CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Filed: 9/11/08
Staff: B. Carey-Ventura
A. Helperin-San Francisco
Staff Report: 10/23/08
Hearing Date: 11/13/08

Th 22a

CLAIM OF VESTED RIGHTS

STAFF REPORT AND RECOMMENDATION

CLAIM NO: 4-08-066-VRC

CLAIMANT: Lee Jamieson **AGENT:** Susan M. Basham, Price, Postel & Parma, LLP

PROJECT LOCATION: 4809 Sandyland Road, Carpinteria, Santa Barbara County.

ASSESSOR'S PARCEL NO.: 003-800-001; 003-800-002, 003-800-003

DEVELOPMENT RIGHT CLAIMED: Construction of patio extension to Judgment Line defined in 1974 Stipulated Judgment.

SUBSTANTIVE FILE DOCUMENTS: 1974 Judgment in the case of Roberts v. City of Carpinteria (Santa Barbara Superior Court Case No. 79327)

ACTION: Commission Hearing and Vote

SUMMARY OF STAFF RECOMMENDATION

The applicant claims a vested right for the new construction of an addition to an existing at-grade patio on a beachfront property developed with a three-unit condominium. Staff recommends **denial** of the claim of vested rights made by Lee Jamieson regarding the construction of a patio extension.

The Coastal Act requires a coastal development permit prior to undertaking development. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit if all other required permits and other discretionary approvals were obtained at the time the development began and, in good faith reliance on those entitlements, the owner performed substantial work and incurred substantial liabilities.

Mr. Jamieson does not provide any evidence that he or any previous owner obtained any permits to construct the subject patio extension, or that any work was performed on the patio extension prior to the effective date of the California Coastal Act (January 1, 1977). In fact, the applicant acknowledges that no work has been commenced on the patio extension. Rather, the applicant's claim is based on the terms of the 1974 Judgment in the case of *Roberts v. City of Carpinteria* (Santa

Barbara County Superior Court Case No. 79327). However, as discussed in detail below, the 1974 Roberts Judgment does not give rise to a vested right under the California Coastal Act of 1976, the California Coastal Zone Conservation Act of 1972, nor does it establish any other sort of right to conduct development without compliance with the permitting requirements of the Coastal Act.

I. STAFF RECOMMENDATION FOR DENIAL OF CLAIM

Pursuant to section 13203 of the Commission's regulations, 14 C.C.R. § 13203, the Commission's Executive Director has made an initial determination as to whether Claim of Vested Rights 4-08-066-VRC has been substantiated. As indicated in the attached letter, the Executive Director found that the claim was not substantiated. Staff recommends that the Commission deny Claim of Vested Rights 4-08-066-VRC.

Motion: *"I move that the Commission determine that Claim of Vested Rights 4-08-066-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Following the staff recommendation will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Denial of Claim:

The Commission hereby determines that Claim of Vested Rights 4-00-279-VRC is not substantiated, denies the claim, and adopts the Findings set forth below.

STAFF NOTE

On October 6, 2008, staff verbally requested additional background information from the claimant's agent relating to the case of *Roberts v. City of Carpinteria* (Santa Barbara County Superior Court Case No. 79327), including the basis for the lawsuit and information regarding which State agency was the cross-defendant in the case. This information was not explicit in the 1974 *Roberts* Judgment document. Ms. Basham provided a letter (Exhibit 6b), dated October 14, 2008, and copies of several documents pertaining to the 1974 *Roberts* case (although because of technical difficulties, the information was not received until October 22, 2008). In this letter, Ms. Basham notes the requirements of 14 CCR §13203, which requires the executive director to make an initial determination whether the claim of vested rights appears to be substantiated. The letter states that: "Since it has been more than 30 days since we filed Mr. Jamieson's claim, we would appreciate receiving your prompt determination and notice of a scheduled hearing in this matter".

In fact, staff had already made an initial determination that the vested rights claim did not appear to be sufficiently substantiated and that it should be denied. Notice of this determination was sent to the claimant's agent and known interested parties on October 10, 2008, within the 30-day time frame required by 14 CCR §13203. This determination was made by staff even though the requested background information had not yet been received. In staff's view, the information sought, and provided by the claimant's agent was not relevant to the question of whether a vested right was substantiated, but rather was sought in order to determine what other sorts of rights, if any, the Judgment may give the applicant with regard to the Coastal Act permitting requirements.

Staff subsequently received a letter, dated October 15, 2008 (Exhibit 6c), from Ms. Basham stating that the October 14, 2008 letter (with attachments) should have been considered before the Initial Determination was issued. The letter also states that: "We therefore seek your reconsideration of this Initial Determination, based upon the fact that the Stipulated Judgment—a court order—established a vested right that is tantamount to the issuance of a permit under the Commission's customary standard". As previously stated, 14 CCR §13203 requires the Executive Director to make an initial determination whether a vested rights claim appears to be substantiated within 30 days of filing the claim. (In this case, the vested rights claim was filed on September 11, 2008, pursuant to 14 CCR §13202). Because the additional background information was not relevant to this determination, it was not necessary to delay the initial determination. As such, staff has declined to reconsider the Initial Determination made on October 10, 2008.

II. FINDINGS AND DECLARATIONS

A. Legal Authority and Standard of Review

The Coastal Act requires that a coastal development permit be obtained before development is undertaken in the coastal zone. Coastal Act section 30600(a)[1] states:

> . . . in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . .wishing to perform or undertake any development in the coastal zone, . . . shall obtain a coastal development permit.

Coastal Act section 30106 defines the term "development" as:

> . . . the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant

[1] The Coastal Act is codified at California Public Resources Code ("PRC") sections 30,000 to 30,900. All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to provisions of the Coastal Act, unless otherwise indicated.

> to the Subdivision Map Act … change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ….

One exception to the general requirement that one obtain a coastal development permit before undertaking development within the coastal zone is that if one has obtained a vested right in the development prior to enactment of the Coastal Act, a permit is not required. Section 30608 of the Coastal Act states:

> No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (commenting with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.

The effective date of the division to which Section 30608 refers, i.e., the Coastal Act, is January 1, 1977. Thus, pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no Coastal Development Permit (CDP) is required for that development. However, no substantial change in any such development may be made until obtaining either a CDP, or approval pursuant to another provision of the Coastal Act.

In addition, the California Coastal Zone Conservation Act of 1972 (aka Proposition 20, “the Coastal Initiative”) had its own vested rights provision, former PRC section 27404, which stated, in relevant part:

> If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor.

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations (“14 CCR”). These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge or deny the claim. 14 CCR § 13205(a). If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any substantial changes to the exempt development after January 1, 1977 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

Although section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development, neither the Coastal Act nor the Commission's regulations articulate any standard for determining whether a person has obtained such a right.[2] Thus, to determine whether the Coastal Act's vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence. That case law is discussed below.

"""The vested rights theory is predicated upon estoppel of the governing body."""" *Raley v. California Tahoe Regional Planning Agency* (1977), 68 Cal.App.3d 965, 977.[3] Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government "is of sufficient dimension to justify any effect upon public interest or policy" that would result from the estoppel. *Raley*, 68 Cal.App.3d at 975.[4] Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project. *Raley*, 68 Cal.App.3d at 976.

The seminal decision regarding vested rights under the Coastal Act is *Avco Cmty. Developers, Inc. v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785. In *Avco*, the California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete a construction in accordance with the terms of the permit.[5] The court contrasted the affirmative approval of the proposed project by the granting of a permit with the existence of a zoning classification that would allow the type of land use involved in the proposed project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning. *Avco, supra,* at 796; *accord, Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357.

The acquisition of a vested right to continue an activity without complying with a change in the law thus depends on good faith reliance by the claimant on a governmental

---

[2] By contrast Proposition 20, the predecessor to the Coastal Act, did require that a building permit have been issued and that the claimant have performed substantial work and incurred substantial liabilities in reliance on that permit in order to secure a vested right. However, as is demonstrated by the case law, other than the explicit requirement for a building permit, this Proposition 20 standard is essentially the same as the common law vested rights standard applied by the courts, and the seminal case on the standard for a vested right (*Avco Cmty. Developers, Inc. v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785) was based on Proposition 20.

[3] *Quoting Spindler Realty Corp. v. Monning* (1966), 243 Cal. App.2d 255, 269, *quoting Anderson v. City Council* (1964), 229 Cal. App.2d 79, 89.

[4] *Quoting City of Long Beach v. Mansell* (1970), 3 Cal. 3d462, 496-97.

[5] Again, although the *Avco* decision pre-dates the Coastal Act and was based on the vested rights provision in Proposition 20, the standard the case articulated for establishing vested rights was the pre-existing common law standard, and the courts have continued to apply it, and to cite *Avco*, both in applying the 1976 Coastal Act vested rights provision and in assessing common law vested rights claims. *See*, *e.g.*, *Stokes v. Board of Permit Appeals* (1997) 52 Cal. App. 4th 1348, 1353; *South Central Coast Regional Comm'n v. Pratt Const. Co.* (1982) 128 Cal. App. 3d 830, 841-842.

representation that the project is fully approved and legal. The scope of a vested right is limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel. One cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed. *Avco Cmty. Developers, inc. v. South Coast Reg'l Comm'n, supra*, 17 Cal.3d 785.

There are many vested rights cases involving the Commission (or its predecessor agency). The courts consistently focused on whether the developers had acquired all of the necessary government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, and had begun their development before the Coastal Act (or its predecessor) took effect.[6] The frequently cited standard for establishing a vested right is that the claimant had to have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" in order to acquire a vested right to complete such construction. *Avco Cmty. Developers, Inc. v. South Coast Reg'l Comm'n (1976),* 17 Cal.3d 785, 791.

Based on these cases, the standard of review for determining the validity of a claim of vested rights is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would be a building permit or other legal authorization, and

2. The claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. (*Raley*, *supra*, 68 Cal.App.3d at 975-76).

There is also legal authority that suggests that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (*Urban Renewal Agency v. California Coastal Zone Conservation Commissio*n (1975) 15 Cal.3d 577).

---

[6] *See*, *e.g.*, *Patterson v. Central Coast Regional Comm'n* (1976) 58 Cal. App. 3d. 833; *Avco Community Developers, Inc. v. South Coast Regional Comm'n* (1976) 17 Cal.3d 785; *Tosh v. California Coastal Comm'n* (1979) 99 Cal.App.3d 388; *Billings v. California Coastal Comm'n* (1980) 103 Cal.App.3d 729. *Halaco Eng'g Co. v. South Central Coast Regional Comm'n* (1986) 42 Cal. 3d 52 (metal recycling); *Monterey Sand Co. v. California Coastal Comm'n* (1987), 191 Cal. App. 3d 169 (sand dredging).

The burden of proof is on the claimant to substantiate the claim of vested right. (14 CCR § 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption*. (Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588). A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy*. (Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, *citing*, *Avco v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses*." Hansen Bros. Enterprises v. Board of Supervisors* (1996)12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

B. Litigation History

Roberts v. City of Carpinteria

The applicant's claim is based on the terms of the 1974 Judgment in the case of *Roberts v. City of Carpinteria* (Santa Barbara County Superior Court Case No. 79327). An earlier owner of the subject parcel (Santa Barbara School Corporation) was a plaintiff in this case. This judgment (hereinafter, the "1974 *Roberts* Judgment," or the "Judgment") is attached as Exhibit 7.

The *Roberts* case involved a dispute between the property owners of 16 beachfront parcels, the City of Carpinteria, the County of Santa Barbara, and the State through the California State Lands Commission regarding the City's public beach easement and the location of a recorded paper street called "Ocean Avenue". The 1974 *Roberts* Judgment resulted in quieting the City's title to its public beach easement against future claims by the private property owners, and in quieting the title of the private property owners over their lots against future claims by the City and State (including any claim that a portion of their properties were part of a public street), subject to the public beach easement.

The Judgment denoted a "private beach" area for each property, which generally followed the former location of "Ocean Avenue". That "private beach" is not burdened by the City's easement, but it is subject to development restrictions listed in section 11 of the Judgment. The Judgment further established the boundary (called the "Judgment Line") between "private beach" and "public beach" on the seaward side of the subject properties, which is the area burdened by the City's public beach easement. The Judgment established the uses and purposes of the public beach easement (sections 7 and 8). The Judgment further states that the owners are permanently restrained from, among other things, doing anything that would interfere with the full use and enjoyment of the public beach area (section 11).

The terms of the Judgment related to the "private beach" area (section 11) prohibit the owners from changing the grade of the private beach area, and from erecting any

structures over, on, or across the private beach area, with two exceptions. The first exception is: “the installation and maintenance of flat, surfaced patios and appropriate landscaping”. The second exception allows for the erection of fences in three cases, including on the Judgment Line, along the property lines between the subject parcels, and along the boundary line between the street end areas and the “private beach”. The Judgment states that: “The prohibitions of this Paragraph 11 shall override any zoning ordinance that may at any time permit uses of the Private Beach, or any part thereof, other than or in addition to the uses set forth in this Paragraph 11”.

Jamieson v. City of Carpinteria

This 2008 case involved a dispute between Lee Jamieson and the City of Carpinteria regarding the construction of a patio extending to the “Judgment Line” (as defined in the 1974 *Roberts* Judgment) on the subject property. According to the ruling in this case, Mr. Jamieson filed a building permit application with the City of Carpinteria to build the patio addition to the “Judgment Line”, as defined in the 1974 *Roberts* Judgment. City staff advised Mr. Jamieson in writing that a coastal development permit would be required for this development and that the City reads the 1974 *Roberts* Judgment as not overriding any zoning ordinance that would conflict with the permitted uses. Jamieson terminated the administrative process and filed a complaint for declaratory relief to determine the rights and duties of the parties under the 1974 *Roberts* Judgment.

The court found for the City of Carpinteria, finding that Jamieson had failed to state facts constituting a cause of action for declaratory relief because he had not alleged facts constituting a controversy between himself and the City speaking through its ultimate authority, and that he had not exhausted his administrative remedies, through a vested rights determination or a coastal development permit application.

C. Background Regarding Property

The property at issue is an approximately 41-foot wide parcel on Sandyland Road that fronts onto Carpinteria City Beach in the City of Carpinteria, Santa Barbara County (The location of the site is shown in Exhibit 1). The parcel is developed with a three-unit residential condominium building with an at-grade patio on the beach side within the “private beach” area of the parcel. The applicant has submitted a copy of the recorded condominium plan map for the property and site plans for the proposed patio addition that is the subject of this vested rights claim (Exhibits 3 and 4).The assessor’s parcel map (reflecting the condominium plan map) for the property shows a ground floor patio area as part of Unit 1 (this designated patio area appears to be larger than the patio as it exists on the ground), while the remainder of the “private beach” area is common to all three units. Thus, the proposed patio expansion would involve work both in the area owned by the owner of Unit 1 and the common area owned jointly by all three unit owners.

The claimant owns one of the three condominium units (Unit 1) jointly with his wife (Krystyna Jamieson), and the claimant’s wife owns another of the three units (Unit 2).

The third unit (Unit 3) is owned by Dennis Maul Sales, Inc. The applicant's agent states that: "Mr. Jamieson and his wife acquired 2 of the 3 condominium units in or about 1998. He is the authorized representative of the owners for purposes of this Claim". Mr. Jamieson states that he is the representative for Dennis Maul Sales, Inc. although no written authorization was included with the claim.

Two coastal development permits (CDPs) were approved for the existing residential development on the subject site. CDP 95-11 [Kinnear, Serena, and Goodman (1976)] was approved for the construction of a three-unit apartment, and CDP 110-05 [Kinnear, Serena, and Goodman (1977)] was approved for conversion of a three-unit apartment to a three-unit condominium.

C. Development Claimed As Exempt From Coastal Act Requirements

Lee Jamieson claims that he has a vested right to construct an addition to the existing at-grade patio, extending to the "Judgment Line" that is the boundary between "private beach" and "public beach", defined in the 1974 Judgment in the case of *Roberts v. City of Carpinteria* (Santa Barbara County Superior Court Case No. 79327). Mr. Jamieson's claim is detailed on the Claim of Vested Rights form (Exhibit 2) and in a letter (Exhibit 6a), dated September 2, 2008, from the claimant's agent, Susan M. Basham, of Price, Postel & Parma, LLP. Additional information regarding the claim is provided in a letter (Exhibit 6b), dated October 14, 2008 from Ms. Basham.

D. Evidence Presented by Claimant

The applicant has not provided any evidence that he or his predecessors in interest obtained a permit for the construction of a patio extension or that substantial work was performed or substantial liabilities were incurred in reliance on a permit for the patio extension. In fact, the applicant acknowledges that no work has been commenced on the patio extension. Rather, the applicant's claim is based on the terms of the 1974 *Roberts* Judgment (Exhibit 7)

The applicant claims that the 1974 *Roberts* Judgment gives him a vested right to build a deck extension at any time, without obtaining a coastal development permit. The applicant's agent states the following, in her September 2, 2008 letter:

> In summary, the 1974 Stipulated Judgment, by its terms, provides that Mr. Jamieson, as a successor to the 1974 owner of his property, has a continuing right to install a flat, surfaced patio in the Private Beach area – a right he may exercise at whatever time he might choose to proceed with construction, without being constrained by later-adopted laws, and "in his sole discretion" without being required to apply for a discretionary Coastal Development Permit. Mr. Jamieson purchased his property in reliance on the express terms of the Superior Court's Judgment and on the recorded Tract Map and Condominium Plan, both of which clearly show the Judgment Line and Private Beach area.

