Policy XII.9, states:

Promote the preservation of significant public view corridors to the ocean.

The subject site is located seaward of the first public road. Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected. Consequently, impacts that the proposed project may have on existing public views must be considered.

As noted previously, the subject site is located prominently in the viewshed toward the beach, ocean, and bluffs. Public views across the site and to the sea currently exist from a public roadway. As shown in Exhibit 5, there is a blue water view available across the property. The proposed project would place a structure that is approximately 14 feet tall above the centerline of La Rambla within this existing view corridor. As a result, the blue-water views presently available would be entirely blocked with the construction of the proposed residence. Such view blockage would be inconsistent with Section 30251 of the Coastal Act which requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas.

A smaller residence, appropriately sited and designed, could significantly reduce or avoid adverse visual impacts. Furthermore, a smaller residence would be more consistent with the character of surrounding areas. According to the application submitted, the subject lot is 6,890 square feet (whereas data available from the County Assessor records provided to the Commission from RealQuest.com indicate the parcel is 7,920 square feet). According to statistics available to the Commission from RealQuest.com, there are at least fifty comparably sized lots (7,920 square feet +/- 15%) within 1/2 mile of the subject site. Other developed lots in the vicinity of the subject vacant lot contain residences that range in size from 987 square feet to 3,000 square feet, with the average being 1,835 square feet. The proposed residence would have 4,468 square feet of living space, plus a 750 square foot attached garage (5,218 square feet total). Thus, the proposed residence significantly exceeds both the average size residential structure and even the largest residential structure on comparably sized lots in the neighborhood.

Members of the public interested in this project have compiled data regarding surrounding lots (see Exhibit 6). Their analysis indicates that the average percentage of lot coverage with residential structures in the vicinity of the subject lot is approximately 20%. The proposed project would have lot coverage of 3,402 square feet of the 6,890 square foot lot area, or 49% lot coverage.

Clearly, it would be both feasible and more consistent with community character to construct a smaller residence on the lot. A smaller residence could be both lower in height as well as sited in a manner that reduces or avoids adverse visual impacts. Therefore, the Commission finds the proposed development inconsistent with Section 30251 of the Coastal Act, and the proposed project must be denied.

E. Alternatives

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. Several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of all possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. As such, there would be no impacts to existing public access. The property would remain as an undeveloped lot. This alternative would result in the least amount of effects to the

environment and also would not have any adverse effect on the value of the property, though it would not, in and of itself, put the property to any productive economic use.

2. Reduced Height/Reduced Square Footage/Reduced Lot Coverage

As noted in the Public Views section of these findings, the proposed residence significantly exceeds the size and lot coverage of residences on comparably sized residences in the neighborhood. A smaller residence with smaller garage could be designed as a single story structure with flat roof, partially recessed below ground in the same approximate fashion as the first floor/basement of the proposed residence. Based on the current design, this would provide for at least 1,200 square feet of living space plus 750 square feet of garage/storage. The amount of living space could increase with a smaller quantity of area devoted to garage/storage. This design would improve views across the site toward the ocean. However, some additional changes may be necessary to incorporate public access across the lot that would be equivalent in both time, place and manner to that which presently exists.

3. Lot Consolidation/Reconfiguration/Comprehensive Development Plan

Consolidation of the subject lot with one or more adjacent vacant lots and/or reconfiguration of lots would provide for the greatest range of flexibility with regard to the design of a residence or residences. Reconfiguration and/or lot consolidation could also address the visual impacts raised by the current proposal as well as provide for public access across the lot(s) that would be equivalent in both time, place and manner to that which presently exists and address the geologic issues inherent in the broader site. The height and footprint of the structure(s) could be adjusted to prevent adverse impacts upon public views. The footprint(s) of the structure(s) could be designed to accommodate public walkway(s), public viewpoint(s) and appropriate privacy buffer(s). Geologic hazards could be addressed comprehensively as well.

4. Public Park

The subject lot and one or more of the adjacent lots could be developed into a park with public view point(s), pathway(s), landscaping and parking. There is at least one written proposal, *La Rambla Park - A Proposal for Coastal Public Access in the City of San Clemente* (by Derehajlo et. al.), for a park design that would include the entire nine-lot area. The proposal is for a view park with parking, trails and native landscaping. In this design, the subject site, Lot No. 5, would have a small parking lot for the proposed park, a trail head, and landscaping. This alternative would address public access and visual issues and would avoid or minimize issues raised with regard to geologic hazards.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and it certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

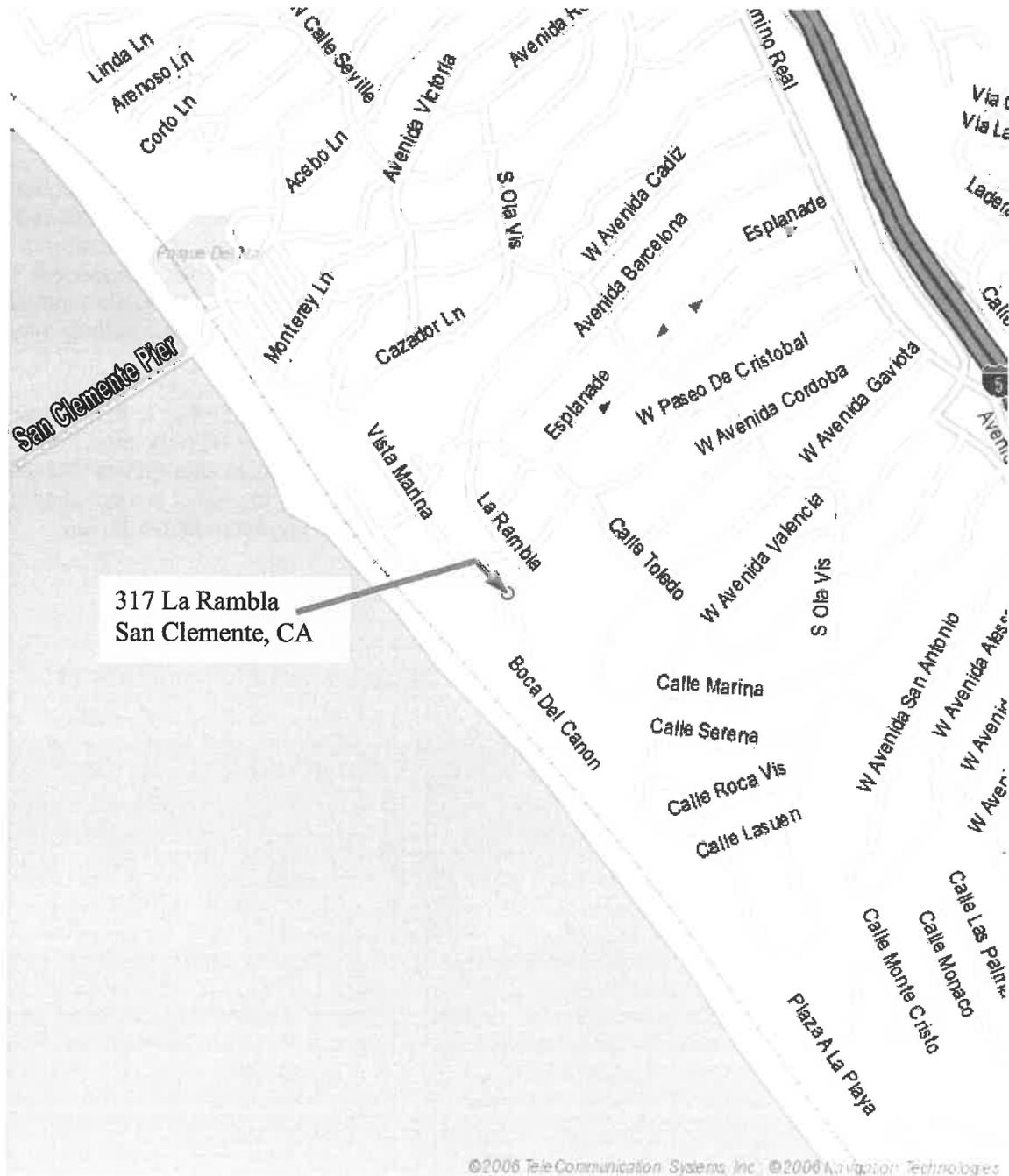
The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the proposed project must be denied.

G. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As explained above and as incorporated here by reference, the proposed project is inconsistent with Sections 30211, 30212 and 30251 of the Coastal Act due to adverse impacts upon public access and views. The Commission has also found that there are feasible alternatives that would avoid such impacts. Therefore, the Commission finds that the proposed project is inconsistent with the California Environmental Quality Act. Therefore, the proposed project must be denied.

317 LA RAMBLA SAN CLEMENTE, CALIFORNIA 92672

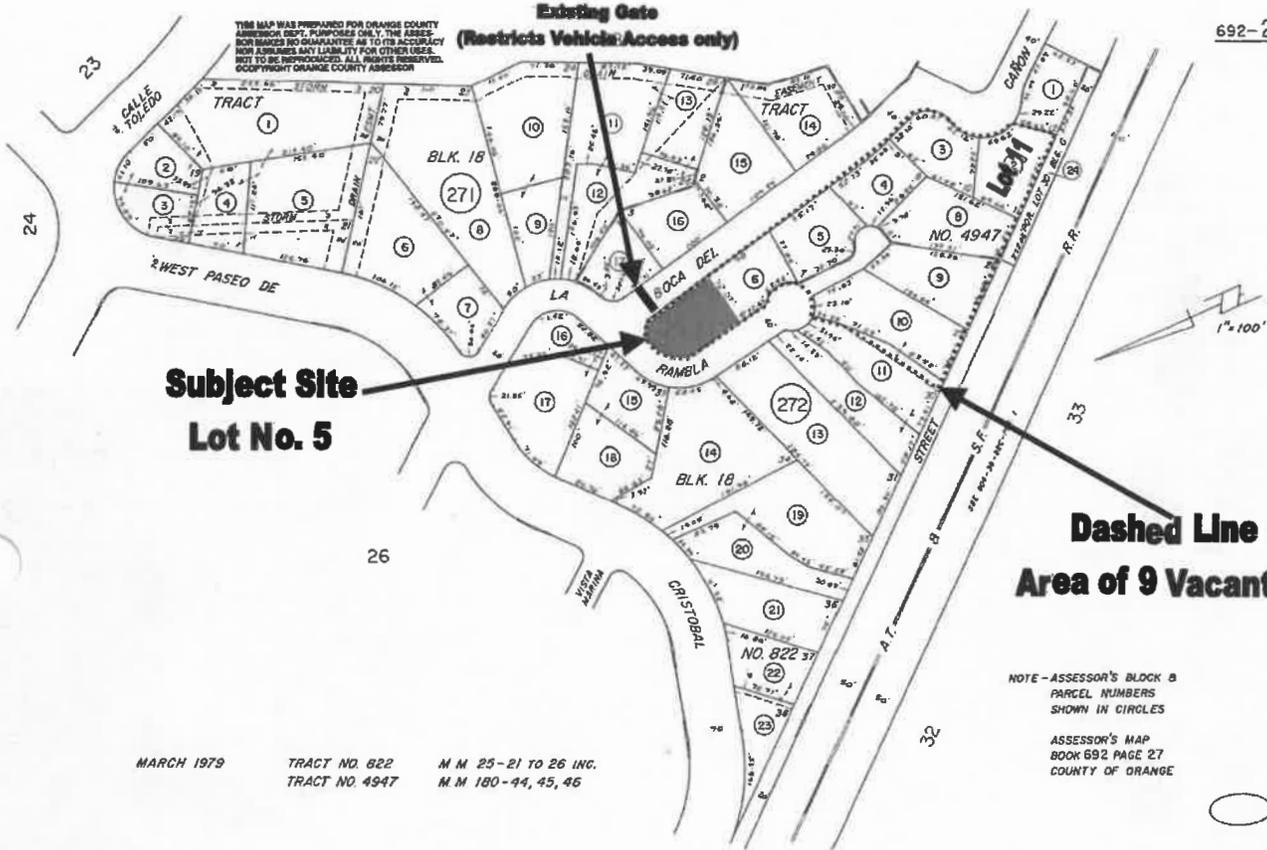


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THIS MAP WAS PREPARED FOR ORANGE COUNTY
 ASSessor'S DEPT. PURPOSES ONLY. THE ASSES-
 SOR MAKES NO GUARANTEE AS TO ITS ACCURACY
 NOR ASSUMES ANY LIABILITY FOR OTHER USES.
 NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
 COPYRIGHT ORANGE COUNTY ASSessor

Existing Gate
 (Restricts Vehicle Access only)

692-27



Subject Site
Lot No. 5

Dashed Line =
Area of 9 Vacant Lots

MARCH 1979 TRACT NO. 822 M.M. 25-21 TO 26 INC.
 TRACT NO. 4947 M.M. 180-44, 45, 46

NOTE - ASSESSOR'S BLOCK 8
 PARCEL NUMBERS
 SHOWN IN CIRCLES
 ASSESSOR'S MAP
 BOOK 692 PAGE 27
 COUNTY OF ORANGE

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**Subject Site (317 La Rambla)
Lot No. 5**