The applicant also claims that the parties agreed to the terms of the Judgment after the adoption of the Coastal Zone Conservation Act, which could have limited vesting of rights to development substantially completed prior to 1973 or potentially only as to the 1973 property owners. The claimant concludes that since the 1974 *Roberts* Judgment nevertheless purports to give the property owners (and their successors) rights, in their sole discretion, to perform development at some later date, it "must be read as the City's and State's intent and agreement to vest rights that otherwise might not have been eligible for vesting in 1974.

Further, the applicant claims (in Ms. Basham's October 15, 2008 letter), that the Judgment established a vested right that is tantamount to the issuance of a permit under the Commission's customary standard.

Finally, the applicant's claim states that the Coastal Commission is bound by the terms of the 1974 *Roberts* Judgment. The October 14, 2008 letter from Ms. Basham states that:

> Mr. Jamieson has not claimed that the California Coastal Commission was named as a party to the *Roberts* action or the City's Cross-Complaint. The Judgment is binding on the State, and as a legislatively-created agency of the State, the Coastal Commission is bound by it. Moreover, we think that even if the State were not a party to the Judgment, the City's agreement to the terms and conditions of the Judgment, relinquishing its right to exercise discretion in the future development of flat patios landward of the Judgment Line, requires that the Commission conclude that Mr. Jamieson's right to proceed with such development vested with the court's entry of the Judgment in 1974.

E. Analysis of Claim of Vested Rights

A vested rights exemption enables one who obtains all valid governmental approvals for development and performs substantial work and incurs substantial liabilities in good faith reliance on those approvals to complete the development, even if the law changes prior to completion. A vested right does not allow any other new development to be completed without compliance with existing laws.[7] Although the claimant has not stated that he or a predecessor had obtained necessary permits, or completed substantial work in reliance on such permits prior to the effective date of the Coastal Act, he does claim to have a vested right to construct a patio extension.

1. The 1974 *Roberts* Judgment did not Give Rise to a Vested Right Under the Act as it Existed at That Time

The 1974 *Roberts* Judgment is dated, and was entered by the court on, February 27, 1974. At that time, the Coastal Initiative/Proposition 20 was already in effect, and it spelled out specific criteria for establishing a vested right (former PRC section 27404). Those criteria included:

[7] *Avco Cmty. Developers, Inc. v. South Coast Reg'l Comm'n* (1976), 17 Cal.3d 791.

- that a building permit have been issued by a city or county prior to November 8, 1972;
- that the party claiming the vested right had, prior to November 8, 1972, in good faith reliance on that permit, diligently commenced construction and performed substantial work on the development; and
- that the claimant had, prior to November 8, 1972, in good faith reliance on the permit, incurred substantial liabilities for work and materials necessary to the commencement of the construction and the performance of substantial work

None of these criteria is satisfied in this case. Thus, the 1974 Roberts Judgment did not give rise to a vested right under, or as recognized by, the Coastal Zone Conservation Act of 1972.

The applicant claims that its predecessor incurred liabilities "in the litigation and negotiation of rights and responsibilities under the 1974 [*Roberts*] Judgment." Claim of Vested Rights Form, page 3, point 10. However, that was not the standard under PRC section 27404. The liabilities had to be incurred for work and materials. Moreover, if one could claim that efforts to secure a right qualified as the necessary liabilities for establishment of a vested right, anyone who obtained a permit approval could claim that, because they expended resources securing that permit, they automatically had a vested right, which cannot be right, as it would reduce the vested rights standard to a permit approval standard.[8] Finally, as vested rights are based on estoppel, to establish such estoppel, Mr. Jamieson would have to show that he performed substantial work and incurred substantial liabilities in good faith reliance on an authorization already obtained, not in the quest to obtain one. Thus, any liabilities incurred in the manner indicated could not have contributed to the securing of a vested right. In addition, even if such liabilities were relevant, which, for all the reasons listed above, they are not, there is no showing that the other two criteria were satisfied. Thus, again, the Roberts litigation and the 1974 *Roberts* Judgment did not give rise to a vested right under, or as recognized by, the Coastal Zone Conservation Act of 1972.

The applicant recognizes this. Accordingly, he argues that, since the 1974 *Roberts* Judgment nevertheless purports to give the property owners (and their successors) rights, in their sole discretion, to perform development at some later date, it "must be read as the City's and State's intent and agreement to vest rights that otherwise might not have been eligible for vesting in 1974." 9/2/08 Basham letter at 2. Similarly, one entry on the vested rights claim form states that the Judgment was entered after the

[8] In fact, the vested rights provision in Proposition 20 contained express terms to avoid such claims, stating that expenses that were "incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material." Former PRC § 27404. And the applicant's agent conceded that they believe the Judgment should be treated as "tantamount to the issuance of a permit." Letter from Susan Basham to Barbara Carey (Oct. 15, 2008)

effective date of Proposition 20, thus "overriding statutory vesting limitations." Claim of Vested Rights form at 2, Point 8.

These statements appear to comprise an assertion that the Judgment provides some *other* sort of right, different from the "vested right" expressly recognized by Proposition 20, in former PRC section 27404. To the extent the applicant is claiming that the Judgment provided some such other sort of right to develop the property free from the permitting requirements of Proposition 20 or the Coastal Act, perhaps based on a more generic meaning of the phrase "vested right," such a claim is not appropriately reviewed via the filing of the instant vested rights claim form or pursuant to Subchapter 1 of Chapter 6 of the Commission's regulations (sections 13200-208), entitled "Claims of Vested Rights." However, we briefly address that assertion in the next section.

2. The 1974 *Roberts* Judgment does not Establish any Other Sort of Right to Conduct Development Without Compliance with the Permitting Requirements of the Coastal Act

As indicated above, the Roberts litigation involved private property owners, the City of Carpinteria, the County of Santa Barbara, and the State Lands Commission. No one has asserted that the Coastal Commission or its predecessor was a party to the lawsuit or to the settlement therefore that was entered as the court's order. Thus, the Coastal Commission is not bound by the judgment, which in no way limits the Commission's ability, in exercising its authority under the Coastal Act, from conducting its normal regulatory review of the proposed development. The Commission came to the same conclusion eight years ago in reviewing another application for development on this stretch of Sandyland Road. See Revised Findings for the De Novo stage of the hearing on appeal number A-4-CPN-99-119 (Clemens et al.), report (without exhibits) attached hereto as Exhibit 8, at 10.[9]

In 2006, another applicant made a similar claim in connection with an application to repair a fence at the base of a coastal bluff in Torrance traversing several properties [CDP application 5-05-503 (Burke)]. The applicants claimed that a Boundary Line Agreement among (1) the City of Torrance, (2) the private property owners, (3) the State through the State Lands Commission, and (4) the State through the Attorney General, on behalf of the People of the State, gave the property owners a continuing right to repair and maintain the fence without Coastal Commission review or otherwise complying with the Coastal Act. The Commission denied the application in July, 2006, finding that it was not bound by the agreement. The applicants sued, and, on June 28, 2007, the trial court ruled in favor of the Commission, finding no basis to conclude that the settlement in any way compromised the Commission's regulatory authority. The case is now on appeal.

---

[9] Staff would note that this development at 4921 Sandyland Road involved the Judgment Line established by the 1974 *Roberts* Judgment, as well as a subsequent 1978 *Roberts* Judgment that established a second Judgment Line with additional terms. The 1978 *Roberts* Judgment does not affect the subject property at 4908 Sandyland Road.

Even if section 11 of the Roberts judgment can be read as a judicial attempt to abrogate the Coastal Commission's permitting authority, such a reading would violate both constitutional and statutory law. The Separation of Powers Doctrine, which emanates from article III, section 3 of California's constitution, prohibits a court from interfering with legislative acts that confer permit authority on regulatory agencies. (*People v. Jordan* (1983) 142 Cal.App.3d 628, 635 ["Inherent judicial powers should not be exercised in such a manner as to nullify existing legislation or frustrate legitimate legislative policies"].) The doctrine also prohibits a court from interfering with the executive functions of regulatory agencies. (*Novar Corp. v. Bureau of Collection & Investigative Services* (1984) 160 Cal.App.3d 1, 6 ["[I]ssuance of an injunction is improper where it is determined that the statute is constitutional and the conduct to be enjoined is within the terms of the statute."].) Indeed, the Legislature codified this second prohibition in two code sections both of which provide that "[a]n injunction cannot be granted...[t]o prevent the execution of a public statute by officers of the law for the public interest." (Code Civ. Proc., § 526, subd. (b)(4); Civ. Code, § 3423, subd. (d); see *Glide v. Superior Court* (1905) 147 Cal. 21, 24 [holding that statutory prohibitions are based on Separation of Powers Doctrine].) At least one appellate court applied these code sections to invalidate an injunction that purportedly permitted a landowner to continue its dredging and waste discharge without having to obtain regulatory approval from the Regional Water Quality Control Board or the San Francisco Bay Conservation and Development Commission. (*People v. F. E. Crites, Inc.* (1975) 51 Cal.App.3d 961.)

Section 11 of the Roberts judgment is explicitly crafted as a permanent injunction. (Judgment, at p. 6, lines 1-2.) As such, any provision within that injunction that could be read to abrogate the Commission's permitting jurisdiction should be construed otherwise, to avoid the constitutional infirmity, and to the extent any provision within the injunction does purportedly abrogate the Commission's permitting authority, such provision would be invalid under the Separation of Powers Doctrine and related statutory provisions.

Finally, even if the Judgment were binding on the Commission, it states that the prohibitions in section 11 (which include the prohibition against erecting any structures on the private beach *except for*, among other things, flat surfaced patios) override any zoning ordinances that may permit uses of the private beach; however, it does not say that the affirmative *allowance* listed in section 11 overrides any zoning ordinances (or similar laws) that may *prohibit* such uses.

In conclusion, whether or not the City and the County bargained away their local police power authority over certain development in the private beach area, through their participation in the 1974 *Roberts* Judgment, the City could not, and thus did not, bargain away its delegated, state law-based, Coastal Act authority, as it did not even possess such authority at the time. Moreover, neither the Coastal Commission nor its predecessor was a party to the lawsuit or the Judgment, and the permitting requirements contained in their enabling acts were not affected by it. The State Lands Commission was a party to the case and the Judgment because of the potential impacts

on the boundaries between State lands and other lands. The applicant concedes this limited interest in stating that the City's cross-complaint against the state was made pursuant to PRC section 6308, 10/14/08 Basham letter at 1-2, which requires that the State be joined as a party whenever an action involves title to the boundaries of tidelands or submerged lands. However, the involvement of the State Lands Commission does not affect the requirement that any proposed development on this site not proceed until the necessary approvals are secured pursuant to the Coastal Act.

3. The 1974 *Roberts* Judgment does not Give Rise to a Vested Right Recognized by Section 30608

As is explained above, the vested rights exemption provided by Section 30608 is based on common law. The standard of review for determining the validity of a claim of vested rights is:

> 1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would be a building permit or other legal authorization, and
>
> 2. The claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. (*Raley*, *supra*, 68 Cal.App.3d at 975-76).

Once again, neither of these criteria is satisfied in this case. First, at the end of 1976, the proposed patio expansion had not received all applicable governmental approvals. At that time, Proposition 20 imposed a permit requirement for such an expansion, and, as is explained in the prior sections, the 1974 *Roberts* Judgment had not obviated the need for such a permit. No such permit had been secured. Thus, the development had not received all applicable governmental approvals needed to undertake the development prior to January 1, 1977.

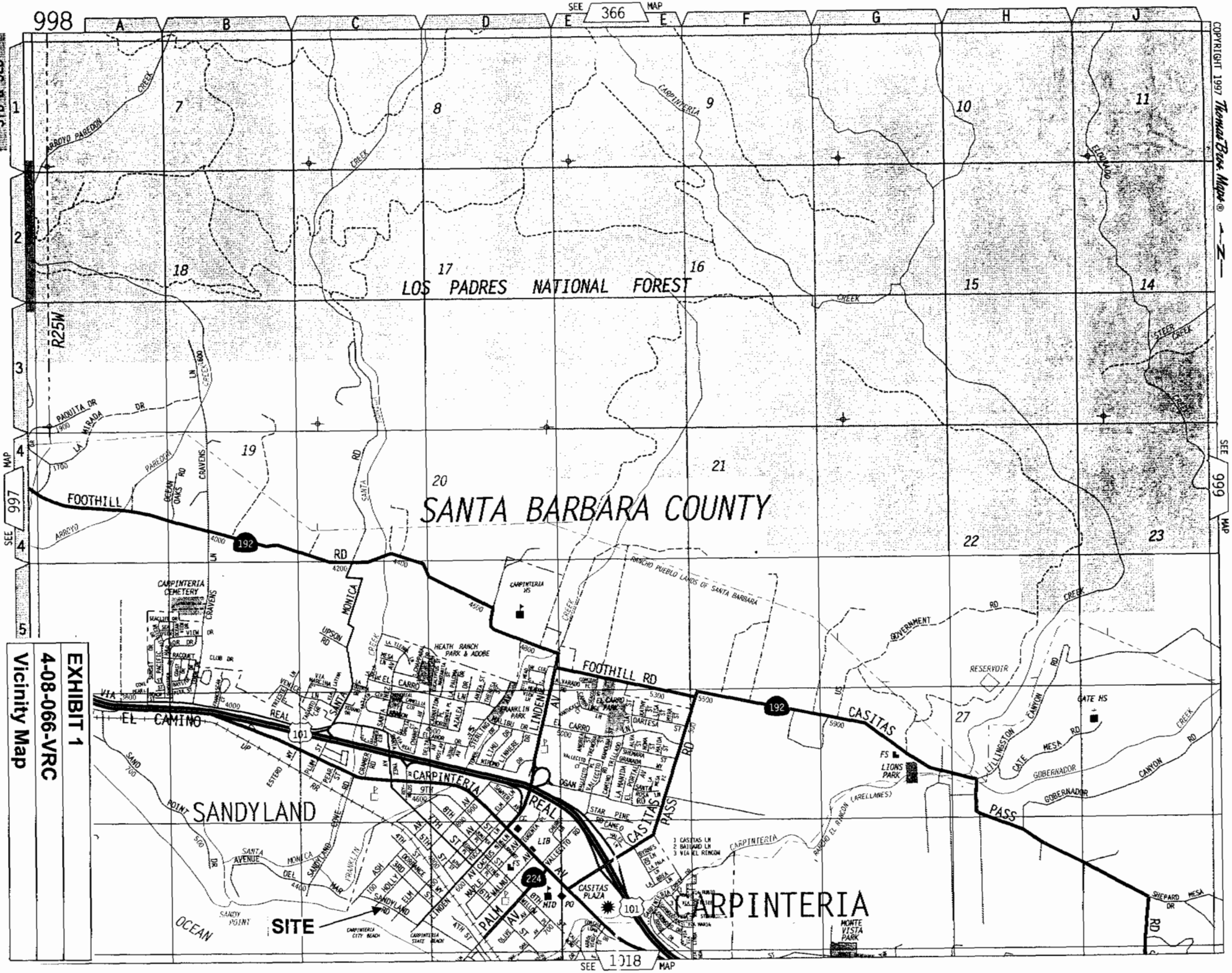
Second, the claimant had performed no work (much less substantial work) and has not incurred any liabilities in performing any such work. The applicant's agent claims that the applicant "purchased the property in reliance on the express terms of the . . . Judgment," 9/2/08 Basham letter at 3; however, no case has been cited, and the Commission is aware of no case, treating the purchase price for real property as constituting the necessary liabilities for establishing a vested right. Moreover, since, as explained above, the 1974 *Roberts* Judgment didn't constitute the necessary governmental approvals, even if purchasing the property were to constitute incurring liabilities, those liabilities would not have been incurred in good faith reliance on all of

the necessary governmental approvals. Further, the applicant still would not have satisfied the requirement that they have performed substantial work.

Finally, the Commission cannot find that the potential injury to the claimant resulting from the denial of his vested rights claim is of sufficient dimension to justify the potential impacts of the claimed activity on Coastal Act policies, particularly public access and coastal resources. The subject property is already developed with a multi-family residential use, including an at-grade patio within the “private beach” area. The potential injury to the claimant of not constructing a larger patio is not substantial. Although the Commission has not specifically analyzed the potential environmental effects of the subject patio addition, this project would result in extending development further seaward than existing development on the subject site. In past permit actions, the Commission has consistently found that development on sandy beach can have significant adverse impacts on public access, through physical occupation of beach area, as well as through effects on beach processes, both from the development itself and from shoreline protection devices that may be required to protect the development from hazards. In order to minimize such impacts, as required by the policies of Chapter three of the Coastal Act, the Commission has consistently restricted the seaward extent of development on beachfronting parcels.

F. Conclusion

For all the reasons set forth above, the Commission finds that Lee Jamieson has not met the burden of proving his claim of vested rights for construction of a patio addition at the subject site.



STB & STB

EXHIBIT 1

4-08-066-VRC

Vicinity Map

4-08-066-VRC

RECEIVED
SEP 0 4 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
VENTURA CA 93001
(805) 585-1800

CLAIM OF VESTED RIGHTS

NOTE: Documentation of the information requested, such as permits, receipts, buildings department inspection reports, and photographs, must be attached.

1. Name of claimant, address, and telephone number:
(Please include zip code & area code):

Lee Jamieson

4809 Sandyland Road, Carpinteria, CA 93013

2. Name, address and telephone number of claimant's representative, if any:
(Please include zip code & area code):

Susan M. Basham
Price, Postel & Parma LLP
200 E. Carrillo Street, Suite 400, Santa Barbara, CA 93101
(805) 962-0011

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

Patio extension to Judgment Line defined in 1974 Stipulated Judgment. Site plan, patio detail, Assessor's Parcel Map, recorded Tract Map 25067, and recorded Condominium Plan are attached.

4. California Environmental Quality Act/Project Status.

Check one of the following:

a. Categorically exempt X. Class: 3. Item: e.

Describe exempted status and date granted: _____

b. Date Negative Declaration Status granted: _____

c. Date Environmental Impact Report approved: _____

Attach environmental impact report or negative declaration.

FOR COASTAL COMMISSION USE:

Claim Number: 4-08-066-VRC **Date Submitted** 9/4/08
Date Filed _____

2/89

EXHIBIT 2
4-08-066-VRC
Vested Rights Claim Form

5 List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

The approval at issue is a 1974 Stipulated Judgment to which the City of Carpinteria and State of California were parties. A copy is attached. The Stipulated Judgment vests certain property owners' right to undertake limited future development, including patios, in their sole discretion, without additional discretionary permitting. See attached letter for additional explanation.

6. List any governmental approvals which have not yet been obtained and anticipated date of approval.

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

See paragraph 11 of 1974 Stipulated Judgment, which specifies limitations on future development. Claimant's plan is consistent with these limitations.

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (i.e., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1972 and/or January 1, 1977 (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals).

Claimant has been unable to commence work on patio extension because City of Carpinteria insists that policies adopted after it stipulated to the Judgment supersede development rights protected by the Judgment. Stipulated Judgment was entered in 1974, by its terms overriding statutory vesting limitations.

9. Describe those portions of development remaining to be constructed.

Patio extension to Judgment Line as permitted in 1974 Stipulated Judgment.

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

Predecessor in title incurred substantial liabilities in the litigation and negotiation of rights and responsibilities under the 1974 Stipulated Judgment, in which property owners relinquished to State and City exclusive use rights in beachfront in exchange for reservation of property owners' rights to limited development landward of the Judgment Line.

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental approval(s).

$20,000

12. Is the development planned as a series of phases or segments? If so, explain.

No

13. When is it anticipated that the total development would be completed?

Within weeks following decision

14. Authorization of Agent.

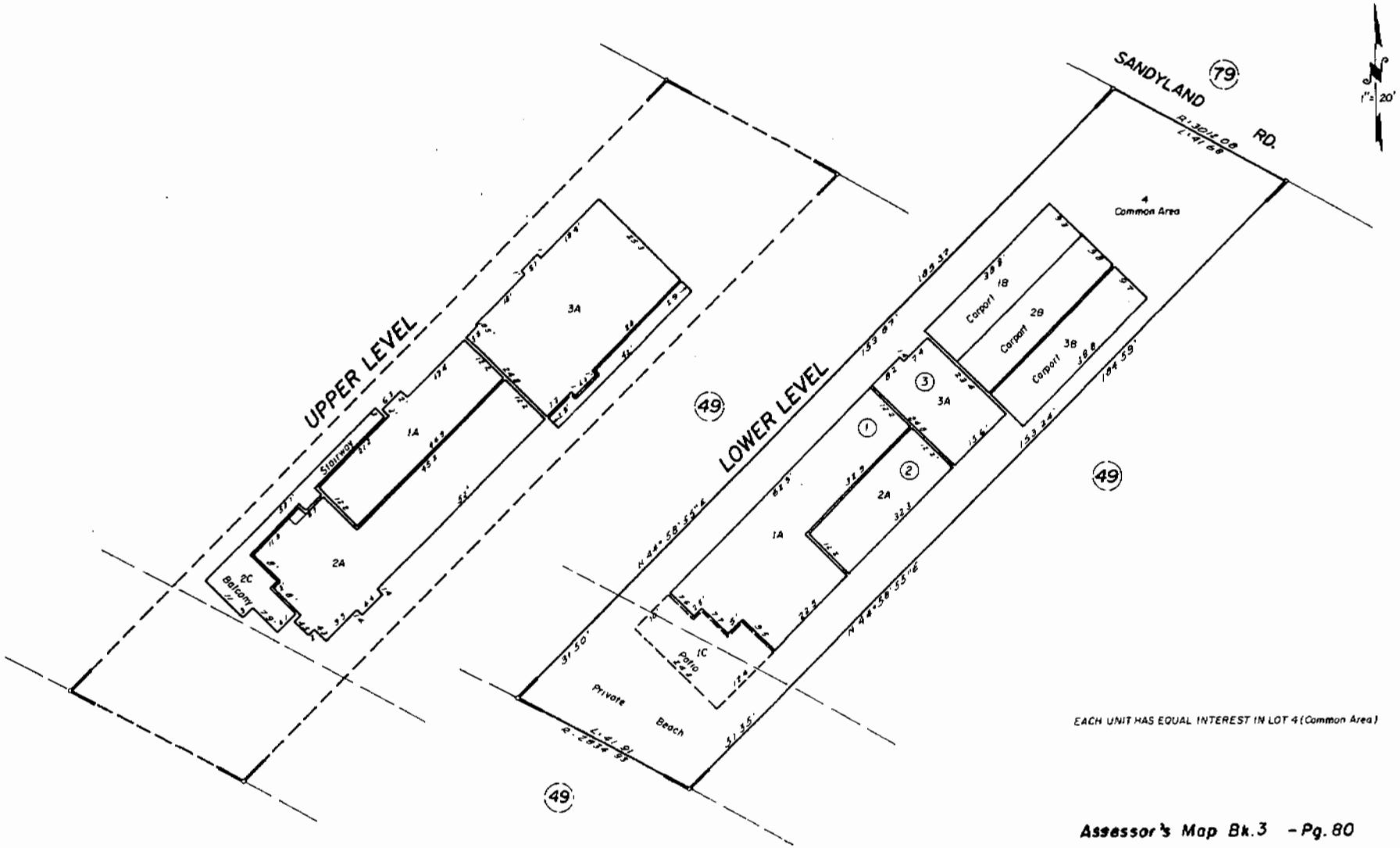
I hereby authorize Susan M. Basham to act as my representative and bind me in all maters concerning this application.

Signature of Claimant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission, of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending, or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Susan M. Basham

Signature of Claimant(s) or Agent

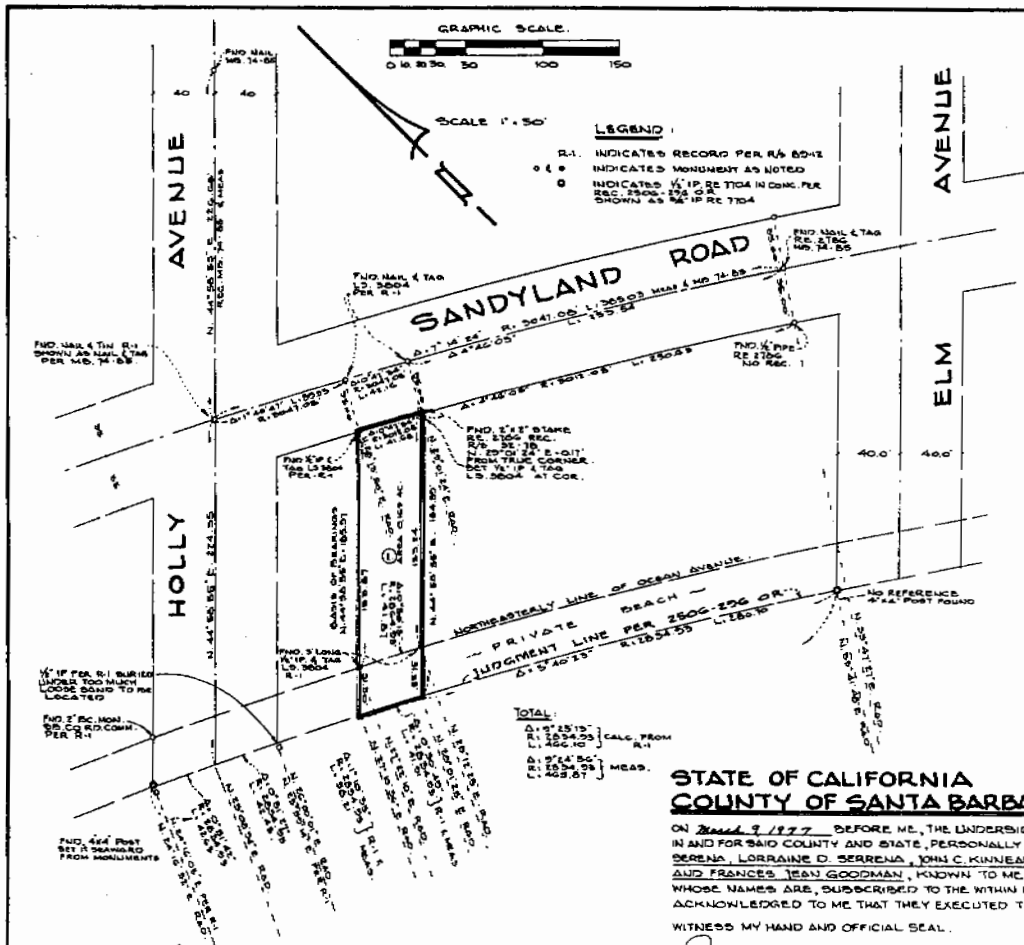


EACH UNIT HAS EQUAL INTEREST IN LOT 4 (Common Area)

2/7/78, R.M. Bk. 105, Pgs. 17-20 - Condominium Plan for Lot 1 of Tract 25,067

Assessor's Map Bk. 3 - Pg. 80
County of Santa Barbara, Calif.
(10/79)

EXHIBIT 3
4-08-066-VRC
Assessor Parcel Map



CITY ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION ORDINANCE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT, AND THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF.

CITY ENGINEER, CITY OF CARPINTERIA — DATE 3/25/77

CARPINTERIA CITY COUNCIL:

I HEREBY CERTIFY THAT THIS MAP WAS DULY ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CARPINTERIA ON THE 28 DAY OF MARCH, 1977 AND THAT THE CITY CLERK WAS DULY AUTHORIZED AND DIRECTED TO ENDORSE THEREON ITS APPROVAL.

CITY CLERK, CITY OF CARPINTERIA — DATE 3/31/77

SANTA BARBARA COUNTY CLERK

I HOWARD C. MENZEL, CLERK OF THE BOARD OF SUPERVISORS OF SANTA BARBARA COUNTY, DO HEREBY CERTIFY THAT THE PROVISIONS OF SECTION 66495(4) OF THE GOVERNMENT CODE HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE THE PAYMENT OF TAXES AND ASSESSMENTS ON THE PROPERTY WITIN THIS SUBDIVISION.

Howard C. Menzel by Barbara Yates 8-5-77
HOWARD C. MENZEL COUNTY CLERK - RECORDER EX-OFFICIO CLERK OF THE BOARD OF SUPERVISOR'S — DATE

RECORDER'S CERTIFICATE:

FILE THIS 5th DAY OF May, 1977 AT 8:01 A.M. IN BOOK 93 OF MAPS AT PAGE 60 TO ____ AT THE REQUEST OF JOSEPH E. WATERS - LICENSED LAND SURVEYOR LS 3604.

FEE $5.00

HOWARD C. MENZEL
COUNTY CLERK - RECORDER

BY Judith Goldberg
DEPUTY

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA AND THAT THIS MAP, CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A TRUE AND COMPLETE SURVEY MADE UNDER MY SUPERVISION DURING FEBRUARY, 1977 AND THAT THE MONUMENTS MARKED LS 3604 ARE OF THE CHARACTER AND OCCUPY THE POSITION INDICATED HEREON, AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

Joseph E. Waters R.S. 3604
JOSEPH E. WATERS LS 3604

March 16, 1977
DATE

EASEMENT HOLDERS:

THE SIGNATURE OF THE CITY OF CARPINTERIA, EASEMENT HOLDER BY A JUDGMENT RECORDED IN BOOK 2506, PAGE 296 OF OFFICIAL RECORDS, MAY BE OMITTED UNDER THE PROVISIONS OF SECTION 66436 (C)(1) OF THE GOVERNMENT CODE, AS THEIR INTEREST CANNOT RIPEN INTO FEE.

SOUTH COAST REGIONAL COASTAL COMMISSION APPROVAL RECEIVED FEBRUARY 18, 1977.

SOILS REPORT:

A PRILIMINARY SOILS REPORT PREPARED BY PACIFIC MATERIALS LABORATORY INC. OF SANTA BARBARA DATED SEPTEMBER 8, 1976 BY DORAL L. NEELEY R.E. 13694 IS FILED WITH THE SANTA BARBARA CITY ENGINEER.

BASIS OF BEARINGS:

THE BEARING NORTH 44° 58' 55" EAST BEING THE NORTHWESTERLY LINE OF PARCEL H AS SHOWN IN RECORD OF SURVEY BOOK 89 PAGE 12 WAS USED AS BASIS FOR THIS SUBDIVISION.

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

ON March 9 1977 BEFORE ME, THE UNDERSIGNED A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED FRANK A. SERENA, LORRAINE D. SERRENA, JOHN C. KINNEAR II, JERRY H. GOODMAN AND FRANCES JEAN GOODMAN, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE, SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE.
Janet N. Woodard
August 6, 1977
PRINTED

MY COMMISSION EXPIRES: 8-6-77

OWNER'S CERTIFICATE:

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN ON THE ANNEXED MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID LAND. WE CONSENT TO THE MAKING AND RECORDING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE COLORED BORDER LINES OF THIS MAP.

FRANK A. SERENA — LORRAINE D. SERENA

JERRY H. GOODMAN — FRANCES JEAN GOODMAN

JOHN C. KINNEAR III

SHEET 1 OF 1 SHEET

TRACT 25067

BEING A PORTION OF BLOCK 42
PER MAP NO. 4 RACK 2 AND R/S 89-12

CITY OF CARPINTERIA
COUNTY OF SANTA BARBARA - CALIFORNIA
FEBRUARY, 1977

JOSEPH E. WATERS
LICENSED LAND SURVEYOR LS 3604
5553 HOLLISTER AVENUE
GOLETA, CALIFORNIA 93017
PH. 261-4416

BK. 93 PG. 60

INDEXED

EXHIBIT 4
4-08-066-VRC
Condominium Map (5 pages)

TITLE SHEET
CONDOMINIUM PLAN

FOR

LOT 1 OF TRACT 25,067

CITY OF CARPINTERIA

COUNTY OF SANTA BARBARA - STATE OF CALIFORNIA

AS SHOWN ON MAP FILED IN BOOK 93, PAGE 60

KNOWN AS SANDYLAND PROPERTIES

OWNER'S CERTIFICATE:

WE, THE UNDERSIGNED, BEING THE RECORD OWNERS OF THE LAND INCLUDED WITHIN THIS PROJECT, AND THE RECORD HOLDERS OF SECURITY INTERESTS THEREIN, HEREBY CONSENT TO THE RECORDATION OF THIS PLAN PURSUANT TO THE PROVISIONS OF CHAPTER 1, TITLE 6, PART 4, DIVISION OF THE CIVIL CODE.

SANDYLAND PROPERTIES - A GENERAL PARTNERSHIP

Frank A. Serena — FRANK A. SERENA, PARTNER

Lorraine D. Serena — LORRAINE D. SERENA, PARTNER

John C. Kinnear III — JOHN C. KINNEAR, III, PARTNER

Jerry H. Goodman — JERRY H. GOODMAN, PARTNER

Frances Jean Goodman — FRANCES JEAN GOODMAN, PARTNER

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } SS

ON THIS 22nd DAY OF Sept, 1977 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, PERSONALLY APPEARED FRANK A. SERENA, LORRAINE D. SERENA, JOHN C. KINNEAR III, JERRY H. GOODMAN AND FRANCES JEAN GOODMAN, KNOWN TO ME TO BE THE PARTNERS OF THE PARTNERSHIP THAT EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SUCH PARTNERSHIP EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL.

Dana Peek

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

PRINTED: DANA PEEK

MY COMMISSION EXPIRES: _____

OFFICIAL SEAL DANA PEEK NOTARY PUBLIC - CALIFORNIA PRINCIPAL OFFICE IN SANTA BARBARA COUNTY My Commission Expires June 25, 1980

BENCH MARK:

TOP OF N. WLY CURB RETURN LINDEN AVENUE AND SANDYLAND ROAD PER COUNTY PLAN AND PROFILE P1109 AND C.C. NO. 550-11. U.S.G.S. DATUM EL: 7.37

LOCAL BENCH MARK:

T.C. ON N. WLY PROPERTY LINE PRODUCED ELEVATION 7.58

BASIS OF BEARINGS:

THE BEARING NORTH 44° 56' 55" EAST BEING THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN IN MB. 53, PAGE 60 WAS USED AS BASIS OF BEARINGS FOR THIS PLAN.

EASEMENT HOLDERS:

THE SIGNATURE OF THE CITY OF CARPINTERIA, EASEMENT HOLDER BY A JUDGMENT RECORDED IN BOOK 2506, PAGE 206 OF OFFICIAL RECORDS, MAY BE OMITTED UNDER THE PROVISIONS OF SECTION 66445 (F) OF THE GOVERNMENT CODE, AS THEIR INTEREST CANNOT RIPEN INTO FEE.