**Existing Footpath Across
Subject Lot**

Existing Gate

La Rambla

Boca del Canon

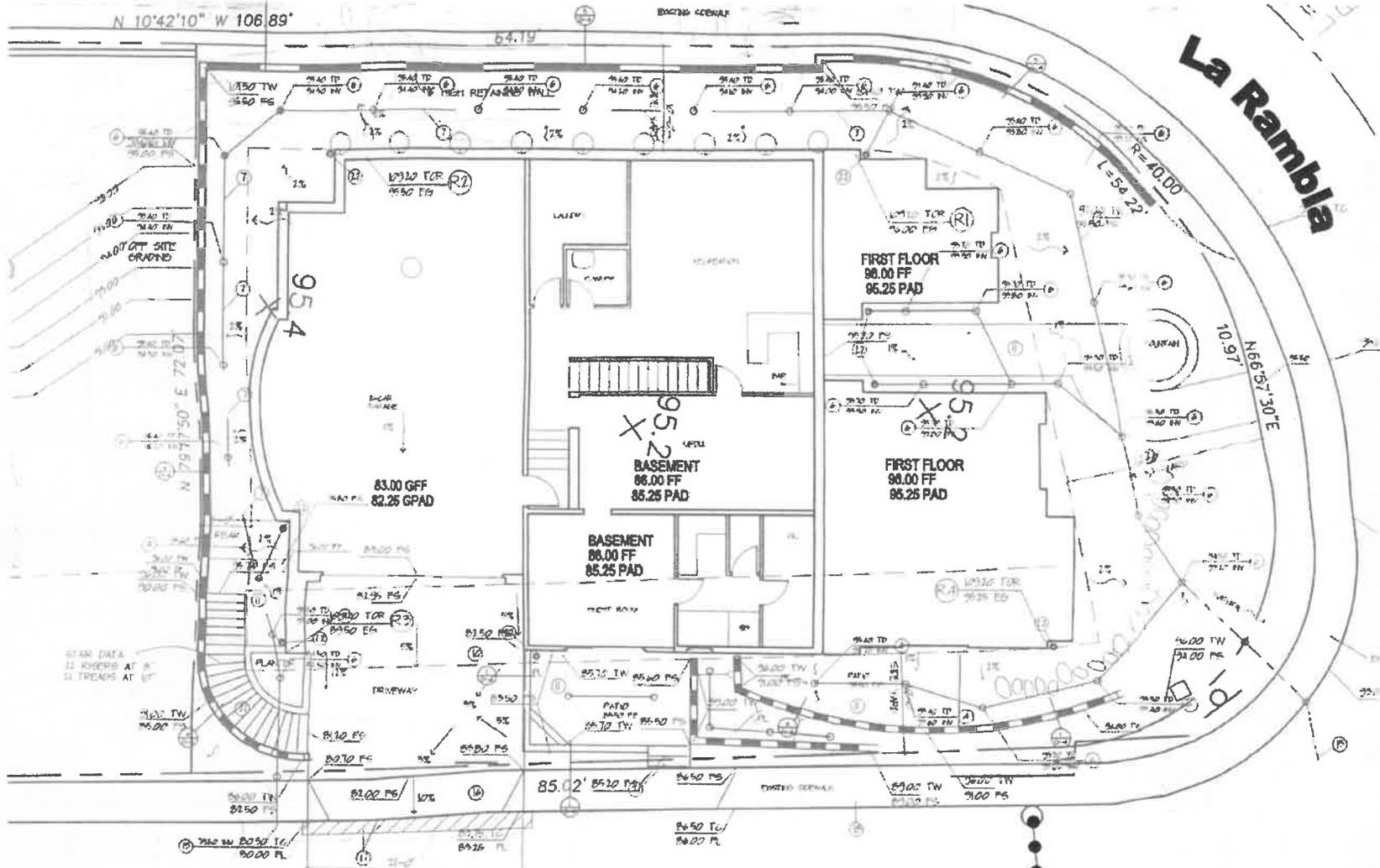
Coastal Trail (Under Construction)

Beach

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Oblique Aerial View of the Nine Vacant Lots, Including the Subject Lot (Lot No. 5)

Site Plans and Elevations



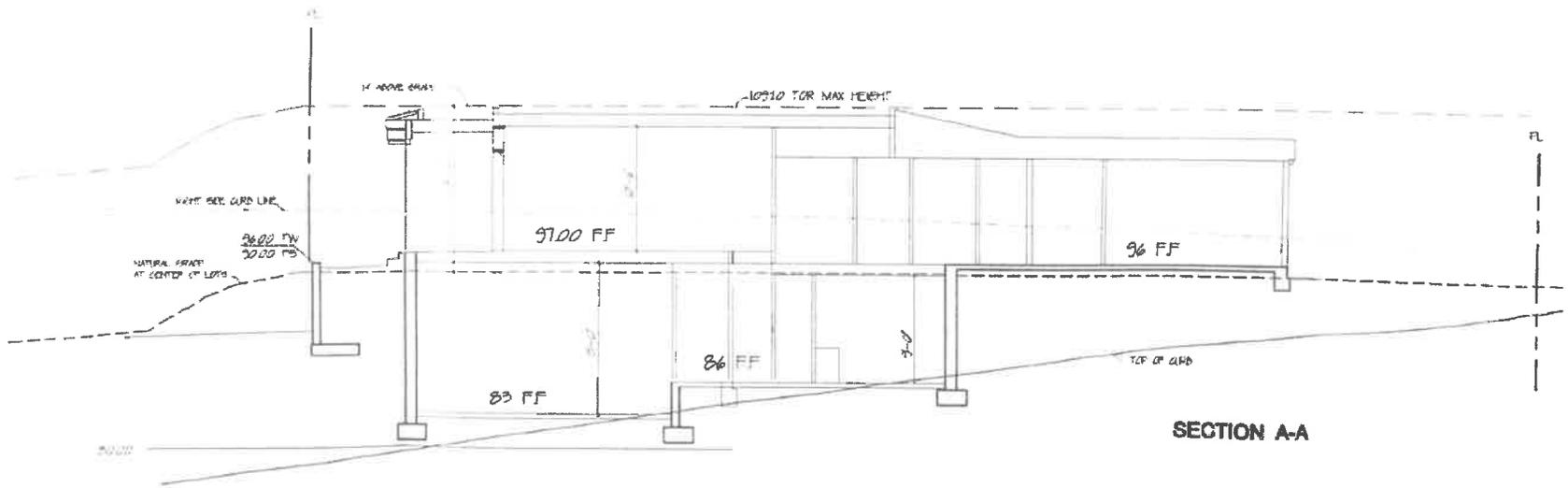
Boca del Canon

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 Commission

Site Plans and Elevations

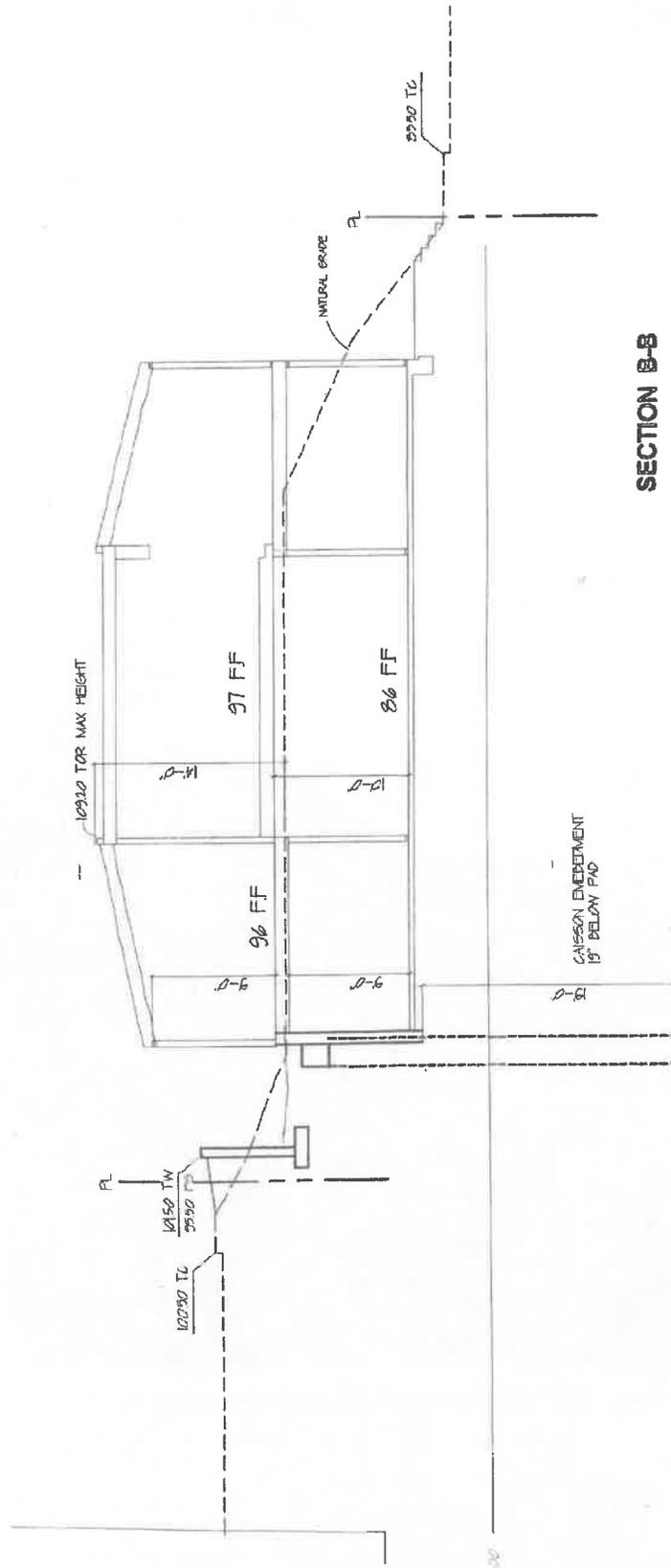


SECTION B-B



View along Boca Del Canon

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SECTION B-B

View from La Rambla



View of Gated Entry to Boca del Canon, the Subject Site Beyond and Entry to Footpath

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**View Across the Subject Site (Lot No. 5) from La Rambla
Showing Blue Water View that will be blocked by the Proposed Development
and Footpath Across Property**

EXHIBIT#5

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California Coastal
Commission

Summary for properties with in 300' radius

<u>Address</u>	<u>lot size</u>	<u>living sq ft</u>	<u>%of lot</u>
303 LaRambla	0.2596	3342	11.5
304 LaRambla	0.1338	1594	27.4
305 LaRambla	0.1608	1088	15.5
307 LaRambla	0.3739	2673	16.4
309 LaRambla	0.2596	1617	14.3
310 LaRambla	0.1741	2600	34.2
311 LaRambla	0.1537	2358	35.2
316 LaRambla	0.2327	2257	22.3
317 La Rambla	0.1603	vacant	
319 LaRambla	0.1521	vacant	
320 LaRambla	0.2969	vacant	
323 LaRamba	0.1937	vacant	
324 LaRambla	0.2411	vacant	
325 LaRambla	0.1599	vacant	
326 LaRambla	0.2561	vacant	
303 Boca DC	0.1845	2324	28.9
305 Boca DC	0.2789	1673	13.7
307 Boca DC	0.2794	3778	31.0
312 Boca DC	0.169	vacant	
314 Boca DC	0.193	vacant	
315 Boca DC	0.142	1684	27.2
315 PD Cristobal	0.2931	2279	17.9
319 PD Cristobal	0.2047	2279	25.6
323 PD Cristobal	0.5087	4550	20.5
327 PD Cristobal	0.6004	5044	19.3
314 Gaviota	0.3155	1301	0.95
316 Gaviota	0.3852	2280	13.6
318 Gaviota	0.4495	2897	14.8
320 Gaviota	0.4341	2055	10.9
322 Gaviota	0.651	vacant	

Average % of lot used = 20.1% (401.15 divided by 20 homes)

Average sq footage/house = 2484 sq ft. (49673 /20)