BENEFICIARY:

IMPERIAL SAVINGS & LOAN ASSOCIATION, A CALIFORNIA CORPORATION BENEFICIARY UNDER A DEED OF TRUST RECORDED IN INSTRUMENT NO. 77-30955 OF OFFICIAL RECORDS SANTA BARBARA COUNTY.

Louise Parks — Marine Williams

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } SS

ON October 17, 1977 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED Louise Parks, KNOWN TO ME TO BE THE Vice PRESIDENT, AND Marine Williams, KNOWN TO ME TO BE Asst. SECRETARY OF THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT, KNOWN TO ME TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF THE CORPORATION THEREIN NAMED, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE WITHIN INSTRUMENT PURSUANT TO ITS BY-LAWS OR A RESOLUTION OF ITS BOARD OF DIRECTORS.

SIGNATURE: Joy C. Knowles

OFFICIAL SEAL JOY C. KNOWLES NOTARY PUBLIC - CALIFORNIA SAN DIEGO COUNTY My Commission Expires Apr. 28, 1978

COUNTY RECORDER'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS CONDOMINIUM PLAN FOR LOT 1 OF FINAL MAP 25,067 CONSISTING OF 4 SHEETS, WAS ACCEPTED AND RECORDED Feb. 7, 1978 1978, IN BOOK 105, PAGES 17 TO 20 OF CONDOMINIUM RECORDS OF SANTA BARBARA COUNTY AT 8:00 Am FEE $1.00

HOWARD C. MENTEL
COUNTY CLERK - RECORDER

BY: Judith Hedding
DEPUTY

SURVEYOR'S CERTIFICATE:

I JOSEPH E. WATERS - LICENSED LAND SURVEYOR NO. LS. 3604 HEREBY CERTIFY THAT THIS PLAN CONSISTING OF 4 SHEETS REPRESENTS A TRUE AND COMPLETE SURVEY OF THIS CONDOMINIUM PROJECT AND WAS COMPILED UNDER MY DIRECTION.

Joseph E. Waters September 1977
JOSEPH E. WATERS - LS. 3604

SHEET 1 OF 4 SHEETS

CONDOMINIUM PLAN
FOR
LOT 1 OF TRACT 25,067
CITY OF CARPINTERIA
COUNTY OF SANTA BARBARA - CALIFORNIA
AS SHOWN ON MAP FILED IN BOOK 93 PAGE 60
SEPTEMBER, 1977

JOSEPH E. WATERS - LICENSED SURVEYOR
8553 HOLLISTER AVE. SUITE D
GOLETA, CALIFORNIA - 93017
PH. 805-967-4416

NOTES AND DEFINITIONS

1. THE "COMMON AREA" THIS PROJECT SHOWN HEREON AS PARCEL 4 IS THE LAND AND REAL PROPERTY INCLUDED WITHIN THE BOUNDARY LINES OF SAID LOT 1 OF FINAL MAP 25,067 EXCEPTING THEREFROM THOSE PORTIONS SHOWN AND DEFINED HEREIN AS UNITS 1 TO 3 INCLUSIVE.

2. EACH OF THE UNITS 1 TO 3 INCLUSIVE IS COMPOSED OF TWO OR MORE AIR SPACES AS SET FORTH IN THE COMPLETE LISTING OF UNITS ON THE CHART ON THIS SHEET.

3. THE FOLLOWING ARE NOT A PART OF THE UNIT; BEARING WALL, COLUMNS, VERTICAL SUPPORTS, FLOOR, ROOFS, FOUNDATIONS, BALCONY WALLS, STEPS AND RAILINGS, EXTERIOR LIGHTING FIXTURES, PIPES, DUCTS, FLUES, CONDUITS, WIRES AND OTHER UTILITY INSTALLATIONS, WHEREVER LOCATED, EXCEPT THE OUTLETS THEREOF WHEN LOCATED WITHIN THE UNIT.

4. EACH OF THE AIR SPACES 1A TO 3A IS AN INTERIOR UNIT. THE BOUNDARIES OF EACH SUCH UNIT ARE AS FOLLOWS:
   (A) THE LOWER VERTICAL BOUNDARY IS THE SURFACE OF THE FINISHED FLOOR THEREOF LISTED AS THE L.B. OR LOWER VERTICAL BOUNDARY.
   (B) THE UPPER VERTICAL BOUNDARY OF SAID AIR SPACES ARE THE HORIZONTAL PLANE WHICH COINCIDES WITH THE ELEVATION OF THE HIGHEST FINISHED CEILING WITHIN EACH UNIT, AND OR THE INCLINED PLANE WHICH COINCIDE WITH THE INTERIOR FINISHED SURFACE OF THE CEILING WITHIN EACH UNIT AS SHOWN IN DETAIL ON THE SHEET WHERE THIS OCCURS.
   (C) THE LATERAL BOUNDARIES ARE THE INTERIOR SURFACES OF THE PERIMETER WALLS, WINDOWS AND DOORS THEREOF.

   EACH SUCH UNIT INCLUDES THE SURFACE SO DESCRIBED, THE PORTIONS OF THE BUILDINGS AND IMPROVEMENTS INCLUDED WITHIN SAID BOUNDARIES EXCEPT AS STATED IN NOTE 3 THIS SHEET AND THE AIR SPACE SO ENCOMPASSED.

5. EACH OF THE AIR SPACES 1B - 3B IS A CARPORT SPACE, THE BOUNDARIES OF EACH SUCH UNIT ARE AS FOLLOWS:
   (A) THE LOWER VERTICAL BOUNDARY IS THE HORIZONTAL PLANE, SHOWN FOR SAID UNIT LISTED AS THE L.B. OR LOWER VERTICAL BOUNDARY.
   (B) THE UPPER VERTICAL BOUNDARY IS THE HORIZONTAL PLANE, SHOWN FOR SAID UNIT LISTED AS THE U.B. OR UPPER VERTICAL BOUNDARY.
   (C) THE LATERAL BOUNDARIES ARE THE INTERIOR SURFACES OF THE PERIMETER WALLS, WINDOWS AND DOORS WHERE THEY EXIST, WHERE SUCH SURFACES ADJOIN SAID UNIT, OTHERWISE THE BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN HEREIN FOR EACH SUCH CARPORT SPACE.

   EACH SUCH CARPORT SPACE INCLUDES ONLY THE AIR SPACE ENCOMPASSED WITHIN SAID BOUNDARIES, EXCEPT AS STATED IN NOTE 3 ON THIS SHEET.

6. EACH OF THE AIR SPACES 1C - 3C IS A BALCONY OR PATIO AREA THE BOUNDARIES OF EACH SUCH BALCONY OR PATIO AREA ARE AS FOLLOWS:
   (A) THE LOWER VERTICAL BOUNDARY IS THE FINISHED FLOOR THEREOF.
   (B) THE UPPER VERTICAL BOUNDARY IS A HORIZONTAL PLANE. THE ELEVATION OF WHICH IS 8.0 FEET ABOVE THE ELEVATION OF THE FINISHED FLOOR OF SAID BALCONY OR PATIO UNLESS NOTED.
   (C) THE LATERAL BOUNDARIES ARE THE EXTERIOR SURFACES OF THE PERIMETER WALLS, WINDOWS AND DOORS OF THE ADJACENT APARTMENT WHERE SUCH SURFACES ADJOIN THE BALCONY OR PATIO OTHERWISE THE LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN HEREIN FOR SUCH BALCONY OR PATIO AREA.

   EACH SUCH BALCONY OR PATIO AREA INCLUDES ONLY THE AIR SPACE ENCOMPASSED WITHIN SAID BOUNDARIES, EXCEPT AS STATED IN NOTE 3 THIS SHEET.

7. VERTICAL ELEVATIONS ARE SHOWN IN DETAIL ON SHEET 14. SCALES PER EACH SHEET VARY.

UNIT LISTING :

UNIT NO.	SHEET	AIR SPACE
1	4	1A, 1B, 1C
2	4	2A, 2B, 2C
3	4	3A, 3B, 3C
PARCEL 4	3	COMMON AREA

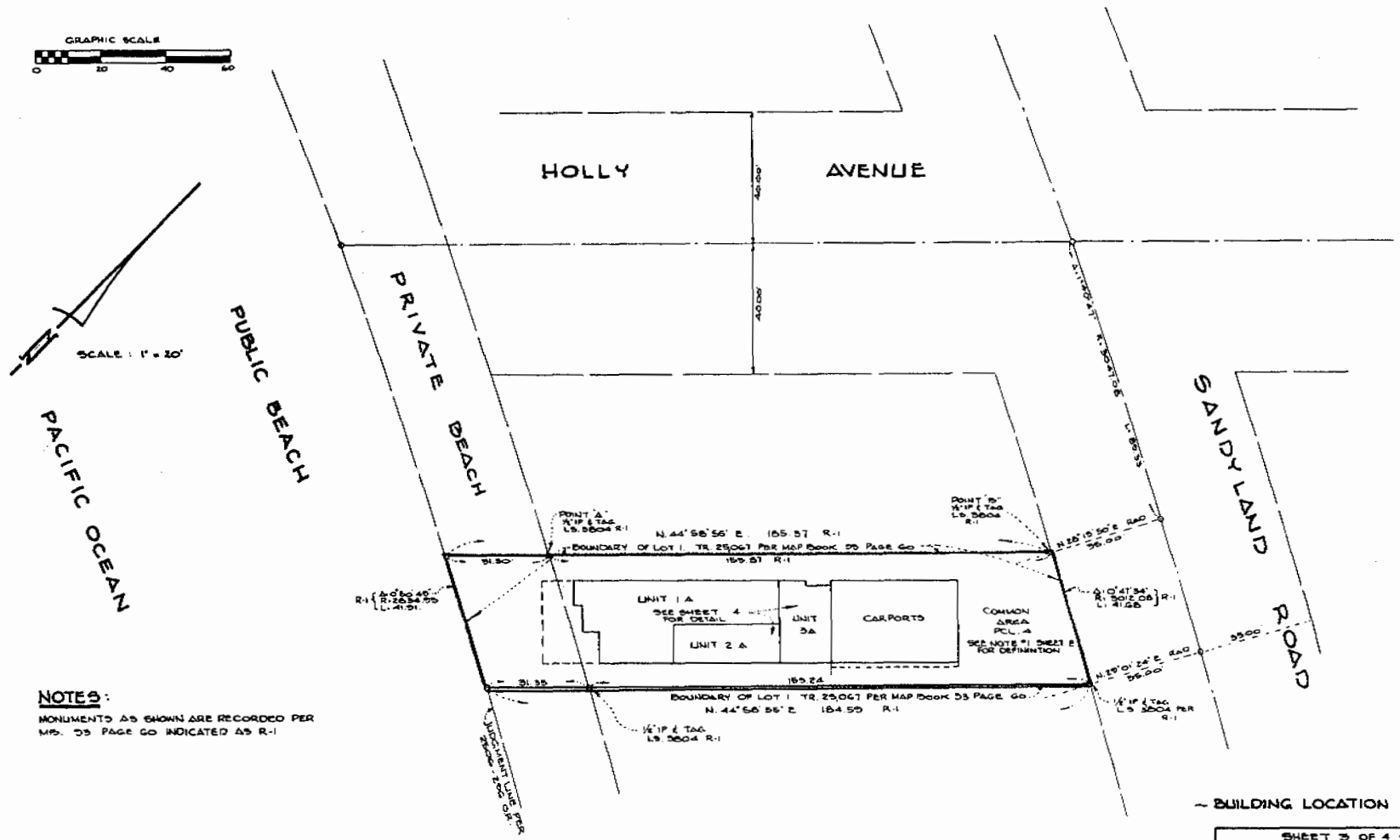
SHEET 2 OF 4 SHEETS

CONDOMINIUM PLAN

FOR

LOT 1 OF TRACT 25,067
CITY OF CARPINTERIA
COUNTY OF SANTA BARBARA - CALIFORNIA
AS SHOWN ON MAP FILED IN BOOK 93 PAGE 60
SEPTEMBER, 1977

JOSEPH E. WATERS - LICENSED SURVEYOR
5553 HOLLISTER AVE. SUITE D
GOLETA, CALIFORNIA - 93017
PH. 805-967-4416



NOTES:

MONUMENTS AS SHOWN ARE RECORDED PER MB. 55 PAGE 60 INDICATED AS R-1

— BUILDING LOCATION PLAN —

SHEET 3 OF 4 SHEETS

CONDOMINIUM PLAN

FOR

LOT 1 OF TRACT 25,067

CITY OF CARPINTERIA

COUNTY OF SANTA BARBARA - STATE OF CALIFORNIA

AS SHOWN ON MAP FILED IN BOOK 55 - PAGE 60

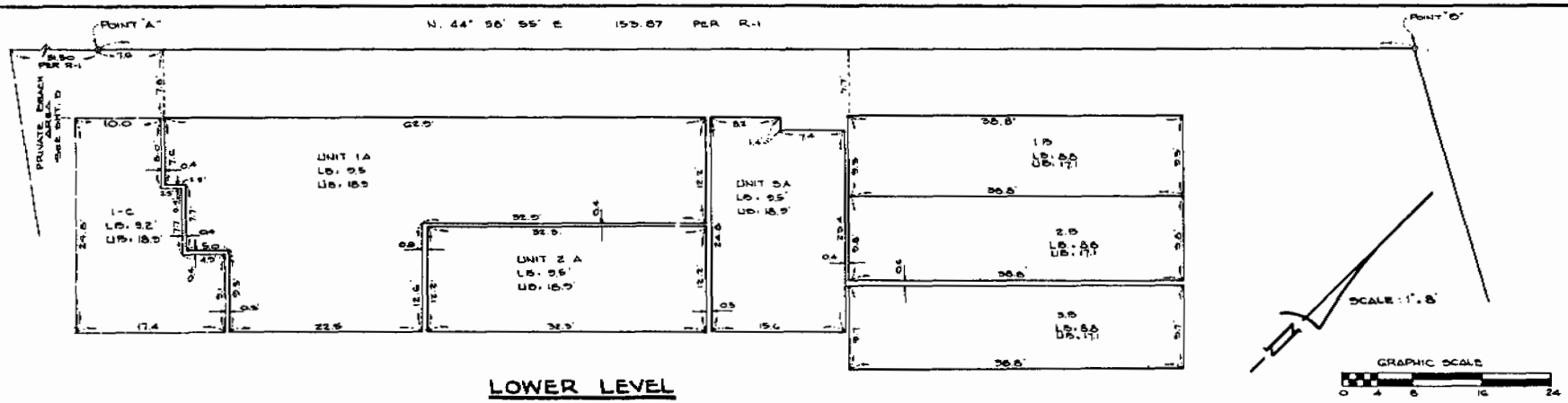
SEPTEMBER, 1977

JOSEPH E. WATERS - LICENSED SURVEYOR

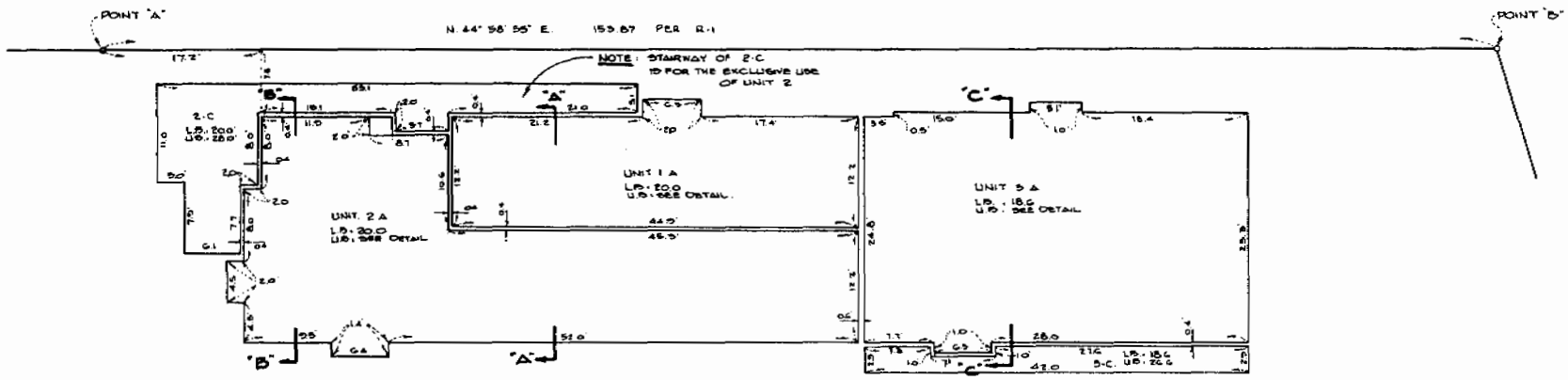
5555 HOLLISTER AVENUE SUITE D

GOLETA, CALIFORNIA - 93017

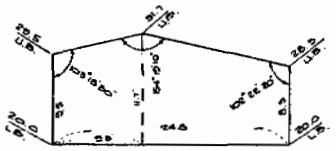
PH. 805-967-4416



LOWER LEVEL

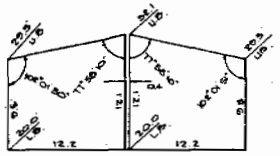


UPPER LEVEL



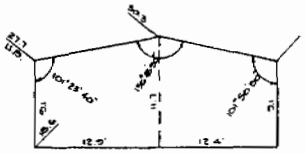
SECTION "B-B"

UNIT - 2



SECTION "A-A"

UNIT 2 & 1



SECTION "C-C"

UNIT - 3

LEGEND:

LB INDICATES LOWER VERTICAL BOUNDARY
UB INDICATES UPPER VERTICAL BOUNDARY
R-1 INDICATES RECORD PER MB. 53-60

NOTE:

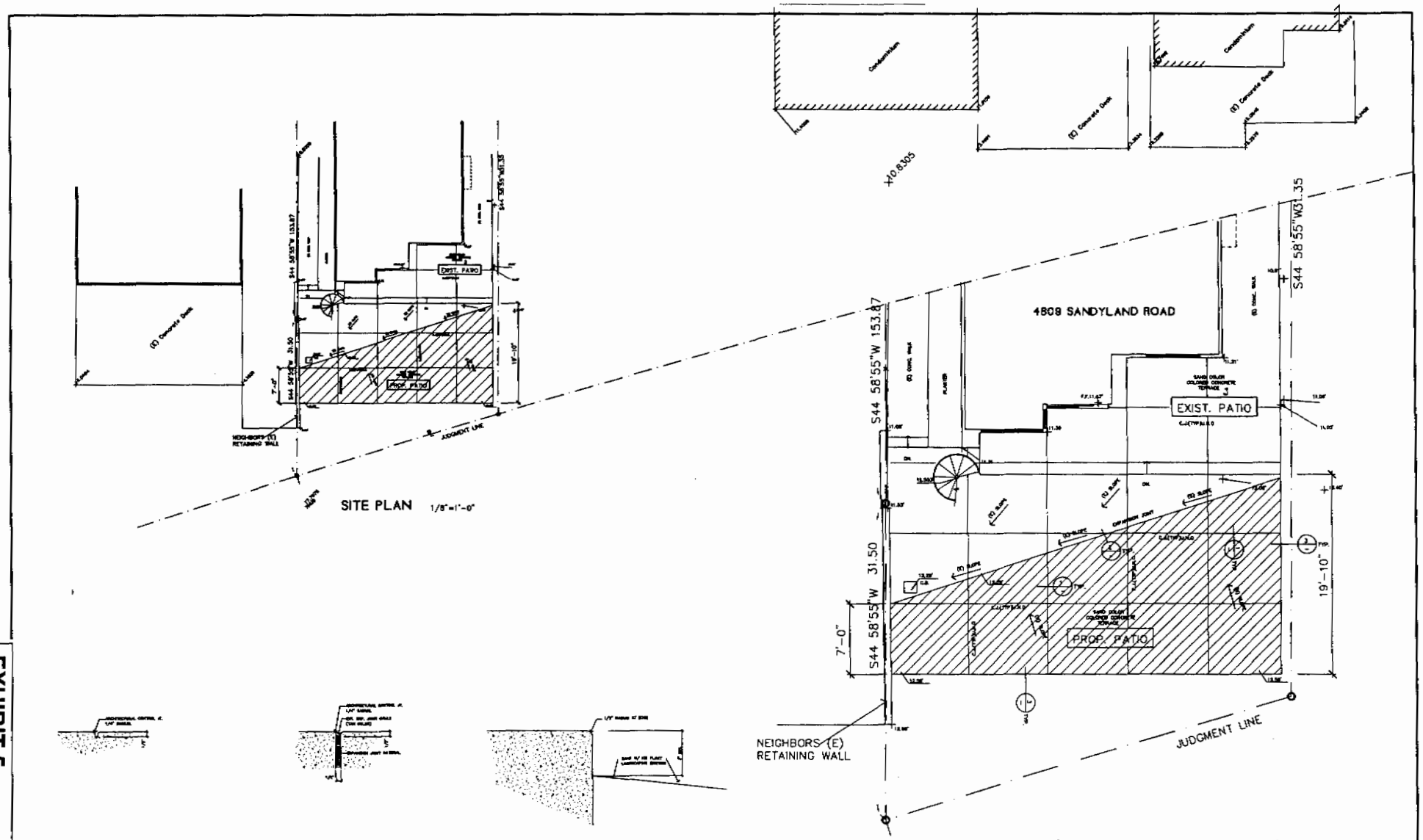
ALL AIR SPACE BOUNDARY LINES INTERSECT AT RIGHT ANGLES UNLESS OTHERWISE NOTED

SHEET 4 OF 4 SHEETS

CONDOMINIUM PLAN

FOR
LOT 1 OF TRACT 25,067
CITY OF CARPINTERIA
COUNTY OF SANTA BARBARA - STATE OF CALIFORNIA
AS SHOWN ON MAP FILED IN BOOK 53 PAGE 60
SEPTEMBER, 1977

JOSEPH E. WATERS - LICENSED SURVEYOR
5555 HOLLISTER AVENUE SUITE D
GOLETA, CALIFORNIA 93017
PH 805-967-4416



1 CONTROL JT. DETAIL 3"=1'-0" 2 EXPANSION JT. DETAIL 3"=1'-0" 3 EDGE OF PAVEMENT AND STAIR NOSING 3"=1'-0" ENLARGED PLAN 1/4"=1'-0"

NORTH JAMIESON

REVISIONS

DATE	COMMENTS

THE JAMIESON PATIO ADDITION

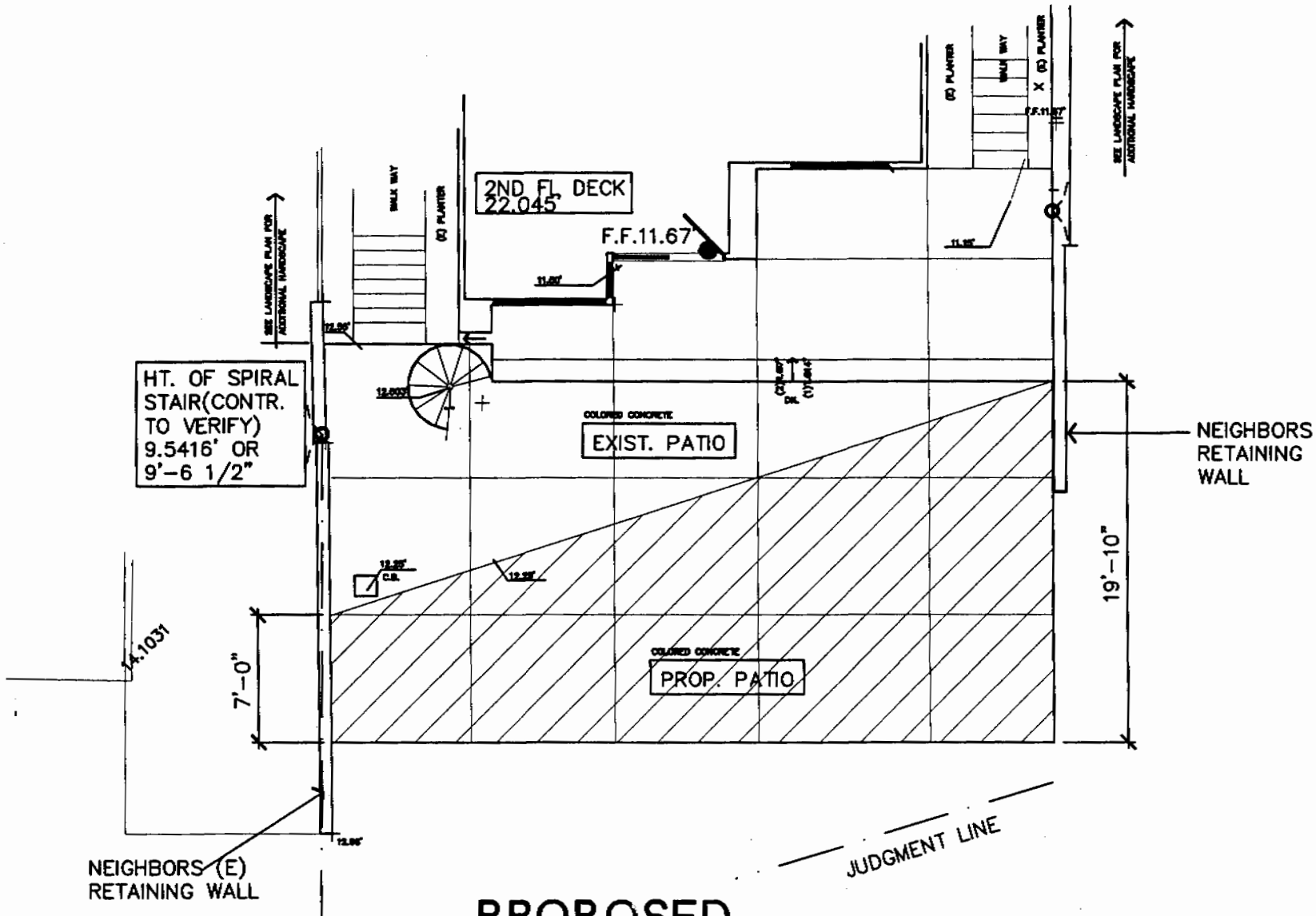
4809 SANDYLAND ROAD
SANTA BARBARA, CALIFORNIA

PRINCIPAL: BP
PROJECT MANAGER:
DESIGNED BY:
DRAWN BY:
CHECKED BY:
PROJECT NUMBER:
CADD FILE

BRYAN POLLARD ARCHITECT
229 W. MISSION STREET
SANTA BARBARA, CALIFORNIA 93101
TEL: (805)687-2785
bp-arch@cox.net
FAX: (805)682-7041

SITE PLAN
SHEET NUMBER: A-1
DATE: JANUARY 25, 2008

EXHIBIT 5
4-08-066-VRC
Site Plans



PROPOSED PATIO PLAN

1/4"=1'-0"

09-06-07

RECEIVED
SEP 0 4 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PRICE, POSTEL & PARMA LLP

JAMES H. HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
DOUGLAS D. ROSSI
ERIC P. HVOLBØLL
CRAIG A. PARTON
CLYDE E. WULLBRANDT
KENNETH J. PONTIFEX
CHRISTOPHER E. HASKELL
TIMOTHY E. METZINGER
TODD A. AMSPOKER
PENNY CLEMMONS
MARK S. MANION
MELISSA J. FASSETT
IAN M. FISHER
SHEREEF MOHARRAM
SAM ZODEH
KRISTEN M.R. BLABEY
LESLEY E. CUNNINGHAM
DARRYL C. HOTTINGER

COUNSELLORS AT LAW

200 EAST CARRILLO STREET, SUITE 400
SANTA BARBARA, CALIFORNIA
93101-2190

MAILING ADDRESS P. O. BOX 99
SANTA BARBARA, CA 93102-0099

TELEPHONE (805) 962-0011
FACSIMILE (805) 965-3978

OF COUNSEL
ARTHUR R. GAUDI
DANIEL C. DAVID
SUSAN M. BASHAM
STEVEN K. McGUIRE

RETIRED PARTNERS
DAVID K. HUGHES
GERALD S. THEDE

OUR FILE NUMBER

21644.2

September 2, 2008

BY HAND

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: Lee Jamieson
Claim of Vested Rights

Dear Commissioners:

We are pleased to submit the enclosed Claim of Vested Rights on behalf of our client, Lee Jamieson, who is an owner of residential condominium property at 4809 Sandyland Road, Carpinteria, California.[1] The subject property is located in the Coastal Zone, within the South Central Coast Area of the Commission's jurisdiction, and is bounded by the Pacific Ocean to the south. The property is depicted on recorded Tract Map 25067, a recorded Condominium Plan, both dating from 1977, and a current Assessor's Parcel Map, copies of which are attached to the enclosed Claim.

Mr. Jamieson claims a vested right to install a patio on his property based on the negotiated provisions of a Judgment (a copy of which is attached to the enclosed Claim), entered by the Superior Court for the County of Santa Barbara on February 27, 1974 (the "1974 Stipulated Judgment"). Both the State of California and the City of Carpinteria were parties to the 1974 Stipulated Judgment, along with Mr. Jamieson's predecessor in title.

The 1974 Stipulated Judgment concluded seven years of litigation over public use, under an easement owned by the City, of the privately-owned beachfront areas of 17 contiguous

[1] Mr. Jamieson and his wife acquired 2 of the 3 condominium units in or about 1998. He is the authorized representative of the owners for purposes of this Claim.

EXHIBIT 6a
4-08-066-VRC
Correspondence—9/2/08

properties (Mr. Jamieson's parcel is identified in the 1974 Stipulated Judgment as Parcel H). The parties agreed to create a "Judgment Line" that would divide the beach into Public Beach and Private Beach areas, with the Public Beach seaward of the Judgment Line and the Private Beach landward of it. The City and State received the property owners' agreement to quiet the City's title to the easement over the Public Beach (Paragraph 9) and the property owners' further agreement not to do anything that would interfere with the public's full use and enjoyment of the easement, or to build any structures of any kind or nature over, on or across the Private Beach (Paragraph 11).

However, in exchange for this relinquishment of substantial rights in their properties, the property owners bargained for and received an important concession from the City and State: under Paragraph 11, an exception was made for "(i) the installation and maintenance of flat, surfaced patios and appropriate landscaping, and (ii) erection of fences" in the Private Beach area. The City and State agreed that "[e]ach individual Plaintiff *or his successor in interest* may, but need not, erect any such structures *in his sole discretion.*" (emphasis added) In addition, the City and State agreed that "[t]he prohibitions of this Paragraph 11 shall override any zoning ordinance that may at any time permit uses of the Private Beach, or any part thereof, other than or in addition to the uses set forth in this Paragraph 11." The Judgment Line is clearly identified on the Tract Map and Condominium Plan.

The parties negotiated and agreed to an open-ended opportunity for subsequent property owners to install patios in the Private Beach area, without any requirement that construction proceed by a particular date, and expressly exempting such projects from discretionary permitting. Yet despite the unambiguous terms of the 1974 Stipulated Judgment, the City of Carpinteria has advised that it will require Mr. Jamieson to apply for a Coastal Development Permit and to comply with its later-adopted Local Coastal Plan policies, which limit Mr. Jamieson's patio extension to a small area defined by a "string-line" between adjacent structures, ignoring the location of the Judgment Line and the specific bargained-for rights of property owners stated the 1974 Stipulated Judgment. Since the existing patio already conforms to the string-line, no additional patio development is possible under this later-adopted standard.

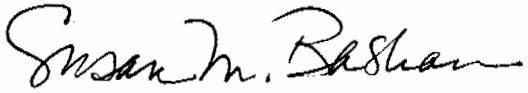
The parties agreed to the terms of the 1974 Stipulated Judgment after the Legislature's adoption of the Coastal Zone Conservation Act, which otherwise could have limited vesting of rights to development substantially completed prior to 1973 or potentially only as to the 1973 property owners. The specific recognition of rights in successors in interest, and the provisions for later construction in the sole discretion of the owners, reasonably must be read as the City's and State's intent and agreement to vest rights that otherwise might not have been eligible for vesting in 1974.

In summary, the 1974 Stipulated Judgment, by its terms, provides that Mr. Jamieson, as a successor to the 1974 owner of his property, has a continuing right to install a flat, surfaced patio in the Private Beach area – a right that he may exercise at whatever time he might choose to proceed with construction, without being constrained by later-adopted laws, and "in his sole discretion," without being required to apply for a discretionary Coastal Development Permit. Mr. Jamieson purchased his property in reliance on the express terms of the Superior Court's Judgment and on the recorded Tract Map and Condominium Plan, both of which clearly show the Judgment Line and Private Beach area.

For these reasons, Mr. Jamieson now asks that the Commission find that his Claim of Vested Rights is substantiated by the 1974 Stipulated Judgment and additional evidence provided herewith, and that he may proceed with installation of the proposed patio extension without a Coastal Development Permit.

We look forward to attending the Commission's hearing on this matter and will be glad to provide any additional information you may require.

Very truly yours,



Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
Enclosure

cc: Lee Jamieson

PRICE, POSTEL & PARMA LLP

JAMES H HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
DOUGLAS D. ROSSI
ERIC P. HVOLBØLL
CRAIG A. PARTON
CLYDE E. WULLBRANDT
KENNETH J PONTIFEX
CHRISTOPHER E. HASKELL
TIMOTHY E. METZINGER
TODD A. AMSPOKER
PENNY CLEMMONS
MARK S. MANION
MELISSA J. FASSETT
IAN M. FISHER
SHEREEF MOHARRAM
SAM ZODEH
KRISTEN M.R. BLABEY
LESLEY E. CUNNINGHAM
DARRYL C. HOTTINGER

COUNSELLORS AT LAW

200 EAST CARRILLO STREET, SUITE 400
SANTA BARBARA, CALIFORNIA
93101-2190

MAILING ADDRESS P. O BOX 99
SANTA BARBARA, CA 93102-0099

TELEPHONE (805) 962-0011
FACSIMILE (805) 965-3978

OF COUNSEL
ARTHUR R. GAUDI
DANIEL C. DAVID
SUSAN M. BASHAM
STEVEN K. MCGUIRE

RETIRED PARTNERS
DAVID K. HUGHES
GERALD S. THEDE

OUR FILE NUMBER
21644.2

October 14, 2008

VIA EMAIL: bcarey@coastal.ca.gov

Ms. Barbara Carey
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: Lee Jamieson
Claim of Vested Rights

Dear Ms. Carey:

In response to your inquiry several days ago, I have reviewed our file on the underlying lawsuit that resulted in the 1974 Judgment on which our client, Lee Jamieson, relies for his Claim of Vested Rights, which was filed with the California Coastal Commission on September 2, 2008. I am attaching several documents that may assist you in your review. These are only a portion of the lengthy record in this case. We also offer the following explanation concerning this lawsuit, which should be considered part of Mr. Jamieson's claim.