**Summary of Lot Sizes, Building Sizes and Lot Coverage
Submitted by C. Rios**

EXHIBIT#6

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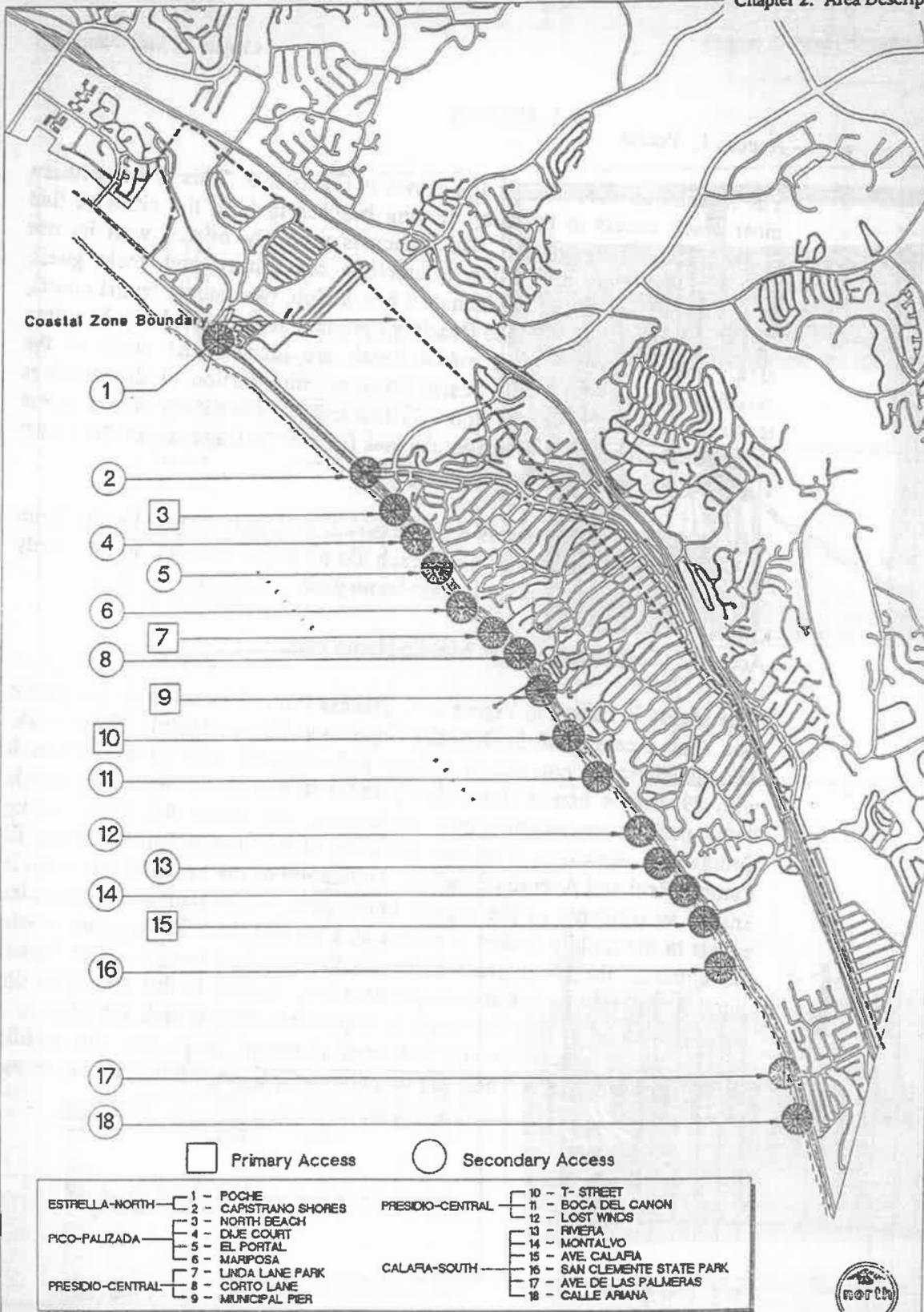


FIGURE 2-5

**CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS**



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TABLE 2-2 SUMMARY OF EXISTING SHORELINE ACCESS POINTS IN SAN CLEMENTE

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California Coastal
Commission

Area Division	Access Point #	Location/Name	Regional Access: Connection to I-5	Type of Developed Public Access	Type of Railroad Crossing	Amenities	# of Parking Spaces		
							Off-St.	On-St.	Total
Estrella/ North	1	Poche	Ave. Pico	Stairs & tunnel beneath PCH	Storm Drain Tunnel	None	0	10	10
	2	Capistrano Shores Mobile Home Park	Ave. Pico	None (Private)	At-Grade	None	0	0	0
Pico/ Palizada	3	North Beach	Ave. Pico	Foot-Path	Asphalt Paved At-Grade	Picnic tables, snack bar, showers, restrooms, child play areas & fire pits	250	100	350
	4	Dije Court	Ave. Pico or Ave. Palizada	Stairway	At-Grade	None	0	10	10
	5	Ave. W. El Portal	Ave. Pico or Ave. Palizada	Stairway	At-Grade/Below Trestle	None	0	10	10
	6	Mariposa	Ave. Pico or Ave. Palizada	Asphalt paved ramp	At-Grade	None	0	15	15
Presidio/ Central	7	Linda Lane City Park	Ave. Palizada/ Ave. Presidio	Foot-Path	Storm Drain Tunnel	Turf picnic area, restrooms, volleyball courts, showers	135	0	135
	8	Corto Lane	Ave. Palizada/ Ave. Presidio	Stairway	At-Grade	Shares Linda Lane Amenities	0	5	5
	9	San Clemente Municipal Pier	Ave. Palizada/ Ave. Presidio	Foot-Path	Underpass & Paved Asphalt At-Grade	Restaurant, tackle, restrooms, showers, picnic tables	133	102	235
	10	"T" Street	El Camino Real	Foot-Path	Overpass	Restrooms, showers, fire pits, picnic tables, volleyball courts	0	150	150
	11	La Boca del Canon	El Camino Real	None (Private)	At-Grade	None	0	0	0
	12	Lost Winds	El Camino Real	Foot-Path/Stairway	At-Grade	None	0	10	10
Calafia/ South	13	Riviera	Ave. Calafia	Stairway	Storm Drain Tunnel	None	0	10	10
	14	Montalvo	Ave. Calafia	Foot-Path/Stairway	Below Trestle	None	0	0	0
	15	Calafia - S. C. State Beach	Ave. Calafia	Foot-Path	At-Grade	Restrooms, snack bar, fire pits, showers	210	0	210
	16	San Clemente State Beach	Ave. Calafia	Foot-Path/Tunnel	At-Grade Underpass	Restrooms, showers, picnic tables, barbecues	200	0	200
	17	Ave. de Las Palmeras	Cristianitos	None (Private)	At-Grade Underpass	None	0	0	0
	18	Calle Ariana	Cristianitos	None (Private)	At-Grade	None	0	0	0
Total							928	422	1,350

Excerpted Pages from San Clemente Coastal Element (Certified LUP)

- **Access Point 11: La Boca del Canon**

This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations (see Figure 2-16).

Parking is limited to on-street spaces for residents, and their guests, of La Boca del Canon. There are no public facilities on the beach at this location.

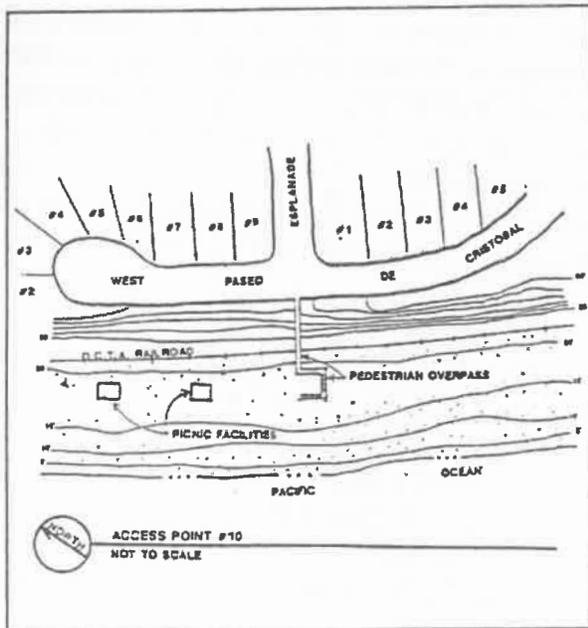
- **Access Point 12: Lost Winds**

The Lost Winds beach access is located 435 feet south of Leslie Park, off the streets Calle de Los Alamos and Calle Lasuen (see Figure 2-17). Originally named after the street "Lasuen," mispronunciation over the years has transformed the name of this beach to "Lost Winds." The Lost Winds access is a ten foot wide easement between two residences with a dirt path that leads from the street down a steep slope. Steps formed from railroad ties lead to a dirt path that slopes gradually down a small valley to the beach. The railroad is crossed at-grade, and there are no public facilities on the beach. Parking at both Leslie Park and Calle de los Alamos is limited to on-street spaces.

The Lost Winds access is located within a residential area, and for this reason, it is used primarily by local residents of San Clemente. Lost Winds is a popular surf break.

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FIGURE 2-15

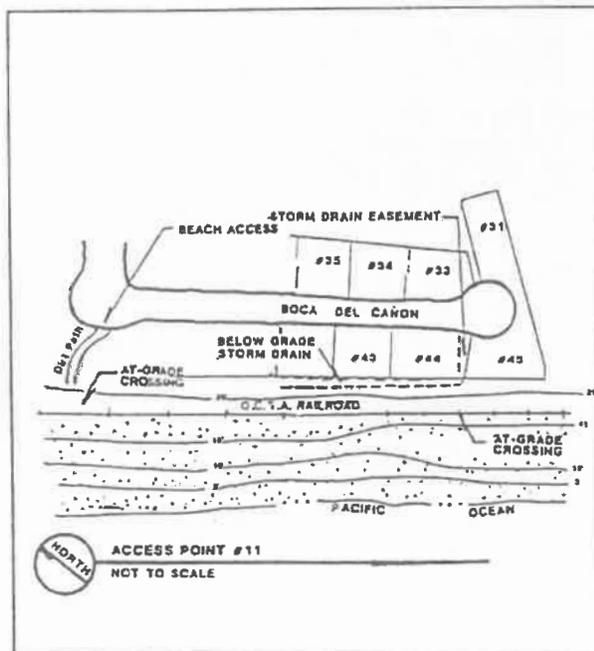


Access Point 10 - "T" Street

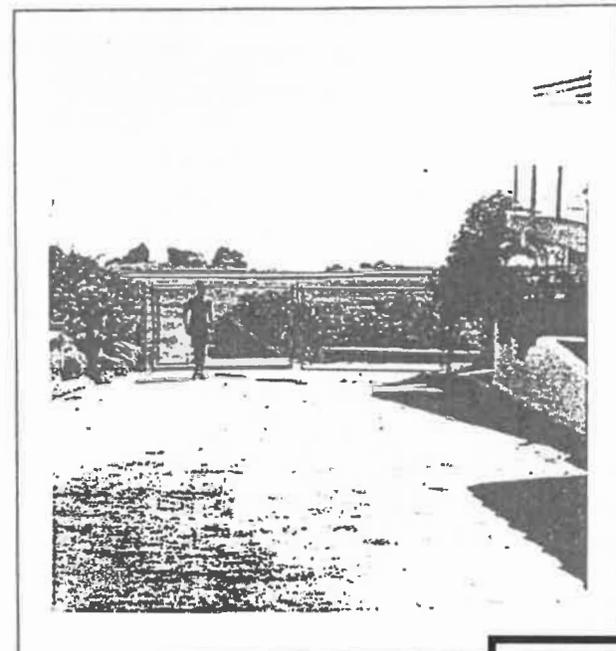


Pedestrian overpass to the beach

FIGURE 2-16



Access Point 11 - La Boca del Canon



Gate access to an at-grade crossing

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Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
1	FRANCISCO	ROSEMARIE	59.9	STATE	1974	DOZENS/100'S	2-10	YES
2	FRANCISCO	RICHARD	59.9	STATE	1974	DOZENS/100'S	1-15	YES
3	SHACKLEY	DANA	442	STATE	1987	10	2-10	Unclear
4	GAFFNEY	CHRISTINA	434	STATE/CITY	1974	100'S	2-10	Unclear
5	TRIMMER	BRAD & KELLY	89	STATE	1993	ON AND OFF	10-35	Unclear
6	FAYER	FRISER	77	STATE	1990	200	3	Unclear
7	BYERS	MELINDA	71	STATE/NEIGHBOF	1962	1000'S	no response	Unclear
8	CHAPMAN	PATRICIA	18.7	COUNTY	1980	100	3 - 5	YES
9	MESERVE	SUSAN	16.3	COUNTY	1959 (TO BE	100'S	3 - 5	YES
10	INSLEY	SHARYN	9.3	COUNTY	1965	3224	5	YES
11	CONLON	MIKE & FAMILY	7.6	COUNTY	1978	1,000	2 - 5	YES
12	MCBRIDE	JULIE	33	COUNTY/CITY	1974	100'S	2-10	Unclear
13	TATALA	JAN	31.8	COUNTY/CITY	1993	100+	2-4	Unclear
14	**Anonimity	Requested	15.2	COUNTY	1995	400	1 - 2+	Unclear
15	VAN DAM	MARK	8.9	COUNTY	1987	3800	2	Unclear
16	FOLEY	GERARD	8.8	COUNTY	1969	1000+	3+	Unclear
17	HAZLETT	GINA	7.2	COUNTY	1972	500	10 - 20	Unclear
18	RANDALL	KRISTIN	5.7	CITY	2000	NUMEROUS	5	YES
19	DARAKJIAN	SPIKE	1.9	CITY	1994	NUMEROUS	10	YES
20	MCINTYRE	KATE	0.8	CITY	1985	3000	3 - 5	YES
21	HAYDEN	DAVID	0.7	CITY	1991	100'S	3-6	YES
22	MCMURRAY	WAYNE	0.7	CITY	1995	100+	1-3	YES
23	MCMURRAY	JEAN	0.7	CITY	1995	100+	1-3	YES
24	PARLOW	WHITNEY	0.7	CITY	2000	NUMEROUS	5-7	YES
25	SCHMITT	KATHLEEN	0.7	CITY	1984	6864	0 - 10	YES
26	ADRIANCE	E. LEIGH	0.6	CITY	1980	4056	1 - 2	YES
27	CURRAR	JILL	6	CITY	1983	200	1 - 10	Unclear
28	DELANTY	RICK	5.8	CITY	1974	100'S	1 - 4	Unclear
29	GALLAGHER	KARIN	5.4	CITY	1986	300	2 - 5	Unclear
30	EADS	TOM & MARISA	3.2	CITY	1974	8320	2 - 10	Unclear
31	STROTHER	SUSAN	2.2	CITY	1976	3120	1 - 6	Unclear
32	MONTGOMERY	SAM	2.1	CITY	1978	1000'S	no response	Unclear
33	MONTGOMERY	SAM & LINDA	2.1	CITY	1986	1000	5 - 15	Unclear
34	HILL	JUSTIN	2	CITY	1990	100'S	1 - 2	Unclear
35	NAMIMATSU	KRISTEL	1.7	CITY	1990	100 +	10 +	Unclear

California Coastal Commission

Exhibit No. 8a

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Page 1

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
36	HURLBUT	KARON & JEFF	1.2	CITY	1976	4680	8 - 10	Unclear
37	MAZIEK	JENNIFER	1.2	CITY	1999	100+	2-10	Unclear
38	MCCOY	BRIDGET	0.8	CITY	1984	DAILY	10-15	Unclear
39	KEISKER	JAMES B., JR.	0.7	CITY	1996	200-300	2 - 20	Unclear
40	SIMON	STEPHEN	0.7	CITY	1981	1000	no response	Unclear
41	BROOKS	EDWARD	0.6	CITY	1987	1000	1-10	Unclear
42	FERRANTO	DALE	0.6	CITY	1993	5 x/WEEK	2-3	Unclear
43	FREET	LARA	0.6	CITY	1989	100+	3+	Unclear
44	GOIT	JENNY & WILLIAM	0.6	CITY	1980	26,820	15	Unclear
45	JOSSE	ALAN	0.6	CITY	1998	1500+	2	Unclear
46	JOSSE	NICOLE	0.6	CITY	1999	DAILY	3	Unclear
47	MERRILL	ARLENE	0.6	CITY	1985	3-4 x/WEEK	2-10	Unclear
48	WIGGINS	ANDREW	0.6	CITY	1987	NUMEROUS	1-10	Unclear
49	WRIGHT	ALAN	0.6	CITY	1973	1000'S	5 - 10	Unclear
50	VLEISIDES	NICK	0.6	CITY/STATE	1963	2000-3000	2 - 20	Unclear
51	HELM	STANDIFORD	0.5	Neighborhood	1982	NUMEROUS	1 - 5	YES
52	LARWOOD	CHARLES & ALLIE	0.5	Neighborhood	1977	100'S	2-5	YES
53	ANDERSON	MARILY	0.4	Neighborhood	2000	900	1 - 6	YES
54	CADDY	ALISTER	0.4	Neighborhood	2000	500	1 - 7	YES
55	DURAN	EDWARD	0.4	Neighborhood	1996	100+	1-4	YES
56	GALLIGAN	DEBBIE	0.4	Neighborhood	1977	1000'S	2-6	YES
57	GALLIGAN	RICHARD	0.4	Neighborhood	1977	1000'S	2-6	YES
58	GASKIN	SHILOH	0.4	Neighborhood	1993	NUMEROUS	14	YES
59	SCHOENIG	TODD	0.4	Neighborhood	1995	600	3-5	YES
60	SIMONELLI	JANENE & FAMILY	0.4	Neighborhood	1990	10000	3 - 4	YES
61	DETTONI	JOHN	0.3	Neighborhood	1982	3-5 x/WEEK	1-10	YES
62	MACKEY	ELENE	0.3	Neighborhood	1981	UNKNOWN	4 - 8	YES
63	NEHER	RUSSELL	0.3	Neighborhood	1983	300	1 - 100	YES
64	RIOS	CHRISTINE	0.3	Neighborhood	1986	2862	1-5	YES
65	RIOS	MAGGIE	0.3	Neighborhood	2000	NUMEROUS	5-7	YES
66	SMITH JR.	WILLIAM	0.3	Neighborhood	1998	2900	1 - 30	YES
67	CROSS	ELIZABETH ANN	0.3	Neighborhood	1987	2660+	2-30	YES
68	BONAR	ANN	0.1	Neighborhood	1981	100'S	SEVERAL	YES
69	BONAR	MARIAN	0.1	Neighborhood	1990	DOZENS	SEVERAL	YES
70	BONAR JR.	KENNETH	0.1	Neighborhood	1975	100'S	4-6	YES

California Coastal Commission

Exhibit No. 8a

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Page 2

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
71	HAYES	JOHN	0.1	Neighborhood	1973	2296	1 - 12	YES
72	HAYES	BETTYE	0.1	Neighborhood	1973	2296	1 - 12	YES
73	LEWIS	VIVIAN GIROT	0.1	Neighborhood	1988	DAILY	1-5	YES
74	MCGUIRE	HARRY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
75	MCGUIRE	SALLY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
76	MESERVE	KATHARINE	0.1	Neighborhood	1976 (AND E	300	3 +	YES
77	STEBLAY	MOLLY	0.1	Neighborhood	1992	728	4 - 5	YES
78	STROTHER	LEE	0.1	Neighborhood	1976	1000+	1 - 5	YES
79	TAYLOR	SHALA	0.1	Neighborhood	1973	600+	3 - 6	YES
80	DALLABETTA	SUZANNE	0.5	Neighborhood	1979	2080	1-4	Unclear
81	HENDRICKSON	TED	0.5	Neighborhood	2000	30	2 - 100'S	Unclear
82	OMAR	STEVE	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
83	OMAR	MARIA	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
84	BANKS	D. SCOTT	0.4	Neighborhood	1994	3744	3	Unclear
85	CARTER	MATT	0.4	Neighborhood	1993	200 x/YEAR	50-100	Unclear
86	CUNNINGHAM	JEFF	0.4	Neighborhood	2000	800	3 - 4	Unclear
87	CUNNINGHAM	DONNA	0.4	Neighborhood	2000	1000	3 - 4	Unclear
88	CUNNINGHAM	KELSEY	0.4	Neighborhood	2000	1000+	2 - 10	Unclear
89	DOLLAR	MICHAEL	0.4	Neighborhood	1960'S	1000'S	1-10	Unclear
90	EMPERO	ED	0.4	Neighborhood	1995	4015	2 - 3	Unclear
91	EMPERO	JACK	0.4	Neighborhood	1995	1716	1 - 3	Unclear
92	EMPERO	SAM	0.4	Neighborhood	1995	1716	1 - 3	Unclear
93	EMPERO	TAMARA	0.4	Neighborhood	1995	2860	1 - 3	Unclear
94	FORTUNA	SAM	0.4	Neighborhood	1995	NUMEROUS	5 - 10	Unclear
95	GASKIN	LISA & FAMILY	0.4	Neighborhood	1978	2900+	3 - 5	Unclear
96	GASKIN	JAMES	0.4	Neighborhood	1980	3/WEEK-EVERYD/	3-5	Unclear
97	GIANNA	SIMONELLI	0.4	Neighborhood	1989	500	4-6	Unclear
98	HERRINGTON	TOM	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
99	HERRINGTON	BECKY	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
100	KING	PATRICK	0.4	Neighborhood	1987	1000 APPROX	3	Unclear
101	MCDONALD	CINDY	0.4	Neighborhood	1988	DAILY	10-100'S	Unclear
102	PEZMAN	THOMAS	0.4	Neighborhood	1986	500	1-10	Unclear
103	PIKE	ROXANNE & NELS	0.4	Neighborhood	1990	5840	30	Unclear
104	SIMONELLI	JOHN J.	0.4	Neighborhood	1987	2 x/WEEK	4-6	Unclear
105	SIMONELLI	ANGELO	0.4	Neighborhood	1994	500	3-4	Unclear

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
106	SIMONELLI	TONY	0.4	Neighborhood	1992	1000	2-3	Unclear
107	TURNEY	NORMA	0.4	Neighborhood	1986	100'S	1 - 3	Unclear
108	WHITAKER	JEFF	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
109	WHITAKER	DARYL	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
110	ARMSTRONG	CASEY	0.3	Neighborhood	1996	NUMEROUS	3-5	Unclear
111	CRUSE	GREG	0.3	Neighborhood	1987	100'S	2-12	Unclear
112	DIEHL	ROBERT & FAMILY	0.3	Neighborhood	2000	200	1-2	Unclear
113	FITZPATRICK	CAROLE	0.3	Neighborhood	1980	NUMEROUS	20 - 40	Unclear
114	RIOS	GARRETT	0.3	Neighborhood	1996	NUMEROUS	1-10	Unclear
115	VICK	MARCY	0.3	Neighborhood	1997	100'S	5-10	Unclear
116	YEILDING	DAN	0.3	Neighborhood	1970	1500 +	2 - 10	Unclear
117	MCGEE	MARY	0.2	Neighborhood	1968 (AND E	NUMEROUS	1 - 10	Unclear
118	WICKS	TOM	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
119	WICKS	LINDA	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
120	BOISSERANC	FRANK	0.1	Neighborhood	1989	5525	3 - 4	Unclear
121	BOISSERANC	SYLVIA	0.1	Neighborhood	1989	5525	3 - 4	Unclear
122	EADS	THOMAS	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
123	EADS	MARILYN	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
124	JASO	TOM	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
125	JASO	LADONNA	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
126	KABEL	ROBERT	0.1	Neighborhood	1981	1100	1 - 20	Unclear
127	LATTEIER	DOLORES	0.1	Neighborhood	1972	DAILY	3-5	Unclear
128	MORTON	JUDITH	0.1	Neighborhood	1975	10000	no response	Unclear
129	SCIBELLI	DALE	0.1	Neighborhood	1979	NUMEROUS	no response	Unclear
130	SCIBELLI	STEPHEN JR.	0.1	Neighborhood	1986	NUMEROUS	35-55	Unclear
131	STEBLAY	KELLY	0.1	Neighborhood	1992	5000 +	3 - 150	Unclear
132	STEBLAY	PHILIP	0.1	Neighborhood	1992	500+	2 - 6	Unclear
133	STEVENS	DIANE	0.1	Neighborhood	1985	100'S	2-3	Unclear
134	TAYLOR	CYNTHIA	0.1	Neighborhood	1980	1000'S	1 - 4	Unclear

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
1	AMES	RAMONA	2002	3 TO 4?	4 - 5	Unclear
2	DOUGHERTY	STEPHANIE	2002	NUMEROUS	1 - 3	Unclear
3	BOLSTER	JULIE ANNE	2002	200	4 - 5	Unclear
4	ROSS	JOAN	2002	200	20	Unclear
5	WOLF	LYNN	2003	468	1 - 3	Unclear
6	COHEN	RUTH	2003	156	1 - 3	Unclear
7	SCIBELLI	MICHELLE & STEPHEN	2003	15-20	1 - 3	Unclear
8	MANDEL	ANDREA	2004	700+	1 - 25	Unclear
9	RIDGE	JIM	2005	250	1 - 15	Unclear
10	RIDGE	SAM	2005	700	50	Unclear
11	RIDGE	KIMBERLY	2005	250	3 - 15	Unclear
12	BRAIL	RICK	2006	100+	2 - 3	Unclear
13	VORELL	TERRY	No resposne	2 x per day/every c	no response	Unclear
14	HENDRICKSON	BRIGID	No resposne	MANY	2 - 100'S	Unclear
15	VAN DER MEULER	LAILA	No resposne	3?	1 - 4	Unclear
16	MACFADEN	NANCY	No resposne	20x/PER YEAR	no response	Unclear
17	WARNER	DORIS	No resposne	500+	2 - 3	Unclear
18	VICK	KAYLA	No resposne			Unclear
19	ROSS	JOAN		200	20	YES
20	HILLYARD	BRETT	2002	3-4 x/WEEK	3-5	YES
21	CUEVA	JASMIN	2000	No Response		Unclear
22	COON	CINDY	2004	Several x/week	3 to 5	Unclear
23	HOWARD	CHRIS	2004	10	5	Unclear
24	HEALY	DOUG	2002	50	3 TO 5	Unclear
25	HEALY	NINA	2002	50	3 TO 5	Unclear
26	CADENHEAD	PHILIP	1986/2006 Unclear	100	1 TO 5	Unclear
27	MARSH	DREW	2006	200-300	5 TO 10	Unclear
28	KRAUS	CONSTANCE	2003	250+	1 TO 3	Unclear
29	FERRANTO	NANCY	2003	3X/WEEK	2	Unclear
30	MANDEL	RICHARD	ALL THE TIME	EVERYDAY	LOTS	Unclear