The underlying lawsuit originated on May 3, 1967 as *Roberts v. City of Carpinteria*, Santa Barbara Superior Court No. 79327 (Exhibit A to this letter). This was a quiet title action in which Glenn Roberts and other owners of a certain beachfront property brought suit against the City of Carpinteria and the County of Santa Barbara to determine the parties' interests in the property. The City filed a 153 page Cross-Complaint against numerous other property owners and the State of California on December 15, 1967 (partially included as Exhibit B). In effect, the City brought into the case all additional parties whose interests could be impacted by the outcome, including Mr. Jamieson's predecessor in title, Santa Barbara School Corporation.

The City's claim against the State was made pursuant to Public Resources Code section 6308, which provides (and provided in 1967) that "whenever an action is commenced by or

EXHIBIT 6b
4-08-066-VRC
Correspondence—10/14/08

against a county, city, or other political subdivision or agency of the State involving the title to or the boundaries of tidelands or submerged lands that have been or may hereafter be granted to it in trust by the Legislature, the State of California shall be joined as a necessary party defendant in such action or proceeding." However, the City's and State's interests were aligned. The Attorney General filed an Answer to the Cross-Complaint on February 26, 1971 (Exhibit C), in which the State asked the court to enter judgment quieting title in the City in trust for the People of the State of California and to declare the line dividing tide and submerged lands from uplands. Mr. Jamieson's predecessor also filed an Answer to the Cross-Complaint (Exhibit D), asking the court to declare that the City has no legal interest in the school's property. There were a number of additional proceedings, resulting eventually in a Stipulation for Judgment and entry of the 1974 Judgment. The City of Carpinteria, State of California and our client's predecessor were parties to the Stipulation (Exhibit E) and to the Judgment, previously submitted.

The Judgment represents a serious compromise for the property owners and their successors. In initiating his action in 1967, Mr. Roberts sought a declaration that neither the City of Carpinteria nor the County of Santa Barbara had any right whatsoever in his property, and Mr. Jamieson's predecessor asked for the same relief in his Answer to the Cross-Complaint. By aligning the State's interests with the asserted claims of the City, the Attorney General made clear the State's contrary position. Eventually the property owners and the governmental representatives agreed to a compromise. They agreed to a demarcation identified as the Judgment Line, and the property owners accepted the City's public easement interest in the part of their properties seaward of the Judgment Line, along with limitations on future beachfront development landward of the Judgment Line, in exchange for quieting their titles and enjoining the City, County, State and the People of California from asserting any further interest in their properties. In this context, it is clear that the exception to the limitations on development was bargained for and carefully crafted to protect the rights of property owners and their successors to add fences and patios to their properties in their sole discretion, without further governmental involvement.

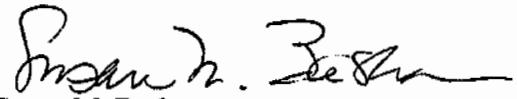
Mr. Jamieson's claim is made pursuant to Public Resources Code section 30608, which provides that property owners who "obtained a vested right in a development" prior to the effective date of the California Coastal Act of 1976 are not required to obtain a coastal development permit for the development. He claims that the Judgment, which predated the adoption of the California Coastal Act of 1976, vested his right to develop a patio in his sole discretion, without discretionary governmental review or approval, and without being compromised by later-adopted policies and ordinances. In this instance, the government in question is the City of Carpinteria, which has stated that Mr. Jamieson is subject to its coastal development permitting authority delegated by the Commission and to its later-adopted policies in its Local Coastal Land Use Plan as certified by the Commission. Mr. Jamieson has not claimed that the California Coastal Commission was named as a party to the *Roberts* action or

the City's Cross-Complaint. The Judgment is binding on the State and, as a legislatively-created agency of the State, the Coastal Commission is bound by it. Moreover, we think that even if the State were not a party to the Judgment, the City's agreement to the terms and conditions of the Judgment, relinquishing its right to exercise discretion in the future development of flat patios landward of the Judgment Line, requires that the Commission conclude that Mr. Jamieson's right to proceed with such development vested with the court's entry of the Judgment in 1974.

Finally, in responding to your inquiry, I would like to call your attention to the Coastal Commission's regulation 14 CCR § 13203, which provides that "as soon as practicable after the filing of a claim *and in no event later than 30 days from the filing* date, the executive director of the commission shall make an initial determination whether the claim of vested rights appears to be substantiated . . . [and] the executive director shall make a written recommendation to the commission for consideration at the hearing on the claim of vested rights application *at the next succeeding regularly scheduled meeting.* (emphasis added) Since it has been more than thirty days since we filed Mr. Jamieson's claim, we would appreciate receiving your prompt determination and notice of a scheduled hearing in this matter.

Thank you.

Very truly yours,



Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
Enclosures

cc: Lee Jamieson (via email)

RECEIVED
OCT 17 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PRICE, POSTEL & PARMA LLP

COUNSELLORS AT LAW

200 EAST CARRILLO STREET, SUITE 400
SANTA BARBARA, CALIFORNIA
93101-2190

MAILING ADDRESS P. O. BOX 99
SANTA BARBARA, CA 93102-0099

TELEPHONE (805) 962-0011
FACSIMILE (805) 965-3978

JAMES H. HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
DOUGLAS D. ROSSI
ERIC P. HVOLBØLL
CRAIG A. PARTON
CLYDE E. WULLBRANDT
KENNETH J. PONTIFEX
CHRISTOPHER E. HASKELL
TIMOTHY E. METZINGER
TODD A. AMSPOKER
PENNY CLEMMONS
MARK S. MANION
MELISSA J. FASSETT
IAN M. FISHER
SHEREEF MOHARRAM
SAM ZODEH
KRISTEN M.R. BLABEY
LESLEY E. CUNNINGHAM
DARRYL C. HOTTINGER
DANIEL C. DAVID
SUSAN M. BASHAM
STEVEN K. McGUIRE

RETIRED PARTNERS
DAVID K. HUGHES
GERALD S. THEDE

OUR FILE NUMBER
21644.2

October 15, 2008

Ms. Barbara Carey
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: Vested Rights Claim No. 4-080-066-VRC

Dear Ms. Carey:

We are in receipt of your letter dated October 10, 2008 which is a Notice of Initial Determination Regarding Lee Jamieson's Claim of Vested Rights (Vested Rights Claim No. 4-080-066-VRC). Apparently you decided to issue this Determination despite the fact that earlier the same week you called to request additional information from us concerning this claim. We emailed you a letter with five exhibits yesterday, October 14, which responded to your questions.

In our view, our letter of October 14 should have been considered before you issued your Determination, particularly because you indicated that you did not understand the underlying lawsuit and the Judgment upon which the claim is based. We therefore seek your reconsideration of this Initial Determination, based upon the fact that the Stipulated Judgment – a court order – established a vested right that is tantamount to the issuance of a permit under the Commission's customary standard.

Thank you.

Very truly yours,

Susan M. Basham

Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
cc: Lee Jamieson

EXHIBIT 6c
4-08-066-VRC
Correspondence—10/15/08

RECEIVED
SEP 04 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

8776 BOOK 2506 PAGE 296
RECORDED AT REQUEST OF
SAFECO TITLE INSURANCE CO.
BOOK 2506 PAGE 296
MAR 14 8 00 AM '74
OFFICIAL RECORDS
SANTA BARBARA CO., CALIF.
RITA VAN SUSCHIRS, RECORDER
FEE $ 3.00

Return To:
SAFECO TITLE INSURANCE COMPANY
1101 ANACAPA ST., P. O. BOX 1590
SANTA BARBARA, CALIFORNIA 93101
144775

FILED
FEB 27 1974
RICHARD C. MESTAS, County Clerk
By _____
Deputy Clerk

27466

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

GLENN ROBERTS, et al., Plaintiffs, v. CITY OF CARPINTERIA, et al., Defendants.	NO. 79327 JUDGMENT
CITY OF CARPINTERIA, Cross-Complainant, v. THE STATE OF CALIFORNIA, et al., Cross-Defendants.	

This judgment is entered pursuant to stipulation entered into by and between the following parties:

(a) Plaintiffs and cross-defendants specifically named in Exhibit "A" attached hereto, who are hereinafter referred to jointly and severally as "Plaintiffs";

EXHIBIT 7
4-08-066-VRC
1974 *Roberts* Judgment

(b) Defendant and cross-complainant, City of Carpinteria, hereinafter referred to as "City"; and

(c) Cross-defendants, County of Santa Barbara and State of California, hereinafter respectively referred to as "County" and "State."

Pursuant to said stipulation, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Exhibits "A", "B", "C", "D" and "E" attached hereto are made a part hereof as though set forth in full.

2. Exhibit "B" sets forth the legal description of 17 parcels of land, designated Parcels C through Q, that are in issue in the above-entitled action and the subject matter of this judgment. In this judgment the term "Parcel," followed by a letter designation, refers to the parcel of land so designated and described in Exhibit "B". Parcels C through Q are depicted on Exhibits "C", "D" and "E".

3. As used herein, the term "Judgment Line" means a line drawn parallel with and distant southwesterly 30 feet, measured at right angles, from the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria, filed in Rack No. 2 as Map No. 4 in the office of the County Recorder of Santa Barbara County.

4. As used herein, the term "Public Beach" shall mean and include all of Parcels C-D, J-I, J-K, P-O and P-Q and that portion of Parcels D through I, K through O, and Q that is located on the seaward side of the Judgment Line. The shaded portion of Exhibit "C" depicts the Public Beach.

5. As used herein, the term "Street Ends" shall mean and include all of Parcels C-D, J-I, J-K, P-O and P-Q. The shaded portion of Exhibit "D" depicts the Street Ends. The Street Ends are part of the Public Beach.

6. As used herein, the term "Private Beach" shall mean and include that portion of Parcels D through I, K through O, and Q that is located on the landward side of the Judgment Line. The shaded portion of Exhibit "E" depicts the Private Beach.

7. The City at the time of the commencement of this action owned and now owns and is vested as the owner of an exclusive easement in, on, over and across the property hereinafter set forth for the uses and purposes hereinafter set forth:

(a) With respect to the Public Beach, for the purpose of public recreation by the general public and uses incidental thereto, including, but not limited to, fishing, boat launching (but not by means of artificial facilities, except as provided in subparagraph (c) of this paragraph), picnicking, general viewing, public protection, sunbathing, surfing, swimming, walking, policing, and erosion control (but not including the right to interfere with pedestrian access to the ocean

and shore from the property situated between the Judgment Line and Sandy Land Road, nor to block the view of the ocean and shore from said property with sand except when temporarily required by seasonal or storm conditions for the preservation of the Public or Private Beach, nor to build any structures except as may be hereinafter permitted under Paragraphs 7(b), 7(c) or 8 hereof); and in furtherance of said easement

7(b) With respect to the Street Ends, for the erection of lifeguard towers; and

(c) With respect to the Street Ends opposite Ash Street, to-wit, Parcels P-O and P-Q, for the installation of a boat-launching ramp.

8. The City shall have a special power, as part and parcel of the easement described in Paragraph 7, to grant an easement over, under, on and across said Public Beach to the United States Government or to the State, or to any appropriate agency thereof, for erosion and shoreline control purposes (including, but without limitation, the erection of groins and jettys), to the extent, and only to that extent, to obtain erosion and shoreline control work by the Corps of Engineers or other appropriate state or federal agency. The power granted to the City herein shall be absolute, but subject to the continuing right of Plaintiffs and their successors in interest to make a claim or claims for and be compensated for permanent impairment of the pedestrian access

to or blocking of the view of the ocean or shore from any part of the Private Beach or of any property under common ownership therewith between the Private Beach and Sandy Land Road. The reservation of this right to make a claim for compensation shall not imply any consent or agreement by the City, County or State as to the validity of any such claim.

9. The easement confirmed in the City in said Public Beach, as described in Paragraphs 7 and 8 hereof, is forever quieted against all claims of Plaintiffs, and said Plaintiffs are perpetually enjoined and restrained from setting up or making any claim adverse or contrary to said easement of the City as set forth in Paragraphs 7 and 8 in said Public Beach and Street Ends, or any part thereof, except to the extent that the terms of said easement are not complied with as set forth in this judgment.

10. Plaintiffs at the time of the commencement of this action owned and now own and are vested as the owners in fee of all right, title and interest in and to those Parcels described on each of the several pages of Exhibit "B" upon which their respective names appear as fee owners, free and clear of, and said title is forever quieted against, any and all claims of the City, the County, the State, or the public of the State of California, either in body politic or singularly, including any claim that said land was part of a public street, except for the easement with respect to the Public Beach and the Street Ends, set forth in Paragraphs 7 and 8 hereinabove, and the restrictions with respect to the Private Beach, set forth in Paragraph 11 hereinbelow. Said City, County, State and public, and each of them, are perpetually enjoined and restrained from setting up or making any claim adverse or contrary to said title, as set forth in this Paragraph 10, except as shall be permitted by the laws of eminent domain or other similar laws.

11. Plaintiffs, their successors, heirs and assigns are permanently enjoined and restrained from:

(a) Doing or permitting to be done anything whatsoever that shall interfere with the full use and enjoyment of the easement described in Paragraphs 7 and 8 hereinabove;

(b) Erecting or installing or permitting the erection or installation of pipelines or power lines in, over or under the Public Beach;

(c) Except as stated in Paragraph 12, changing the natural grade of any portion of the Private Beach;

(d) Erecting any structures of any kind or nature over, on or across the Private Beach, except for (i) the installation and maintenance of flat, surfaced patios and appropriate landscaping, and (ii) erection of fences, as follows:

(aa) A fence on the Judgment Line; said fence shall not exceed 30 inches in height and shall consist only of a single horizontal rail, cable or chain supported by vertical posts not to exceed 4 inches in thickness and not closer than 10 feet apart except at openings in the fence;

(bb) Fences may be erected along the boundary or lot lines or between individual parcels owned by the respective Plaintiffs and shall not exceed 30 inches in height, subject to design approval by the City;

(cc) Wooden fences may be erected along the boundary lines between the Street Ends and the Private Beach, not to exceed 6 feet in height, subject to design approval by the City.

Each individual Plaintiff or his successor in interest may, but need not, erect any such structures in his sole discretion.

The prohibitions of this Paragraph 11 shall override any zoning ordinance that may at any time permit uses of the Private Beach, or any part thereof, other than or in addition to the uses set forth in this Paragraph 11.

12. This judgment shall not prevent Plaintiffs or their successors from undertaking temporary measures to prevent erosion of the Private Beach, including but without limitation measures to increase the level of the sand in the vicinity of the Judgment Line during the winter months. Nor shall this judgment prevent Plaintiffs or their successors from moving sand that may heretofore have drifted or been piled, or may hereafter drift or become piled, upon the Public Beach or the Private Beach so as to block the view of the ocean and shore from the property between the Judgment Line and Sandy Land Road; but such sand may be moved only to the extent necessary to prevent the blocking of such view, shall not be removed from the Public Beach, and shall not be re-piled in such a way as to interfere with the uses and purposes set forth in Paragraph 7 hereinabove. Prior to the taking of any action of the nature hereinabove described in this Paragraph 12, notice of the

proposed action shall be given to the City Clerk and approval by the City of such action shall be obtained, which approval shall not be unreasonably withheld; except when an emergency condition exists that requires action to prevent erosion before notice and approval can be reasonably given and obtained, in which case notice of such action shall promptly be given to the City Clerk.

13. No portion of the Public Beach shall be included in or added to the area of any other land for purposes of determining the setback lines, the gross area, or net area of property under any zoning, subdivision, parcel map, or lot split law, ordinance, rule or regulation of the City, County or State, and all such laws, ordinances, rules and regulations may be drawn and construed by the City, County or State expressly to exclude such real property. On the other hand, the Private Beach shall be and become part and parcel of the land adjoining and landward of said Private Beach and under common ownership with said Private Beach, and shall not be deemed a separate parcel of land.

14. Each party does hereby release and discharge each other party from any and all claims that any party might have or claim against any other party by reason of the use and occupancy of any and all the property which is the subject matter of this lawsuit, or by reason of anything pertaining to or arising out of this lawsuit, but such release or discharge shall not apply to the express terms of this judgment.

15. The Judgment Line is located landward of the line of mean high tide of the Pacific Ocean. In all other respects, this judgment does not purport to determine said line of mean

high tide. As a consequence:

(a) The depiction of the Pacific Ocean on exhibits attached hereto is not intended to depict the actual location of said line of mean high tide;

(b) The descriptions used in Exhibit "B" are not intended to imply or suggest the location of said line of mean high tide.

16. This judgment does not determine any right, title or interest in or to any property that may be the subject of the above-entitled action other than the parcels described in Exhibit "B".

17. This Court finds that the settlement represented by this judgment is in the best interests of the public and will not be detrimental to the full and complete enjoyment by the public of the Public Beach.

18. Any default judgment heretofore entered in this action is, to the extent that it may be inconsistent with the titles of Plaintiffs as herein set forth, hereby set aside.