Surveys Identifying Recent Use (Less than 5 Years) or No Response
(i.e. Use of the Area without Permission for Less than the Prescriptive Period)

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Last Name</u>	<u>First Name</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>OTHER COMMENT</u>
GARRETT	VICTORIA	1952	No Response	No Response	REC'D PERMISSION
SHEPLAY	JULIE	1968	6240+	40	ASKED FOR PERMISSION; but used as if public park
TAYLOR	WILLIAM	1960'S	300+	No Response	REC'D PERMISSION FROM TAFES
GIROT	CHARLES	1986	1000+	1-45+	NO RESPONSE TO 'DID YOU ASK PERMISSION'
JOBST	STEVEN	1986	300	5-10	NO RESPONSE TO 'DID YOU ASK PERMISSION'
CARTER	M.CHRISTINA	1993	Several x/week	3 TO 20	NO RESPONSE TO 'DID YOU ASK PERMISSION'
DETTONI	CAROL	1980	Numerous	1 TO 10	NO RESPONSE TO 'DID YOU ASK PERMISSION'

Surveys Stating Permission for Access was Obtained or No Response

ENCLOSURE 6

Transaction History Report for:



217 VISTA MARINA, SAN CLEMENTE, CA, 92672-

Sale

Sale Recording Date: 9/22/2017 Sale Price: \$1,250,000
 Sale Date: 9/21/2017 Sale Price Type:
 Recording Doc No: 2017000403662 Title Company: FIRST AMERICAN TITLE CO
 Document Type: GRANT DEED/DEED OF TRUST
 Buyer: GRAHAM PROPERTY MANAGEMENT LLC
 Seller: MARTIN, STEVEN P; MARTIN, GRACE P

Sale

Sale Recording Date: 6/14/2017 Sale Price:
 Sale Date: 6/6/2017 Sale Price Type:
 Recording Doc No: 2017000243806 Title Company:
 Document Type: QUITCLAIM/DEED OF TRUST
 Buyer: MARTIN, STEVEN P; MARTIN, GRACE P
 Seller: MARTIN, STEVEN P; MARTIN, GRACE P

Sale

Sale Recording Date: 6/14/2017 Sale Price:
 Sale Date: 6/6/2017 Sale Price Type:
 Recording Doc No: 2017000243805 Title Company:
 Document Type: QUITCLAIM/DEED OF TRUST
 Buyer: MARTIN, STEVEN; MARTIN, GRACE P
 Seller: MARTIN, STEVEN P; MARTIN, GRACE P

Sale

Sale Recording Date: 11/18/2014 Sale Price: \$1,150,000
 Sale Date: 11/3/2014 Sale Price Type:
 Recording Doc No: 2014000497175 Title Company: USA NATIONAL TITLE COMPANY
 Document Type: GRANT DEED/DEED OF TRUST
 Buyer: MARTIN, STEVEN P; MARTIN, GRACE P
 Seller: SHIMOKAHA VISTA MARINA LLC

Sale

Sale Recording Date: 3/29/2007 Sale Price:
 Sale Date: 3/27/2007 Sale Price Type:
 Recording Doc No: 2007000199524 Title Company: ALLIANCE TITLE SAN DIEGO
 Document Type:
 Buyer: CUMMING, JAMES F; CUMMING, SHEILA B
 Seller: SHIMOKAHA VISTA MARINA LLC

Finance

Mtg Recording Date: 3/29/2007 Mtg Loan Amount: \$950,000
 Mtg Document No: 2007000199525 Mtg Loan Type: UNKNOWN
 Document Type: DEED OF TRUST Mtg Rate Type:
 Lender: OHIO SAVINGS BANK FSB

Sale

Sale Recording Date: 3/15/2007 Sale Price:
 Sale Date: 3/13/2007 Sale Price Type:
 Recording Doc No: 2007000166546 Title Company:
 Document Type: GRANT DEED/DEED OF TRUST
 Buyer: CUMMING, JAMES F; CUMMING, SHEILA B
 Seller: SHIMOKAHA VISTA MARINA LLC

Sale

Sale Recording Date: 1/18/2007 Sale Price:

Sale Date:	12/21/2006	Sale Price Type:	
Recording Doc No:	2007000034839	Title Company:	
Document Type:	QUITCLAIM/DEED OF TRUST		
Buyer:	SHIMOKAHA VISTA MARINA LLC		
Seller:	SHIMOKAHA LLC		

Finance

Mtg Recording Date:	1/24/2005	Mtg Loan Amount:	\$500,000
Mtg Document No:		Mtg Loan Type:	
Document Type:	DEED OF TRUST	Mtg Rate Type:	VARIABLE
Lender:	1ST PACIFIC BANK OF CALIFORNIA		

Sale

Sale Recording Date:	8/18/2003	Sale Price:	\$1,250,000
Sale Date:	7/9/2003	Sale Price Type:	
Recording Doc No:	2003000998585	Title Company:	COMMONWEALTH LAND TITLE CO
Document Type:	GRANT DEED/DEED OF TRUST		
Buyer:	SHIMOKAHA LLC		
Seller:	BRUNNER, CLYDE W		

Finance

Mtg Recording Date:	8/18/2003	Mtg Loan Amount:	\$937,500
Mtg Document No:	2003000998586	Mtg Loan Type:	UNKNOWN
Document Type:	DEED OF TRUST	Mtg Rate Type:	VARIABLE
Lender:	1ST PACIFIC BANK OF CALIFORNIA		

Sale

Sale Recording Date:	11/2/2000	Sale Price:	\$65,000
Sale Date:	10/5/2000	Sale Price Type:	
Recording Doc No:	20000592083	Title Company:	INVESTORS TITLE COMPANY
Document Type:	GRANT DEED/DEED OF TRUST		
Buyer:	BRUNNER, CLYDE		
Seller:	LUXOUR LEVEL 10 CONSTRUCTION		

Sale

Sale Recording Date:	11/2/2000	Sale Price:	
Sale Date:	10/30/2000	Sale Price Type:	
Recording Doc No:	20000592082	Title Company:	INVESTORS TITLE COMPANY
Document Type:	QUITCLAIM/DEED OF TRUST		
Buyer:	BRUNNER, CLYDE		
Seller:	BRUNNER, SHAROL		

Sale

Sale Recording Date:	7/7/1998	Sale Price:	\$485,000
Sale Date:	5/11/1998	Sale Price Type:	
Recording Doc No:	19980433474	Title Company:	FIRST SOUTHWESTERN TITLE CO
Document Type:	GRANT DEED/DEED OF TRUST		
Buyer:	LUXOUR LEVEL 10 CONSTRUCTION INC		
Seller:	KAIN JOHN F; KAIN, BARBARA K		

Finance

Mtg Recording Date:	7/7/1998	Mtg Loan Amount:	\$385,000
Mtg Document No:	19980433475	Mtg Loan Type:	SELLER TAKE-BACK
Document Type:	DEED OF TRUST	Mtg Rate Type:	
Lender:	JOHN F KAIN		

Property Detail Report for:



217 VISTA MARINA, SAN CLEMENTE, CA, 92672-

Owner Information:

Owner Name: **GRAHAM PROPERTY MANAGEMENT LLC**
 Mailing Address: **23638 LYONS AVE # 456, NEWHALL, CA, 91321-2513**
 Vesting Code: _____ Phone Number: _____

Location Information:

Legal Description: **N TR 822 BLK 10 LOT 31 TR 822 LOT 31 BLK 10 ALL -EX NELY 45 FT- IN LOT**
 County: **ORANGE** FIPS Code: **06059** Census Trct/Blk: **042103 / 3**
 APN: **692-252-01** Alternative APN: _____ Map Ref: **J5-992**
 Twshp-Rnge-Sect: **- -** Legal Book/Page: _____ Tract No: **822**
 Legal Lot: **31** Legal Block: **10**
 Subdivision: _____

Last Market Sale Information:

Sale Date: **9/22/2017** Sale Price: **\$1,250,000** 1st Mtg Amount: \$
 Sale Doc No: **2017000403662** Price Per SqFt: _____ 1st Mtg Int Type: _____
 Transfer Doc No: _____ Price Per Acre: **\$1,470,588** 2nd Mtg Amount: \$
 1st Mtg Doc No: _____ 2nd Mtg Int Type: _____
 Sale Type: **SALES PRICE OR TRANSFER TAX ROUNDED BY COUNTY**
 Deed Type: **GRANT DEED/DEED OF TRUST**
 Title Company: **FIRST AMERICAN TITLE CO**
 Lender: _____
 Seller Name: **MARTIN, STEVEN P; MARTIN, GRACE P**

Property Characteristics:

Building Area: _____ Total Rooms: _____ Construction: _____
 Living Area: _____ Bedrooms: _____ Heat Type: _____
 Garage Area: _____ Baths: **0** Air Cond: _____
 Basement Area: _____ Fireplace: _____ Roof Type: _____
 Parking Type: _____ No of Stories: _____ Roof Material: _____
 Yr Built/Effective: **/** Quality: _____ Style: _____
 Pool Code: _____

Tax and Value Information:

Assessed Value: **\$1,250,000** Assessed Year: **2018** Est Market Val: **\$1,307,000**
 Land Value: **\$1,250,000** Property Tax: **\$13,598** Assessor Appd Val: _____
 Improvement Value: _____ Improvement %: _____ Tax Exemption: _____

Site Information:

Assessor Acres: **0.85** Zoning: _____ Land Use Code: **465**
 Assessor Lot SqFt: **36,962** No of Buildings: _____ Land Use Desc: **RESIDENTIAL LOT**
 Lot W/D: **0 /** Res/Comm Units: _____ County Use Code: **1**
 Calculated Acres: **0.7842** Sewer Type: _____
 Calculated Lot SqFt: **34,160** Water Type: _____

ENCLOSURE 7

CITY OF SAN CLEMENTE

LOCAL COASTAL PROGRAM

LAND USE PLAN



February 2, 2016

**LOCAL COASTAL PROGRAM
LAND USE PLAN**



CITY OF SAN CLEMENTE
Community Development Department
910 Calle Negocio, Suite 100
San Clemente, CA 92673
(949) 361-6100

- c. Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- d. Minimize energy consumption and vehicle miles traveled.
- e. Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

5.3 Goals and Policies

GOAL 5-1 Minimize risks to life and property in areas of high geologic, flood, and fire hazard. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs

5.3.1 Coastal Bluff and Shoreline Development

HAZ-1 Beach Front Setback. Proposed development on a beach front lot shall be setback:

- a. In accordance with a stringline; or
- b. In accordance with the underlying zoning district setbacks.
- c. No part of a proposed new accessory structures shall be built farther toward the beach front than a stringline drawn between the nearest corners of adjacent accessory structures.

HAZ-2 Blufftop Setback. Proposed development, redevelopment, and accessory structures requiring a foundation on blufftop lots shall be set back at least 25 feet from the bluff edge, or set back in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. City Planner shall determine which of the setbacks shall be applied to a development based on the geology, soil, topography, existing vegetation, public views, adjacent development, and other site characteristics. A structure developed prior to the Coastal Act could be considered in the stringline setback when it is in character with development that was approved under the Coastal Act. This minimum setback may be altered to require greater setbacks when required or recommended as a result of geotechnical review required by policy HAZ-27.

HAZ-3 Blufftop Swimming Pool Setback. The minimum setback for swimming pools is 25 feet from the bluff edge. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system.

HAZ-4 Bluff Face Development. New permanent structures shall not be permitted on a bluff face, except for public access facilities, including walkways, overlooks, stairways, and/or ramps, may be allowed within the shoreline/bluff top setback established to provide public beach access where no feasible alternative means of public access exists by Polies HAZ-2 and HAZ-17 provided they meet the following criteria:

- a. Must be designed and constructed to minimize landform alteration of the oceanfront bluff face;
- b. Does not contribute to further erosion or cause, expand, or accelerate instability of the bluff;
- c. Visually compatible with the surrounding areas;
- d. Does not require shoreline protection devices;
- e. Must be sited and designed to be easily relocated or removed without significant damage to the bluff or shoreline; and

HAZ-5 New Development and Accessory Structures in Bluff Setbacks. All new development, including additions to existing structures, on bluff property shall be landward of the setback line required by Policy HAZ-2. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, and septic systems, etc with a foundation. Accessory structures such as decks, patios, and walkways, which are at grade and do not require foundations may extend into the setback area and shall be sited in accordance with a stringline, but no closer than 10 feet to the bluff edge, provided such accessory structures:

- a. Such accessory structures are consistent with all other applicable LCP policies;
- b. Such accessory structures are sited and designed to be easily relocated landward or removed without significant damage to the bluff area,
- c. Such accessory structures will be relocated and/or removed and affected area restored to natural conditions when threatened by erosion, geologic instability, or other coastal hazards, and

HAZ-6 Bluff/Shoreline Landscaping. All landscaping for new blufftop or shoreline development or redevelopment shall consist of native, non-invasive, drought-tolerant, fire-resistant species and any approved irrigation system shall be low volume (drip, micro jet, etc.). Excessive irrigation on bluff top lots is prohibited.

HAZ-7 Stability Requirements for Foundations on Bluffs. The City may consider options including a caisson foundation to meet the stability requirement and avoid substantial alteration of the natural landform along the bluffs where setbacks and other development standards would preclude new development on a bluff top parcel. CDPs for any such residence shall have a condition that expressly requires a waiver of any rights to new or additional bluff retention devices which may exist and recording of said waiver on the title of the bluff top parcel.

HAZ-8 Public Non-conforming Facilities. Publicly-owned facilities that are existing, legal, non-conforming, and coastal dependent uses, such as public access improvements, restrooms, and lifeguard facilities, on the beach area may be maintained, repaired and/or replaced as determined necessary by the City. Any such repair or replacement of existing public facilities shall be designed and sited to avoid the need for shoreline protection to the extent feasible.

HAZ-9 Shoreline Development and Marine Safety. New permanent structures shall not be permitted on the sandy beach with the exception of the proposed redevelopment of the City's Marine Safety Headquarters building and coastal dependent uses. Any proposed relocation or redevelopment of the City's Marine Safety Headquarters on the sandy beach shall be located as far landward as feasible and shall be designed to avoid the need for future shoreline protection to the maximum extent feasible. Any CDP authorizing redevelopment of the Marine Safety Headquarters shall require any future shoreline protection device to be sited and designed to mimic natural shoreline features where feasible, and to require a new CDP for any future shoreline protective device for the structure.

HAZ-10 Site-Specific Coastal Hazard Study. A site-specific coastal hazard study is required for new shoreline development, prepared by a qualified professional and based on the best available science. The study should include an evaluation to determine whether any grading (permitted or unpermitted) has occurred and whether the grading, if any, has had an effect on potential inundation hazard.

HAZ-11 Shoreline Management Plan. Develop and implement a shoreline management plan for the City's shoreline areas subject to wave hazards and erosion. The shoreline management plan should provide for the protection of public beaches, existing development, public improvements, coastal access, public opportunities for coastal recreation and coastal resources. The plan must evaluate the feasibility of coastal hazard avoidance, restoration of the sand supply, beach nourishment, and planned retreat.

5.3.2 Coastal Canyon Development

HAZ-12 Canyon Setbacks. New development or redevelopment, including principal structures and accessory structures with foundations, such as guest houses, pools, and detached garages etc., shall not encroach into coastal canyons. When there are two or more setbacks available in the standards below (e.g., stringline or canyon edge setback), the City Planner shall determine which of the setbacks will be applied to a development based on the geology, soil, topography, existing vegetation, public views, adjacent development and other site characteristics. Coastal Canyon Setbacks shall be set back either:

- a. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and not less than 15 feet from the canyon edge; or
- b. A minimum of 30% of the depth of the lot, as measured from the property lines that abut the bottom of the coastal canyon, and setback from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or
- c. In accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures (rear corner/side of structure closest to coastal canyon). A structure developed prior to the Coastal Act could be considered in the stringline setback when it is in character with development along the coastal canyon that was approved under the Coastal Act. The development setback shall be established depending on site characteristics and determined after a site visit. If a greater setback is required as a result of the geotechnical review prepared pursuant to policy HAZ-27, the greater setback shall apply.
- d. Ancillary improvements such as decks and patios, which are at-grade and do not require structural foundations may extend into the setback area no closer than five (5) feet to the canyon edge (as defined in Chapter 7, Definitions), provided no additional fuel modification is required that may impact native vegetation. No new or redeveloped walkways shall extend into the canyon beyond the required coastal canyon setback.

When selecting the appropriate setback from the above-referenced options, the City Planner shall consider the following factors: safety, minimization of potential impacts to visual resources, community character, protection of native vegetation and equity. These additional factors may require increased setbacks depending

on the conditions of the site and adjacent coastal resources. A variance shall be required to allow a reduction or deviation to the canyon setbacks identified herein.

HAZ-13 Location of Canyon Development. All new development or redevelopment, including additions to existing structures, on parcels abutting coastal canyons shall be located on geologically stable areas as determined by the geotechnical review prepared pursuant to HAZ-27. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, and septic systems, etc.

HAZ-14 Canyon Pool Setbacks. The minimum setback for swimming pools adjacent to coastal canyons is 15 ft. from the canyon edge. All new or substantially reconstructed swimming pools shall incorporate a leak prevention/detection system.

5.3.3 Hazard Area Development

HAZ-15 Hazards Review. Review applications for new development, land divisions and plan amendments to determine the presence of hazards and, if they are present, ensure the hazards are avoided and/or mitigated, as required by the policies in this Section.

HAZ-16 Development on Hillside Canyons and Bluffs. New development shall be designed and sited to maintain the natural topographic characteristics of the City's natural landforms by minimizing the area of height of cut and fill, minimizing pad sizes, siting and designing structures to reflect natural contours, clustering development on lesser slopes, avoiding development within setbacks, and/or other techniques. Any landform alteration proposed for reasons of public safety shall be minimized to the maximum extent feasible. Developments partially or wholly located in a coastal canyon or bluff shall minimize the disturbance to the natural topographic characteristics of the natural landforms.

HAZ-17 Development Near Hazards. New development that is in proximity to a hazard area shall be sited and designed in ways that minimize: risks to life and property, impacts to public access and recreation, impacts to scenic resources, impacts to the quality or quantity of the natural supply of sediment to the coastline, adverse impacts due to runoff, and accounts for sea level rise and coastal storm surge projections.

HAZ-18 Subdivision. Any subdivision of property in or adjacent to coastal canyons or bluffs shall be reviewed for consistency with LCP policies. New parcels that do not have an adequate building site area to comply with the setback standards of these policies shall not be created.

HAZ-19 Development Exposure to Hazards. Minimize the exposure of new development to geologic, flood (including inundation from sea level rise, wave up-rush, storm surge, and stream flooding), and fire hazards. Strive to ensure that new bluff, canyon, or shoreline development is safe from, and does not contribute to, geologic instability or other hazards.

HAZ-20 Avoidance of Geologic and Other Hazards. Require applicants for development in areas potentially subject to hazards such as seismic hazards, tsunami run-up, landslides, liquefaction, episodic and long-term shoreline retreat (including beach or bluff erosion), wave action storms, tidal scour, flooding, steep slopes averaging greater than 35%, unstable slopes regardless of steepness, and flood hazard areas, including those areas potentially inundated by accelerated sea level rise, to demonstrate, based on site-specific conditions and using the best available science, that:

- a. The area of construction is stable for development based on geologic/geotechnical and coastal hazards review,
- b. The development will not create a hazard or diminish the stability of the area, and
- c. For shoreline/canyon, or bluff development, compliance with the policies in this chapter.

HAZ-21 New Development in Hazard Areas. New development shall only be permitted where an adequate factor of safety can be provided on ancient landslides, unstable slopes, or other geologic hazards areas.

HAZ-22 Stabilization of Landslides. In the event that remediation or stabilization of landslides that affect existing structures or that threaten public health or safety is required, multiple remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to coastal resources and to preclude the need for future mitigation.

HAZ-23 Development Compliance with Fire Safety. Coastal Development Permit applications for new or redeveloped structures shall demonstrate that the development meets all applicable fire safety standards. New development shall be sited and designed to minimize required initial and future fuel modification and brush clearance in general, and to avoid such activities within native habitat areas, Environmentally Sensitive Habitat Areas (ESHA) and ESHA buffers, and on neighboring property.

HAZ-24 Applicant's Assumption of Risk. Applicants with a Coastal Development Permit (CDP) for a development in a hazardous area must record a document exempting the City from liability for any personal or property damage caused by geologic or other hazards on such properties and acknowledging that future shoreline protective devices to protect structures authorized by such a CDP are prohibited.

HAZ-25 New Development Compliance with Health and Safety. New development that does not conform to the provisions of the LCP and presents an extraordinary risk to life and property due to an existing or demonstrated potential public health and safety hazard shall be prohibited.

HAZ-26 Non-conforming Structures. Structures lawfully built along a coastal canyon, bluff or shoreline area pursuant to a Coastal Commission-issued Coastal Development Permit or prior to the effective date of the Coastal Act (January 1, 1977) that do not conform to the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered a major remodel, as defined herein, may be permitted provided that such additions or improvements comply with the current policies and standards of the LCP. Complete demolition and reconstruction or major remodel is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP.

HAZ-27 Geotechnical Review. A geotechnical review is required for all shoreline/bluff top or coastal canyon parcels where new development or major remodel is proposed. If, as a result of geotechnical review, a greater setback is recommended than is required in the policies herein, the greater of the setbacks shall apply. For bluff top parcels, geotechnical review should include consideration of the expected long-term bluff retreat over the expected life of the structure and should provide information assuring that the development will maintain a minimum factor of safety against land sliding of 1.5 (static) and 1.1 (pseudo static) for the life of the structure. The Building Official can issue building permits for structures that maintain a minimum factor of safety against landslides under certain circumstances and conditions were alternative stability requirements are approved by the City Engineer.

HAZ-28 Removal of Unpermitted and/or Obsolete Structures. Development on the shoreline, canyon, and/or bluff sites must identify and remove all unpermitted and/or obsolete structures that no longer serve a function, including but not limited to protective devices, fences, walkways, stairways, etc. which encroach into canyons or bluffs or onto public property.

HAZ-29 Infrastructure in Hazard Areas. New critical or replacement or rehabilitation or sensitive infrastructure and uses shall:

- a. Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- b. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- c. Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- d. Minimize energy consumption and vehicle miles traveled.
- e. Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

HAZ-30 Accessory Structures. For CDPs authorizing accessory structures on a bluff or canyon lot that do not meet the shoreline, bluff or canyon setback, a condition shall be applied that requires the permittee (and all successors in interest) to apply for a CDP to remove the accessory structure(s), if it is determined by a licensed Geotechnical Engineer and/or the City, that the accessory structure is in danger from erosion, landslide, or other form of bluff or slope collapse.

HAZ-31 Blufftop/Coastal Canyon Lot Drainage and Erosion. New development and redevelopment on a blufftop or Coastal Canyon lot shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner away from the bluff/canyon edge to minimize hazards, site instability, and erosion. Drainage devices extending over or down the bluff face will not be permitted if the property can be drained away from the bluff face. Drainpipes will be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach.

HAZ-32 Compensation for Taking Private Property. The City does not have the power to grant or deny a permit in a manner which will cause a physical or regulatory taking of private property, without the payment of just compensation therefor. This policy is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States (Coastal Act Section 30010).

HAZ-33 Bluff/Canyon/Shoreline Retention Devices. Bluff/canyon/shoreline retention devices shall be discouraged due to their coastal resource impacts, including visual impacts, obstruction of public access, interference with natural shoreline processes and water circulation, and effects on marine habitats and water quality. All new bluff/canyon/shoreline development and Major Remodels involving any significant alteration or improvement to a principal existing structure on lots with a legally established bluff/canyon/shoreline retention device shall trigger review of any associated bluff/canyon/shoreline retention device as prescribed herein.

HAZ-34 Restrict Bluff/Canyon/Shoreline Retention Devices. The construction, reconstruction, expansion, and/or replacement of a bluff/canyon/shoreline retention device, (i.e. revetments, breakwaters, groins, seawalls, bluff retention devices, deep piers/caissons, or other artificial structures as defined in Chapter 7 that alter natural landforms or alter bluff/canyon/shoreline processes), for coastal erosion control and hazards protection, are prohibited, except pursuant to a CDP where it can be shown that all of the following are met:

- a. The bluff, canyon or shoreline retention device is required for the protection of coastal-dependent uses, existing development (including a principal structure or residence) or public beaches in danger from erosion,
- b. Where there is no less environmentally damaging alternative to the bluff, canyon or shoreline retention device,
- c. The device is sited to avoid sensitive resources,
- d. The device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply and public access and to avoid or, where avoidance is infeasible, to minimize and mitigate the encroachment on the public beach, and
- e. The device is designed to minimize adverse visual impacts to the maximum extent feasible.

HAZ-35 CDP Application for Bluff, Canyon or Shoreline Retention Devices. The CDP application for a bluff, canyon or shoreline retention device constructed pursuant to policy HAZ-34 shall include:

- a. A re-assessment of the need for the device, the need for any repair or maintenance of the device, and the potential for the device's removal based on changed conditions,
- b. An evaluation of the age, condition, and economic life of the existing principal structure,

- c. An analysis of changed geologic site conditions, including but not limited to, changes relative to sea level rise, implementation of a long-term large scale sand replenishment or shoreline restoration program,
- d. An analysis of any impact to coastal resources, including but not limited to public access and recreation, and
- e. A geologic analysis that: (1) describes the condition of the existing retention device, (2) identifies any impacts on public access and recreation, scenic views, sand supply and other coastal resources, (3) evaluates options to mitigate any previously unmitigated impacts of the structure or to modify, replace, or remove the existing protective device in a manner that would eliminate or reduce those impacts. In addition, any significant alteration or improvement to the principal existing structure shall trigger such review (i.e., the analysis of the bluff/canyon/shoreline retention device) and any unavoidable impacts shall be mitigated.