19. Every party will bear his own costs of suit.

20. Exhibit "F" attached hereto and made a part hereof is a true and correct survey of the "Judgment Line."

DATED: February 27, 1974

Judge of the Superior Court

FEB 27 1974
ENTERED JUDGMENT 7755 REC

APPROVED AS TO FORM:

JAMES R. CHRISTIANSEN
City Attorney
City of Carpinteria

O'MELVENY & MYERS

By _____
EVERETT B. CLARY
Attorneys for parties described as "Plaintiffs" in Exhibit "A" hereto

BRAMBLE & SCHULHOFER

By _____
JAMES R. BRAMBLE
Attorneys for parties described as "Plaintiffs" in Exhibit "A" hereto

EVELLE J. YOUNGER
Attorney General

By _____
WARREN J. ABBOTT
Deputy Attorney General
Attorney for cross-defendant State of California

GEORGE P. KADING
County Counsel

By _____
ROBERT D. CURIEL
Chief Assistant County Counsel
Attorney for cross-defendant County of Santa Barbara

PERSONS REFERRED TO HEREIN AS "PLAINTIFFS"

W. G. Salzgeber

Bernice L. Salzgeber

Robert M. Edmonston

Adrienne Ann Edmonston

Francis C. Romer

Mary Seeley Romer

Frances S. Wymond

Santa Barbara School Corporation, a corporation

Bryan N.Cono

Helen R. Cono

Lua Thurmond Scott Safwenberg aka Lua Thurmond Scott

Glenn Roberts

Claire Roberts

James M. Stafford

Jane C. Stafford

Mary Rock Sherriffs

Adele Rock Nickel

Joan Rock Mirov

Bambi Ruth Fincher

Max Dookman

Lucian J. Meyers

Harold L. Cadwell

Nina B. Cadwell

Mary Cadwell Wilmot

Marjorie C. Chace

Harold L. Cadwell, Jr.

EXHIBIT "A"

LEGAL DESCRIPTION OF PARCELS OF
LAND GOVERNED BY THIS JUDGMENT
AND FEE OWNERS THEREOF

PARCEL C-D

That certain parcel of real property situated in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

Beginning at the intersection of the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria, filed in Back No. 2 as Map No. 4, in the office of the County Recorder of said county with the center line of Elm Avenue, as shown on said map; thence southwesterly along the southwesterly prolongation of said last mentioned line to its intersection with the line of mean high tide of the Pacific Ocean; thence northwesterly along said line of mean high tide to its intersection with the southwesterly prolongation of the northwesterly line of Elm Avenue, as shown on said map; thence northeasterly along said last mentioned prolonged line to its intersection with said northeasterly line of Ocean Avenue, above referred to; thence southeasterly along said northeasterly line of Ocean Avenue to the point of beginning.

FEE OWNERS: W. G. Salzgeber and Dornice L. Salzgeber

PARCEL D

That certain parcel of real property situated in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

Beginning at the intersection of the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria, filed in Rack No. 2 as Map o. 4, in the office of the County Recorder of said county with the northwesterly line of Elm Avenue, as shown on said map; thence southwesterly along the southwesterly prolongation of said last mentioned line to its intersection with the line of mean high tide of the Pacific Ocean; thence northwesterly along said line of mean high tide to its intersection with the southwesterly prolongation of the southeasterly line of the tract of land described in deed from Hester S. Fish, et al., to Los Angeles Trust and Savings Bank, a corporation, dated August 24, 1922 and recorded in Book 189, Page 466 of deeds, records of said county, as shown on said map; thence northeasterly along said last mentioned prolonged line to its intersection with said northeasterly line of Ocean Avenue, above referred to; thence southeasterly along said northeasterly line of Ocean Avenue to the point of beginning.

FEE OWNERS: W. G. Salzgeber and Bernice L. Salzgeber

PARCEL E

That certain parcel of real property situated in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

Beginning at the intersection of the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria filed in Rack No. 2 as Map No. 4, in the office of the County Recorder of said county with the southeasterly line of the tract of land described in deed from Hector S. Fish, et al., to Los Angeles Trust and Savings Bank, a corporation, dated August 24, 1922 and recorded in Book 189, Page 466 of deeds, records of said county, being a point in said northeasterly line of Ocean Avenue distant thereon Southeasterly 280 feet from the west corner of Block 42 of said town, as shown on said map; thence southwesterly along the southwesterly prolongation of said southeasterly line of the tract of land described in said last mentioned deed, to its intersection with the line of mean high tide of the Pacific Ocean; thence northwesterly along said line of mean high tide to its intersection with

the southwesterly prolongation of the southeasterly line of the tract of land described as Parcel 2 in deed to Carpinteria Beach Properties, recorded June 26, 1947 in Book 740, Page 117 of Official Records, records of said county; thence northeasterly along said last mentioned prolonged line to its intersection with said northeasterly line of Ocean Avenue, above referred to; thence southeasterly along said northeasterly line of Ocean Avenue 50 feet more or less to the point of beginning.

FEE OWNERS: Robert M. Edmonston and Adrienne Ann Edmonston

PARCEL F

That certain parcel of real property situated in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

Beginning at the intersection of the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria, filed in Back No. 2 as Map No. 4 in the office of the County Recorder of said county with the southeasterly line of the tract of land described as Parcel 2 in deed to Carpinteria Beach Properties, recorded June 26, 1947 in Book 740, Page 117 of Official Records, records of said county, being a point in said northeasterly line of Ocean Avenue distant thereon southeasterly 230 feet from the west corner of Block 42 of said town as shown on said map; thence southwesterly along the southwesterly prolongation of said southeasterly line of said Parcel 2 as described in said last mentioned deed, to its intersection with the line of mean high tide of the Pacific Ocean; thence northwesterly along said line of mean high tide to its intersection with

the southeasterly line of the tract of land described in deed to Frank C. Wymond, et ux., recorded June 20, 1958 in Book 1532, Page 553 of Official Records, records of said county. Thence northeasterly along said last mentioned prolonged line to its intersection with said northeasterly line of Ocean Avenue, above referred to; thence southeasterly along said northeasterly line of Ocean Avenue 80 feet more or less to the point of beginning.

FEE OWNERS: Francis C. Rosor and Mary Staley Rosor

PARCEL 6

That certain parcel of real property situated in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

Beginning at the intersection of the northeasterly line of Ocean Avenue, as shown on map of the town of Carpinteria, filed in Rack No. 2 as Map No. 4, in the office of the County Recorder of said county with the southeasterly line of the tract of land described in deed to Frank C. Wymond, et ux., recorded June 20, 1958 in Book 1532, Page 553 of Official Records, records of said county, being a point in said northeasterly line of Ocean Avenue, distant thereon southeasterly 150 feet from the west corner of Block 42 of said town, as shown on said map; thence southwesterly along said southeasterly line of said Wymond Tract of land to its intersection with the line of mean high tide of the Pacific Ocean; thence northwesterly along said line of mean high tide to its intersection with

the southeasterly line of the tract of land described in deed to Santa Barbara School, a corporation, dated June 25, 1934 and recorded in Book 310, Page 63 of Official Records, records of said county; thence northeasterly along said last mentioned line to its intersection with said northeasterly line of Ocean Avenue, above referred to; thence southeasterly along said northeasterly line of Ocean Avenue to the point of beginning.

FEE OWNER: Frances S. Wymond

Tu 25a

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Hearing Opened: 10/12/99
Original Action 2/17/00
Staff: S. Hudson
Staff Report: 5/25/00
Hearing Date: 6/13/00
Commission Action:

STAFF REPORT: APPEAL
De Novo Hearing
Revised Findings

LOCAL GOVERNMENT: City of Carpinteria

LOCAL DECISION: Approved with No Conditions

APPEAL NO.: A-4-CPN-99-119

APPLICANT: Christopher A. Clemens and Lanette K. Loeks Revocable Trust

APPELLANTS: Mary Clark, Vince Mezzio, and Gerald Velasco

PROJECT LOCATION: 4921 Sandyland Road, Carpinteria; Santa Barbara County.

PROJECT DESCRIPTION: The applicant is requesting after-the-fact approval for the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and a 3 ft. high retaining wall; and the construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement and a 7 ft. high retaining wall.

DATE OF COMMISSION ACTION: February 17, 2000 in San Diego

COMMISSIONERS ON PREVAILING SIDE: Commissioners Daniels, Desser, Dettloff, Allgood, Kruer, McClain-Hill, Nava, Potter, Reilly, Wooley, and Wan.

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program; City of Carpinteria General Plan; City of Carpinteria Administrative Record for all approved development at 4921 Sandyland Road; Winter Protection Berm Project Summary Report by City of Carpinteria dated 1996; Letter to Clemens/Loeks from Perkins Engineering dated 2/6/00.

PROCEDURAL NOTE

Staff recommends that the Commission **adopt** the following revised findings in support of the Commission's decision on February 17, 2000, to **approve** the proposed project subject to two (2) special conditions regarding no future shoreline protective devices and assumption of risk. The Commission found that the proposed project is consistent with the policies of the City of Carpinteria's Local Coastal Program and with the applicable policies of the Coastal Act.

Because staff originally recommended denial of this proposed project, revised findings are necessary to reflect the action taken by the Commission. Staff recommends, therefore, that the Commission adopt the following resolution and revised findings in support of its action to approve this permit with conditions. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the action of the Commission.

EXHIBIT 8
4-08-066-VRC
Revised Findings Report—CDP A-4-CPN-99-119

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission adopt the revised findings in support of the Commission's action on February 17, 2000, concerning approval of Coastal Development Permit Application A-4-CPN-99-119.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 17, 2000, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for approval of Coastal Development Permit A-4-CPN-99-119 on the ground that the findings support the Commission's decision made on February 17, 2000, and accurately reflect the reasons for it.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. No Future Bluff or Shoreline Protective Device

A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit A-4-CPN-99-119 including, but not limited to, the construction of the residence, retaining wall, basement, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to the residence, basement, and retaining wall, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

C. Prior to issuance Coastal Development Permit A-4-CPN-99-119, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which reflects the above restrictions and obligations. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Assumption of Risk/Shoreline Protection

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run

with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is requesting after-the-fact approval for the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and a 3 ft. high retaining wall; and the construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement and a 7 ft. high retaining wall.

The project site is located on a 5,227 sq. ft. beachfront parcel of land in the City of Carpinteria between Sandyland Road and Carpinteria City Beach (Exhibit 1). The area surrounding the subject site is characterized as a built-out portion of Carpinteria consisting primarily of multi-family residential development. The project site is designated as a "Zone A" flood hazard area (area with highest potential for flood hazard) by the Carpinteria General Plan, the Federal Emergency Management Agency (FEMA), and the National Flood Insurance Rate Map System (FIRM). In previous years, the City of Carpinteria has constructed a sand berm (subject to a coastal development permit) along Carpinteria City Beach (approximately 20 ft. seaward of the proposed deck dripline) on an annual basis to protect the private residential development located along Sandyland Road which would otherwise be subject to wave action during storm events. The Winter Protection Berm Project Summary Report by the City dated 1996 indicates that if the berm is not constructed each winter, the private residences along Sandyland Road would be subject to significant wave action and flooding.

All proposed development has already been constructed. Although a coastal development permit is required for the proposed project, the proposed project was originally approved in error by the City pursuant to an administrative building permit on November 16, 1998. Although a coastal permit had not been issued, the City issued a Notice of Final Action for a coastal development permit for the project on April 8, 1999, after being informed by Commission Staff that a coastal permit was required. Commission Staff subsequently notified the City on April 12, 1999, that the notice was determined to be insufficient since it contained no written findings for approval. Although a coastal development permit had still not been issued for the project, the City subsequently issued an amended Notice of Final Action on May 3, 1999. Two appeals of the above-described decision were received in the Commission office on May 17 and 18, 1999, and filed on May 18, 1999. In a letter dated June 22, 1999, from Mr. Dave Durflinger, Community Development Director for the City of Carpinteria, to Mr. Vince Mezzio, appellant, Mr. Durflinger states that the City "informed the property owner [Clemens/Loeks] that he proceeds with completion of the house at his own risk in light

of that pending appeal" of the project to the California Coastal Commission. In accordance with Section 13112 of the Administrative Regulations, staff requested on May 26, 1999, that the local government forward all relevant documents and materials regarding the subject permit. The City authorized occupancy of the completed development in August 1999. After several additional requests were made to obtain the administrative record, it was subsequently received on September 14, 1999. At the Commission hearing of October 12, 1999, the Commission found that a substantial issue was raised by the appeal.

During the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit. The subject parcel has apparently been previously converted from a single lot with two duplex apartment units (4 units) to two single family residence condominiums through the approval of a subdivision/tentative condominium tract map by the City in 1987 (which also occurred without the required coastal development permit). The second condominium residence on the subject site is located directly landward of the structure subject to this application. This application is for the recent demolition/construction of the seawardmost condominium residence on the subject site only. The above mentioned additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit.

B. Consistency With Local Coastal Program Policies

Policy 1-1 of the LCP states:

> ***The City shall adopt the policies of the Coastal Act (Public Resources Code Sections 30210 through 30263) as the guiding policies of the land use plan.***

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development which occurs between the first public road and the sea, such as the proposed project site). In this case, the proposed development has been previously appealed to the Commission which found, during a public hearing on October 12, 1999, that a substantial issue was raised.

As a "de novo" application, the standard of review for the proposed development is, in part, the policies and provisions of the City of Carpinteria Local Coastal Program (LCP) which was certified by the Commission on January 6, 1982. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea, including those areas where a certified LCP has been prepared, such as the project site, must also be reviewed for consistency with the Chapter 3 policies of the Coastal Act regarding public access and public recreation. Further, the Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Carpinteria LCP as guiding policies pursuant to Policy 1-1 of the LCP.

C. Hazards and Geologic Stability

Policy 3-8 of the LCP states:

> ***Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impacts of geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.***

Policy 3-11 of the LCP states in part:

> ***If the proposed development falls within the floodway fringe, development may be permitted provided...finish floor elevations are above the projected 100-year flood elevation, as specified in the City's Flood Plain Management Plan.***

Policy 3-12 of the LCP states:

> ***Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.***

Policy 3-8 of the LCP requires that all proposed development located in or adjacent to areas subject to geologic hazards or beach erosion shall be reviewed to determine any potential impacts of such development. Policies 3-11 and 3-12 of the LCP require that new development be designed in a manner that minimizes hazards from flooding and does not require the expenditure of public funds for flood control works. In addition, Section 30253 of the Coastal Act, which has been included in the certified LCP as a guiding policy, requires that new development minimize risks to life and property in areas of high geologic or flood hazards and assure structural stability and integrity.

The proposed project includes the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement. The applicant has submitted a letter from Perkins Engineering which indicates that the proposed residence has been constructed in compliance with current structural building code requirements. The letter from Perkins Engineering dated 2/6/00 states:

> ***The 1994 Uniform Building Code was used for seismic design and the structural wall elements met code requirements for seismic design. The front, ocean facing masonry, wall was not designed as an ocean resisting element, e.g., seawall.***

Although no information regarding the geologic stability of the subject site or location of the proposed development in relation to wave action has been submitted by the applicant, the Commission notes (based on available information including the sections of the City's General Plan regarding hazards and the engineering reports previously submitted by the City for the construction of an annual sand berm to prevent damage to the subject site from wave action) that the proposed development is located in an area

that has been historically subject to an unusually high amount of natural hazards including flooding and severe beach erosion from storm waves. The Winter Protection Berm Project Summary Report by the City of Carpinteria dated 1996 indicates that the construction of a sand berm along the public beach fronting the subject site (approximately 20 ft. seaward of the dripline of the proposed deck) is necessary on an annual basis in order to protect private residential development located along Sandyland Road which would otherwise be damaged by wave action. In addition, the entire project site is designated as a "Zone A" flood hazard area (area with highest potential for flood hazard) by the City of Carpinteria General Plan, the Federal Emergency Management Agency (FEMA), and the National Flood Insurance Rate Map System (FIRM). However, in this case, the applicant has indicated that the portions of the proposed residence that are intended for habitable use will be located above the elevation of the flood zone and will not be subject to flood hazard. In addition, the City of Carpinteria's Engineer has determined that the proposed project is consistent with FEMA flood control requirements. In addition, the City's approval required that the remodel be supported by caissons which have been constructed at the seaward end of the deck. A copy of the architect's caisson plan and photographs of the caissons as constructed are included in the record. Given the existence of these caissons, and certification by the City that the project is consistent with FEMA flood control requirements, the project is consistent with Coastal Act requirements and LCP Policy 3-8.

As discussed above, the Carpinteria coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the 1995 severe winter storm season. Thus, ample evidence exists that beachfront development located on the seaward side of Sandyland Road in Carpinteria, including the project site, is subject to potential risks due to storm waves and surges, high surf conditions, erosion, and flooding.

When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property. Therefore, in the case of this project, the Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by Special Condition Two (2), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development is consistent with Policies 3-8, 3-11, and 3-12 of the LCP and with Section 30253 of the Coastal Act as included in the LCP as a guiding policies.

D. Shoreline Protective Devices and Seaward Encroachment

Policy 3-1 of the LCP states:

> ***Seawalls shall not be permitted unless the City has determined that there are no other less environmentally damaging alternatives for protection of existing development. Where permitted, seawall design and construction shall respect to the degree possible natural land forms. Adequate provision for lateral beach access shall be made and the project shall be designed to minimize visual impacts by use of appropriate colors and materials.***

Policy 3-3 of the LCP states:

> ***To avoid the need for future protective devices that could impact sand movement and supply, no permanent above-ground structures shall be permitted on the dry sandy beach except facilities necessary for public health and safety, such as lifeguard towers.***

Policy 3-8 of the LCP states:

> ***Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impacts of geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.***

Policy 3-11 of the LCP states in part:

> ***If the proposed development falls within the floodway fringe, development may be permitted provided...finish floor elevations are above the projected 100-year flood elevation, as specified in the City's Flood Plain Management Plan.***

Policy 3-12 of the LCP states:

> ***Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.***

Policy 3-1 of the LCP, consistent with Section 30235 of the Coastal Act which has been included in the certified LCP as a guiding policy, provides that the construction of shoreline protection devices for existing development may be allowed only when no feasible less environmentally damaging alternative exists. Policy 3-3 of the LCP prohibits the construction of new development on the dry sandy beach in order to avoid the need for the construction of seawalls for new development. In addition, Policy 3-8 of the LCP requires that all proposed development located in or adjacent to areas subject to geologic hazards or beach erosion shall be reviewed to determine any potential impacts of such development. Further, Policies 3-11 and 3-12 of the LCP require that new development be designed in a manner that minimizes hazards from flooding and does not require the expenditure of public funds for flood control works. In addition, Section 30253 of the Coastal Act, which has been included in the certified LCP as a guiding policy, requires that new development minimize risks to life and

property in areas of high geologic or flood hazards and assure stability and structural integrity.

The proposed project includes the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement. The proposed project also includes a 7 ft. high concrete block retaining wall approximately 1.5 ft. landward of the toe of the deck. The subject site is located between Sandyland Road and Carpinteria City Beach in a built-out area of Carpinteria consisting primarily of multi-family residential development. As previously discussed the Commission notes that Carpinteria City Beach is subject to periodic episodes of beach erosion and flooding from severe storm events and that the proposed development will be subject to potential wave action.

Past Commission review of residential projects along the shoreline has shown that such development has potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas. In order to determine what adverse effects to coastal processes and public access will result from the proposed project, it is necessary to analyze whether the proposed development will result in the seaward encroachment of development on the sandy beach.

1. Seaward Encroachment by New Development

One means of controlling seaward encroachment of residential structures to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, that the Commission, in past permit actions, has developed is the "stringline" policy. As applied to beachfront development, the stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks.

The applicant is not in agreement with the use of a stringline measurement to define the appropriate seaward limit for development on the subject site. Specifically, the applicant's consultants have asserted that new development on the subject site should be allowed to extend seaward to a "judgement line" determined as part of a previous stipulation agreement between the State Lands Commission, the City of Carpinteria, and the previous property owner in 1978 which occurred as a result of a Superior Court action (Glenn Roberts, et al. v. City of Carpinteria, et al.). The agreement defines the boundary line referred to as a "judgement line" between private property and public beach (Carpinteria City Beach). In addition, the agreement between the above three parties also delineated a second "judgement line" (drawn approximately 20 ft. landward

of the property boundary judgement line) seaward of which, no development would be allowed to occur. The approximate location of this most landward "judgement line" is shown on Exhibit 3. Staff notes that use of the above described "judgement line" would allow development on the subject site to extend further seaward than the use of a stringline method.

However, the Commission notes that the above agreement between the State Lands Commission, the City, and the previous property owner is not included in the certified LCP as a policy or development standard and that the City has not submitted any amendment application to the certified LCP to do so. Further, the Commission also notes that the above agreement does not require the approval of new development landward of the judgement line and that the agreement in no way limits the ability of the Commission, or the City, to regulate the appropriate location, or the seaward extent, of new development on the subject site.

In past permit actions regarding new beachfront development along Sandyland Road in Carpinteria, the Commission has, in some cases, required that new development be consistent with a stringline in order to minimize seaward encroachment. Coastal Development Permit 4-85-378 (Mezzio) was approved by the Commission for the construction of a condominium complex on the neighboring parcel located immediately east and adjacent to the subject site in 1985 with a special condition requiring the submittal of revised plans to relocate all development landward of the appropriate structural and deck stringlines. However, the Commission notes that a stringline was not applied in all cases for new development along Sandyland Road in Carpinteria. Coastal Development Permit (CDP) 4-90-041 (Designworks Development) was approved in 1990 for the construction of a condominium complex two lots to the west of the subject site. The staff report for CDP 4-90-041 stated that a stringline was not required for the subject development because of the unique irregular design of the structure (seaward encroachment by portions of the structure would be compensated by other portions of the structure that would be setback further from the beach) and because the LCP does not contain a specific policy regarding the use of a stringline. However, the Commission notes that the development approved by CDP 4-90-041 was constructed in substantial conformance with a stringline drawn from the nearest corners of the adjacent structures and deck (the deck was located entirely landward of the stringline and only a small portion of the structure extended seaward of the structural stringline).

The Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and that the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. Therefore, the applicant is only seeking to extend the outer "envelope" of the development 1.5 ft. further seaward. The applicant states that this 1.5 ft. area of new deck was formerly occupied by a permanent planter box.

The Commission finds that the LCP does not require the Commission to apply a stringline. The Commission further finds that, in the specific case of this project, the

proposed extension of the house and deck will not result in the significant seaward encroachment by new development on the Carpinteria City Beach. Based on these determinations, the Commission finds that the proposed development is consistent with the LCP.

2. Shoreline Protective Devices

In past permit actions, the Commission has found that the construction of a shoreline protection device, such as a seawall, may result in significant adverse effects to shoreline sand supply and public access. The certified LCP, in recognition of the adverse effects to beach areas that results from the use of shoreline protection devices to protect development, includes several policies which limit the use of such devices. Policy 3-1 of the LCP, consistent with Section 30235 of the Coastal Act which has been included in the certified LCP as a guiding policy, provides that the construction of shoreline protection devices for existing development may be allowed only when no feasible less environmentally damaging alternative exists. Further, Policy 3-3 of the LCP prohibits the construction of new development on the dry sandy beach in order to avoid the need for the construction of seawalls for new development.

In the case of the proposed project, although no seawall is proposed, the project includes the a 7 ft. high concrete block retaining wall approximately 1.5 ft. landward of the toe of the proposed deck. The proposed retaining wall is part of the foundation for the proposed deck and residence and the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. The Commission notes, pursuant to the above referenced policies of the LCP, that the construction of a shoreline protection device for development, may only be allowed when no feasible alternatives to the construction of the proposed seawall exist.

Even though the precise impact of a structure on the beach is a persistent subject of debate within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whether it is a vertical bulkhead or a rock revetment. The main difference between a vertical bulkhead and rock revetment seawall is their physical encroachment onto the beach. However, it has been well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or vertical bulkhead will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach and the interruption of alongshore processes

In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering that, "Seawalls usually cause accelerated erosion of the beaches

fronting them and an increase in the transport rate of sand along them."[1] Ninety-four experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement of the adverse effects of shoreline protective devices:

> ***These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.***[2]

The impact of seawalls as they are related to sand removal on the sandy beaches is further documented by the State Department of Boating and Waterways:

> ***While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.***[3]

Finally this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

> ***Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.***[4]

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself. He concludes that:

> ***Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide***

---

1 Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.
2 Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.
3 State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976), page 30.
4 Coastal Sediments '87.

> ***enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.***[5]

Dr. Everts further concludes that armoring in the form of a shoreline protection device interrupts the natural process of beach retreat during a storm event and that, "a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat." Therefore, the Commission finds that a shoreline protective device, over time, will result in potential adverse effects to the beach sand supply resulting in increased seasonal erosion of the beach and longer recovery periods.

The impacts of potential beach scour is also important relative to beach use. Scour is the removal of beach material from the base of a cliff, seawall or revetment due to wave action. When waves impact on a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges that seawalls do affect the supply of beach sand. The subject property is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue. If the beach scours at the base of the bulkhead, even minimal scouring in front of the proposed retaining wall/bulkhead will translate into a loss of beach sand available (i. e. erosion) at an accelerated rate than would otherwise occur under a normal winter season if the beach were unaltered. A second impact of beach scour relates to the potential turbulent ocean condition. Scour at the face of a seawall would result in greater interaction with the wall and thus, make the ocean along Carpinteria City Beach more turbulent than it would along an unarmored beach area

In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that staff proposed for

---

5 Letter Report dated March 14, 1994 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Craig Everts, Moffatt and Nichol Engineers.

several other projects that were being heard by the Commission on the same day as this project.

3. Conclusion

The proposed project includes the demolition of more than 50% of an existing residence and the construction of a significantly larger new residence with a 7 ft. high concrete block retaining wall. The subject site is located between Sandyland Road and Carpinteria City Beach in a built-out area of Carpinteria consisting primarily of multi-family residential development. As previously discussed in detail, the Commission notes that Carpinteria City Beach is subject to periodic episodes of beach erosion and flooding from severe storm events and that the proposed development may be subject to potential wave action. In past years, the City of Carpinteria has constructed a large sand berm along Carpinteria City Beach (approximately 20 ft. seaward of the proposed deck dripline) on an annual basis (subject to a coastal development permit) to protect the private residential development located along Sandyland Road, including the subject site, which could otherwise be subject to potential wave action during storm events.

The Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. However, as discussed above, the Commission finds that the project will not result in significant seaward encroachment by new development on a sandy beach.

It is not possible to completely predict what conditions the proposed residence may be subject to in the future. The construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act as included in the certified LCP as a guiding policy. In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that staff proposed for several other projects that were being heard by the Commission on the same day as this project.

Therefore, for the reasons discussed above, the Commission finds that the proposed project is consistent with Policies 3-1, 3-3, 3-8, 3-11, and 3-12 of the certified LCP or

with Sections 30235, 30251, or 30253 of the Coastal Act which have been included in the certified LCP as guiding policies.

E. Public Access

The City of Carpinteria Local Coastal Program, consistent with the Chapter 3 policies of the Coastal Act, mandates the provision of maximum public access and recreational opportunities along the coast. The LCP contains several policies which address the issues of public access and recreation along the coast.

Policy 7-1 of the LCP states:

> ***For new developments between Sandyland Road and City Beach, the City shall determine the extent to which the land proposed for development has historically been used by the public for informal parking and beach access and shall require adequate provision for continuation of such use.***

Policy 7-2 of the LCP states:

> ***No above-ground structure or other development, except for public health and safety purposes, and recreational facilities of a temporary nature (e.g., volleyball nets) shall be sited on any dry sandy beach within the City's jurisdiction.***

Policy 7-13 of the LCP states, in part:

> ***For all developments between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory...At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide.***

In addition to the above referenced policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act.

Coastal Act Section **30210** states that:

> ***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.***

Coastal Act Section **30211** 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.***

Coastal Act Section **30212(a)** provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, 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 access 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.***

Section **30220** of the Coastal Act states that:

> ***Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.***

As previously noted, in addition to any applicable policies of the LCP, all projects located between the first public road and the sea requiring a coastal development permit, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Based on the access and recreation sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential adverse effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The subject site is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue.

The Commission must consider a project's direct and indirect effect on public areas of the beach. To protect public beach areas when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public beach (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on public beach land, whether the development will indirectly affect public areas of the beach by causing physical impacts to tidelands and shoreline processes.

The project does not have any impact on the nearby public accessway or the existing beach parking. While the Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck, the Commission finds that the proposed residence will not result in significant seaward encroachment by new development on the sandy beach. As such, the Commission notes that the location of the proposed development will not result in significant adverse effects to public access along the sandy beach.

Although the applicant has not submitted any information regarding the location of the mean high tide line, the Commission notes, based on the width of the subject beach, that the proposed development is likely located landward of the mean high tide line. However, the Commission also notes that even structures located above the mean high tide line, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. Specifically, the Commission notes that if a shoreline protection device results in increased beach erosion, the effect would be a reduction in the amount of beach available for public use. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands.

In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

The beaches of Carpinteria are extensively used by visitors of both local and regional origin and the Commission notes that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. The construction of a new seawall to protect the proposed new development would not be consistent with Policy 3-1 of the LCP and with Section 30235 of the Coastal Act which has been included in the LCP as a guiding policy. In this case, the applicant's engineering consultant has indicated that the proposed retaining wall is not intended to function as a seawall. Further, the applicant has stated that a shoreline protective device is neither proposed or necessary to protect the proposed development. Therefore, to ensure that the proposed project is consistent with Policies 3-1 and 3-3 of the LCP and Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special

Condition One (1) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is identical to the condition that the staff proposed for several other projects that were being heard by the Commission on the same day as this project.

Therefore, the Commission finds that the proposed project is consistent with the public access and recreation policies of the Coastal Act and with the certified Carpinteria Local Coastal Program.

F. Visual Resources

Policy 4-1 of the LCP states, in part, that:

> ***Broad unobstructed views from the nearest public street to the ocean...shall be preserved to the extent feasible. In addition, new development located on or adjacent to bluffs, beaches, or streams , or adjacent to Carpinteria Marsh shall be designed and sited prevent adverse impacts on the visual quality of these resources.***

Policy 4-1 of the LCP requires that new development be designed and sited in order to prevent any adverse impacts to public views to and along the Carpinteria shoreline. In addition, Coastal Act Section 30251, which is included in the certified LCP as a guiding policy, requires that visual qualities of coastal areas shall be considered and protected and, where feasible, degraded areas shall be enhanced and restored.

The subject site is located immediately landward and adjacent to the Carpinteria City Beach (a public beach area) and approximately 400 ft. west (upcoast) of Carpinteria State beach. In addition, the subject site is located approximately 40 ft to the east (downcoast) from an existing public vertical accessway and public beach parking lot located at the terminus of Elm Avenue. The LCP requires that public views to the ocean from Linden Avenue must be preserved to the extent feasible. See Carpinteria LCP at page 30. The development does not obstruct the view of the ocean from Linden Avenue.

As previously discussed in detail, the proposed development will not be located substantially further seaward than the previously existing development on the subject site. Specifically, the Commission notes that the proposed deck for the new residence extends approximately 1.5 ft. further seaward than the previously existing deck and that the proposed residence extends approximately 8 ft. or more further seaward than the previously existing structure. In the case of the proposed project, the Commission notes that the proposed project will not result in the significant seaward encroachment by new development on the sandy beach and will therefore not result in adverse effects to public views to or along the sandy beach.

Therefore, the Commission finds that the proposed project is consistent with Policy 4-1 of the LCP or with Section 30251 of the Coastal Act which has been included in the certified LCP as a guiding policy.

G. Violations

Development has occurred on the subject site without the required coastal development permit consisting of the partial demolition (820 sq. ft.) of an existing 1,620 sq. ft. single family residence with 500 sq. ft. of non-habitable underfloor area and a 3 ft. high retaining wall; and the construction of a new 2,130 sq. ft. single family residence with a 1,000 sq. ft. basement and a 7 ft. high retaining wall. Although a coastal development permit is required for the proposed project, the proposed project was approved, in error, by the City pursuant to an administrative building permit on November 16, 1998. All proposed development has already been constructed.

Although construction has taken place prior to the issuance of a coastal development permit, consideration of the application by the Commission has been based solely upon the policies of the certified Carpinteria Local Coastal Program and the Chapter 3 public access and recreation policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to potential violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit. This additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit.

H. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). 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.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

APPENDIX

STUDIES AND PUBLICATIONS

Chrisiansen, Herman. "Economic Profiling of Beach Fills" in Coastal Sediments '77. 1977.

Dean, Robert G., "Coastal Sediment Processes: Toward Engineering Solutions". Coastal Sediments '87.1987.

Denison, Frank and Hugh Robertson. "Assessment of 1982-83 Winter Storms Damage to Malibu Coastline". California Geology. September 1985.

Field et. al. Union of Concerned Scientists and The Ecological Society of America, Confronting Climate Change in California, Ecological Impacts on the Golden State, November 1999.

Griggs, G., J. Tait, and W. Corona. "The Interaction of Seawalls and Beaches: Seven Years of Monitoring, Monterey Bay, California". Shore and Beach. Vol. 62, No. 3. 1994

Hale. "Modeling the Ocean Shoreline". Shore and Beach (Vol. 43, No. 2). October 1975).

Johnson. "The Significance of Seasonal Beach Changes in Tidal Boundaries". Shore and Beach. (Vol. 39, No. 1). April 1971.

Kraus, Nicholas. "Effects of Seawalls on the Beach". Journal of Coastal Research. Special Issue # 4, 1988.

Kuhn, Gerald G. Coastal Erosion along Oceanside Littoral Cell, San Diego, California. 1981.

Maloney & Ausness. "The Use and Legal Significance of the Mean High Water Line Coastal Boundary Mapping". 53 No. Carolina L. Rev. 185 (1974).

McDougal, W.G., M.A. Sturtevant, and P.D. Komar. "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties". Coastal Sediments '87. 1987.

National Academy of Sciences. Responding to Changes in Sea Level, Engineering Implications. National Academy Press, Washington D.C. 1987.

Shalowitz, Shore and Sea Boundaries, Vols. I and II (1962, 1964).

Shepard, Beach Cycles in Southern California, Beach Erosion Board Technical Memorandum No. 20 (U.S. Army Corps of Engineers, 1950).

State of California. State Department of Boating and Waterways (formerly Navigation and Ocean Development). Shore Protection in California. 1976.

Tait, J.F and G.B. Griggs. "Beach Response to the Presence of a Seawall: A Comparison of Field Observations". Shore and Beach. Vol. 58, No. 2, pp 11-28. 1990.

Thompson, "Seasonal Orientation of California Beaches". Shore and Beach (Vol. 55, Nos. 3-4). July 1987.

LETTERS and MEMOS

Letter to Lesley Ewing from Douglas Inman, Ph.D., February 25, 1991

Letter to Lesley Ewing from Dr. Craig Everts of Moffatt and Nichols Engineers, March 14, 1994