HAZ-36 CDP Application for Bluff, Canyon or Shoreline Retention Devices – Findings and Conditions for Approval. No permit shall be issued for retention, expansion, alteration or repair of a bluff, canyon or shoreline retention device unless the City finds:

- a. That the criteria for issuance set forth in policy HAZ-34 are met,
- b. That the bluff or shoreline retention device is still required to protect an existing principal structure in danger from erosion,
- c. That the device will minimize further alteration of the natural landform of the bluff/canyon, and
- d. That adequate mitigation for coastal resource impacts, including but not limited to impacts to the public beach, has been provided.

A condition of the CDP for all new development and Major Remodels on bluff, canyon or beach property shall require the property owner to record a deed restriction against the property that expressly waives any future right that may exist pursuant to Section 30253 of the Coastal Act, to add new or additional bluff or shoreline retention devices. This policy requires the removal of any structures that become threatened by hazards if relocation is infeasible.

HAZ-37 Devices on Public Lands. Construction of new bluff, canyon or shoreline retention devices on land in public ownership or control for the purpose of protecting existing development on private property or protecting development on public land shall be discouraged. However, where necessary, such construction

shall avoid siting on public land to the maximum extent feasible and shall protect public lands for general public use.

HAZ-38 Design of Bluff/Canyon/Shoreline Retention Devices.

Bluff/canyon/shoreline retention devices permitted pursuant to policies HAZ-34 through HAZ-36 shall be designed to be compatible with the surrounding bluff or canyon vegetation and natural landforms. The design plan approved pursuant to the CDP shall demonstrate that:

- a. The device structure will be colored/constructed with concrete or other approved material that has been colored with earth tones that are compatible with any adjacent area,
- b. The structure will be textured for a natural look to blend with the surrounding vegetation, and the color will be maintained throughout the life of the structure. White and black color tones will not be used,
- c. Drought tolerant, non-invasive vegetation may be used to cover and camouflage the structure.
- d. Mitigation measures to offset any impacts to coastal resources caused by the project;
- e. Any impairment and interference with shoreline sand supply and the circulation of coastal waters have been minimized and mitigated,
- f. Minimize and mitigate for the impairment and interference with shoreline sand supply and the circulation of coastal waters;
- g. Any geologic hazards presented by construction in or near earthquake or landslide hazard zones have been addressed;
- h. Public recreational access have been protected and enhanced where feasible, including by minimizing the displacement of beach; and
- i. The device has, if necessary, has been designed to combined with efforts to control erosion from surface and groundwater flows, and
- j. The device incorporates soft structures and designs that mimic natural shoreline features, where feasible.

HAZ-39 Monitoring. The CDP for the bluff, canyon or shoreline retention device shall require the retention device to be regularly monitored by an engineer or engineering geologist familiar and experienced with coastal structures and processes. Monitoring reports to the City shall be required every five years from

the date of CDP issuance until CDP expiration, which monitoring shall evaluate whether or not the shoreline protective device is still required to protect the existing structure it was designed to protect.

HAZ-40 Expiration of Bluff, Canyon, and Shoreline Retention Devices. CDPs for expansion, alteration, and/or repair of bluff, canyon or shoreline retention devices shall expire when the existing structure requiring protection is: 1) incorporated into a Major Remodel, 2) is no longer present, or 3) no longer requires a retention device, whichever occurs first. The property owner shall apply for a coastal development permit to remove the authorized bluff, canyon or shoreline retention device within six months of a determination by the City that the device is no longer authorized to protect the structure it was designed to protect because the structure is no longer present or no longer requires protection as authorized pursuant to policies HAZ-34 through HAZ-36. The removal of the authorized bluff or shoreline retention devices shall be required prior to the commencement of construction on a Major Remodel.

HAZ-41 Construction BMPs for Bluff/Canyon/Shoreline Development.

Development on the bluffs/canyon/shoreline, including the construction of a bluff/canyon/shoreline retention devices, shall include measures to ensure that:

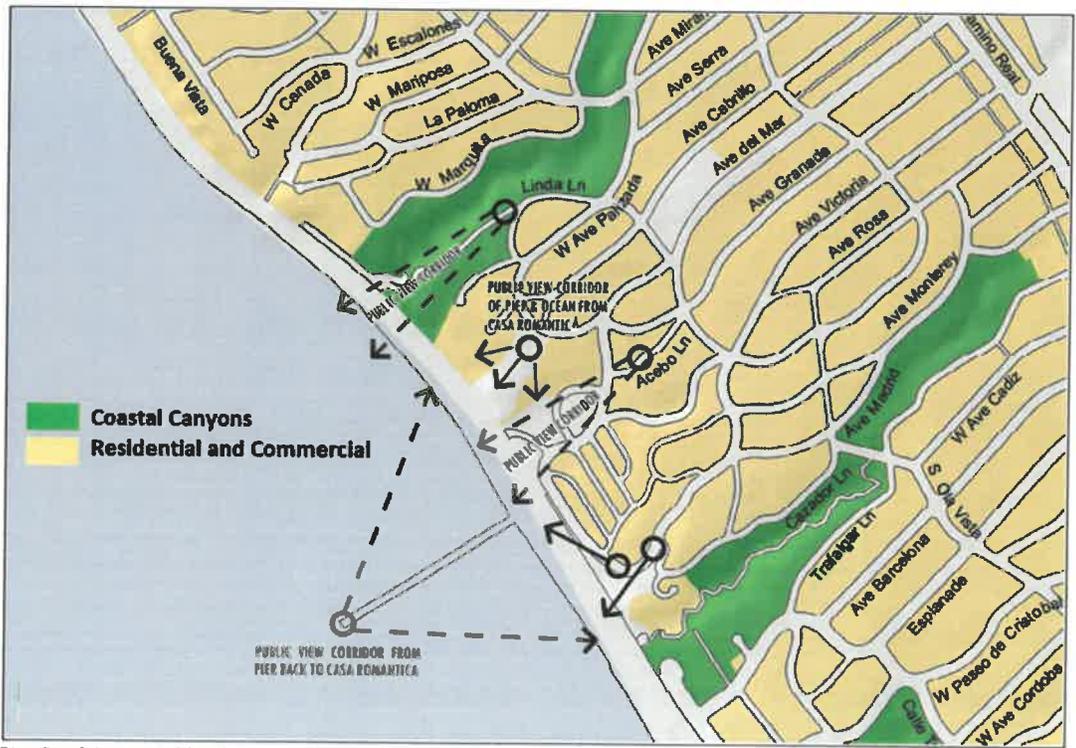
- a. No stockpiling of dirt or construction materials shall occur on the beach;
- b. All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation, as determined by the City Engineer;
- c. Measures to control erosion shall be implemented at the end of each day's work;
- d. No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
- e. All construction debris shall be properly collected and removed from the beach, and
- f. Shotcrete/concrete or other material shall be contained through the use of tarps or similar barriers that completely enclose the application area and that prevent the contact of shotcrete/concrete or other material with beach sands and/or coastal waters.

HAZ-42 No Bluff/Canyon Retention for Accessory Structures. No bluff/Canyon retention device shall be allowed for the sole purpose of protecting a new or existing accessory structure.





North Beach - Public View Corridors



Pier Bowl Area - Public View Corridors

ENCLOSURE 8

Patio/Deck Stringline

Structure Stringline

Patio/Wall
Encroachments
Proposed to be
Removed

Roof Encroachment
(Not a Part of subject permit)

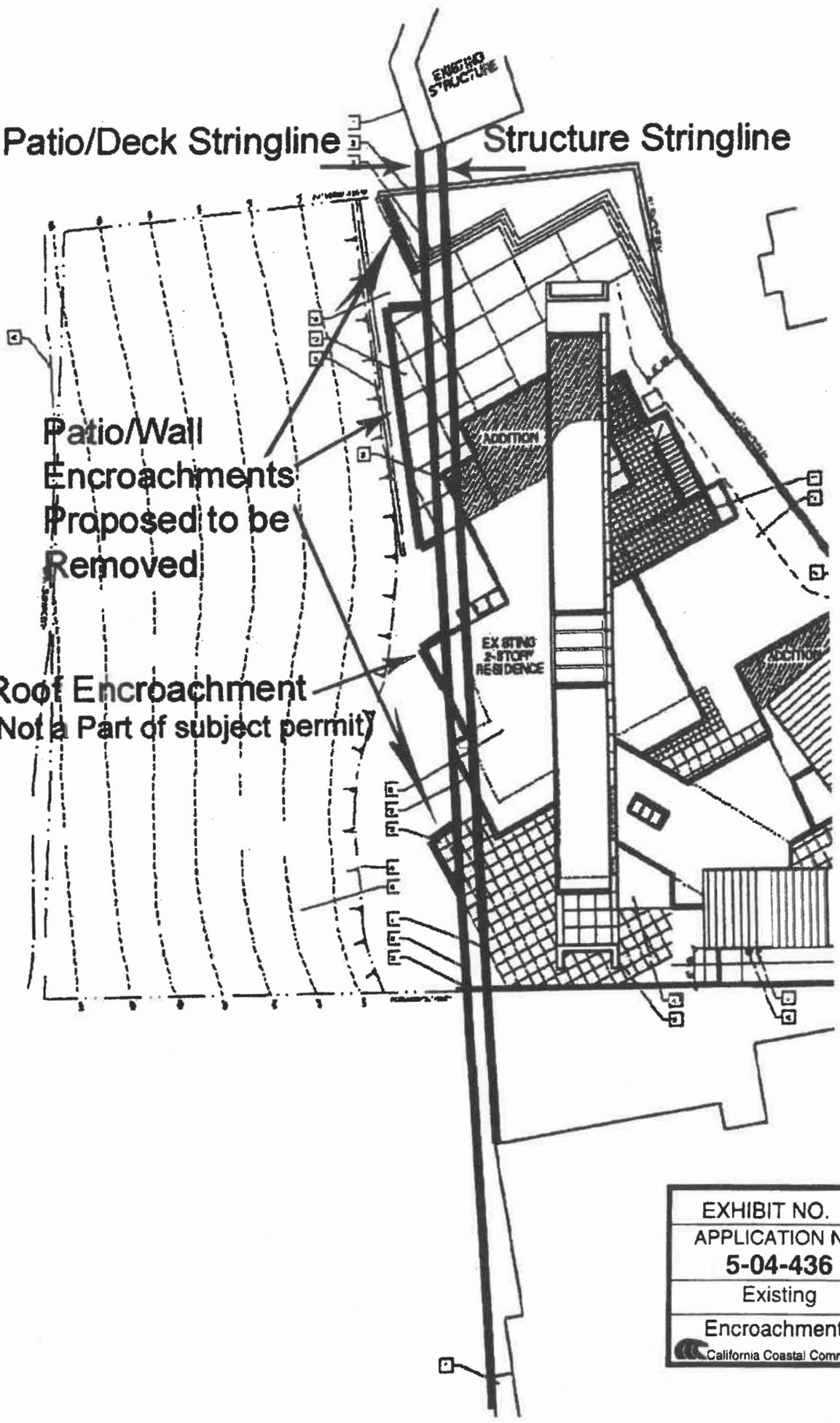


EXHIBIT NO. 5
APPLICATION NO. 5-04-436
Existing
Encroachments
California Coastal Commission

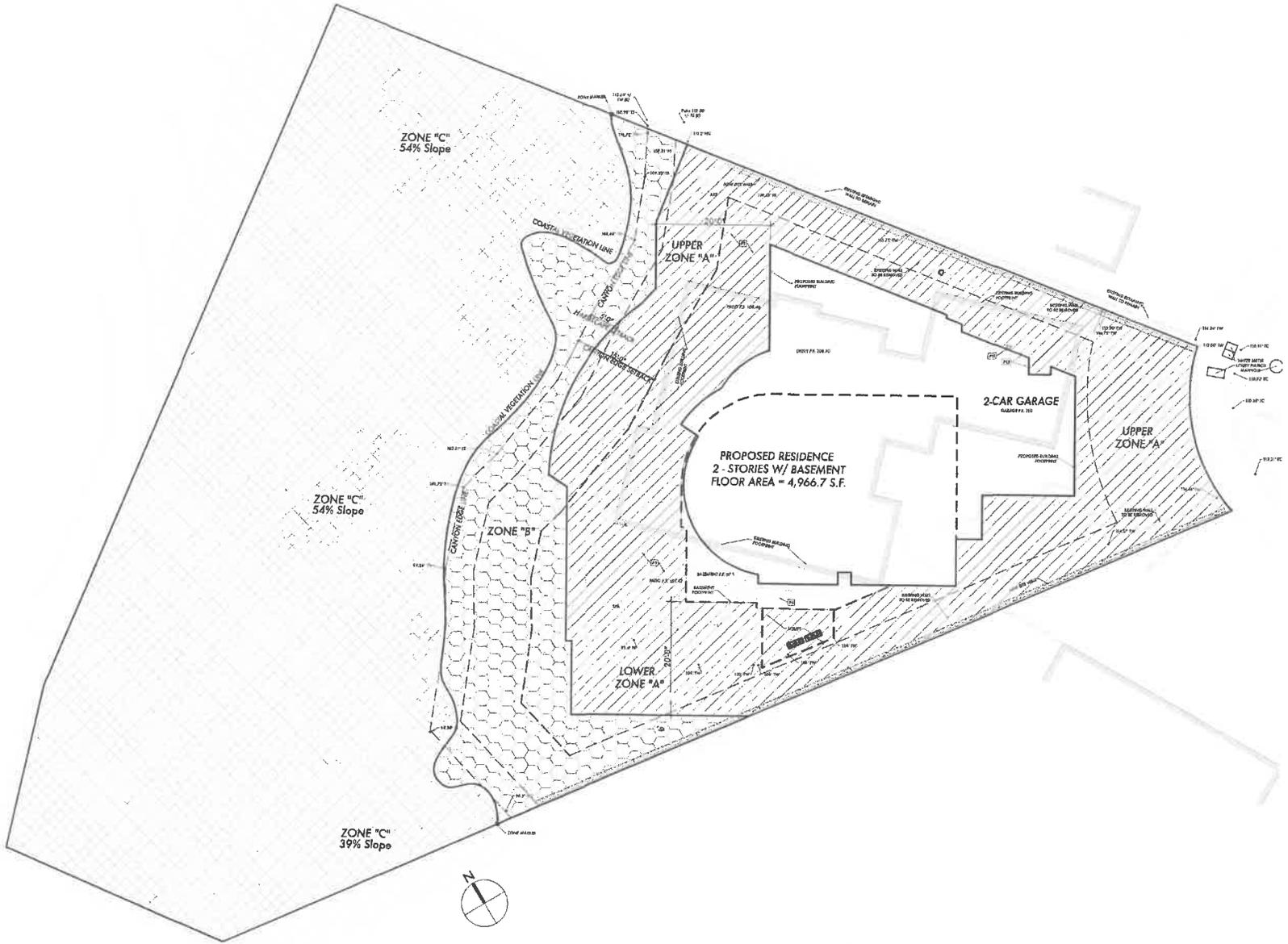
5-17-0607



Christian R. Light - Architect

1401 Quail Street, Suite 120
 Newport Beach, CA 92660
 (949) 833-8345
 Fax (949) 831-1116

The Drawings, Specifications and other documents prepared by Architect for the Project are for use in the Project only and may not be used for any other project. It is the obligation of the Permittee to verify the accuracy of the information provided by others. The Architect and Architectural Firm shall not be responsible for any errors or omissions in the drawings or specifications prepared by others. The Architect and Architectural Firm shall not be responsible for any errors or omissions in the drawings or specifications prepared by others. The Architect and Architectural Firm shall not be responsible for any errors or omissions in the drawings or specifications prepared by others.



Worthington Residence
 207 Calle Conchita
 San Clemente, CA 92672

OCFA ZONE OVERLAY

Job Number: 1619
 Scale: 1/8" = 1'-0"
 Date: 4/10/2018
 Submittal 1 Date: 01/26/18
 Resubmittal Date: 04/17/18

OCFA 1

MCKERNAN ROOM ADDITION
CANYON SETBACK

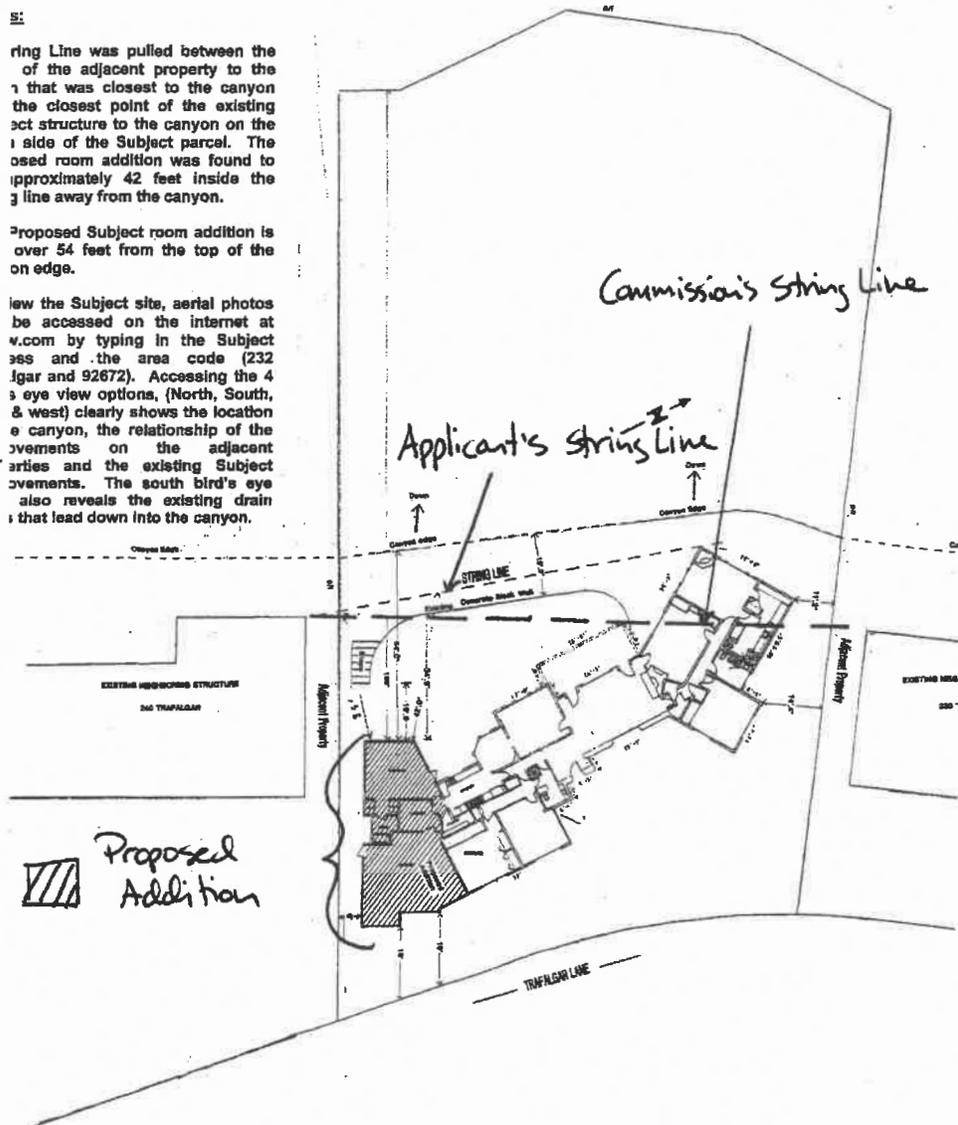
COASTAL COMMISSION
5-06-389
EXHIBIT # 4
PAGE 1 OF 1

Permit Application 5-06-389

The String Line was pulled between the top of the adjacent property to the canyon that was closest to the existing structure to the canyon on the east side of the Subject parcel. The proposed room addition was found to be approximately 42 feet inside the String Line away from the canyon.

Proposed Subject room addition is over 54 feet from the top of the canyon edge.

To view the Subject site, aerial photos can be accessed on the internet at www.google.com by typing in the Subject address and the area code (232) and the zip code (92672). Accessing the 4 satellite view options, (North, South, East, & West) clearly shows the location of the canyon, the relationship of the proposed room addition on the adjacent property and the existing Subject structure. The south satellite view also reveals the existing drain that lead down into the canyon.



ENCLOSURE 9

From: [Scarborough, George](#)
To: [Buell, George](#); [Holloway, Jim](#)
Cc: [Smith, Jim](#); [Montoya, Tony](#)
Subject: RE: COASTAL COMMISSION APPLICATION
Date: Monday, February 11, 2008 5:31:02 PM

George and Jim, I am providing the response from George minus the comment about training Wayne to use the on-line service. Keep the holds in place.

George, independently of this response please contact Wayne and let him know that permit activity can be monitored for all property in town through our web site.

George Scarborough

From: Buell, George
Sent: Monday, February 11, 2008 4:29 PM
To: Scarborough, George; Holloway, Jim
Cc: Smith, Jim; Montoya, Tony
Subject: RE: COASTAL COMMISSION APPLICATION

George and Jim-

With regard to the property at 206 Calle Conchita, no In-Concept review has been requested/performed since the 8/25/07 Code Enforcement action (Case No. CE 2007-1033). A hold has been placed on this property as well as 207 Calle Conchita so that prior to adding anything into the permit database, Building and Planning counter staff must read a note that indicates that you or I must be notified so that Councilman Eggleston is informed of any permitting activity. The properties at 206 and 207 Calle Conchita are the only ones on that street that face Trafalgar Canyon.

There is no current permit activity for a Coastal Development Permit for a fence (or any other development) on Calle Conchita.

The owner of 217 Vista Marina is Finlay Cumming. His address is 30201 Via Festivo, SJC 92675.

Mr. Cumming placed his project to construct a home (entirely within Trafalgar Canyon) on hold, and there is no new activity on the project. Councilman Eggleston's name has been added to the project notification list as a party of record. Similarly to the Calle Conchita properties, a hold has been placed on this property so that prior to adding anything into the permit database, counter staff must read a note that indicates that you or I must be notified so that Councilman Eggleston is informed of any permitting activity.

The holds described above are extraordinary measures that are not typically taken and are certainly not extended to the general public. Taken to an extreme, we could create a tremendous amount of work that is well beyond the scope of the Code relative to notification. Typically, we direct the interested public to go online and periodically perform a search on their neighbors' permit activity, which can be accessed through

the City's website. Rather than keeping these holds in place, I would be happy to sit down with Wayne to teach him how to perform these searches. It would take about 15 minutes, and he could research literally all building permit activity and planning entitlement projects in the City.

George

From: Holloway, Jim
Sent: Monday, February 11, 2008 8:11 AM
To: Scarborough, George; Buell, George; Montoya, Tony; Smith, Jim
Subject: RE: COASTAL COMMISSION APPLICATION

George B

Have someone call CCC to see if any CDPs have been applied for in this area.

George S and All

The best we can do is notify the CM and Council if in concept approvals are requested at the local level. We do not have access to the CCC files and therefore cannot place a tickler on their files. Circulate a map of the area in question at the staff meeting and discuss this issue. George B – can you think of a way to add a “tickler” to these properties?

From: Scarborough, George
Sent: Sunday, February 10, 2008 2:45 PM
To: Holloway, Jim; Buell, George; Montoya, Tony
Subject: FW: COASTAL COMMISSION APPLICATION

What can we help with on these questions and request?

From: [REDACTED]
Sent: Sun 2/10/2008 11:16 AM
To: Scarborough, George
Subject: COASTAL COMMISSION APPLICATION

George,

As you may remember some time ago an owner who lives on Calle Conchita was in the process one Saturday of installing a fence at the edge of their property in the canyon. I went down there at that time and also called code enforcement and the installation was stopped.

Please advise if that owner or any other owner on that street has applied for a coastal permit to fence their property ?

Also if not I would like to be notified by you if any owner in the future applies for a coastal permit for that purpose. Please put me in a tickler file for notification.

Also, please advise if there has been any activity by the owner of the vacant coastal canyon property at the end of Vista Marina for any proposed building.

Also please advise me of any future propose building activity by putting me on your tickler list.

Also do you have the name and address of the current property owner of the Vista Marina owner-could you provide that to me.

Thanks

[REDACTED]

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant Luxor Development - Mr. Rohn Boyd

Project Description Proposed 2-story single family residence approx. 5,939 S.F. livable w/ 3 car garage @ 874 S.F.

Location 217 Vista Marina, San Clemente. a portion of lot 31, Tract 822, M.M. 25/21-26

Assessor's Parcel Number 692-252-01

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation RL 7 du/ac

General or Community Plan Designation RL 7 du/ac

Local Discretionary Approvals

Proposed development meets all zoning requirements and needs no local permits other than building permits.

Proposed development needs local discretionary approvals noted below.

Needed Received

- Design/Architectural review
- Variance for: _____
- Rezone from _____
- Tentative Subdivision/Parcel Map No. _____
- Grading/Land Development Permit No. _____
- Planned Residential/Commercial Development Approval
- Site Plan Review
- Condominium Conversion Permit
- Conditional, Special, or Major Use Permit No. _____
- Other _____

CEQA Status

Categorically Exempt Class 15303 Item (A)

Negative Declaration Granted (Date) _____

Environmental Impact Report Required, Final Report Certified (Date) _____

Other _____

Prepared for the City/County of SAN CLEMENTE by John M. Harnd

Date 6-8-99 Title ASSOCIATE PLANNER

