CALIFORNIA COASTAL COMMISSION
SOUTH COAST AREA DISTRICT
200 OCEANGATE, SUITE 1000
LONG BEACH, CA 90802
(562) 590-5071

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Staff: Karl Schwing-LB; Louise Warren-SF
Staff Report: 7/17/2008
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Commission Action:

Th13a

CLAIM OF VESTED RIGHTS

STAFF REPORT AND RECOMMENDATION

CLAIM NO: 5-07-412-VRC

CLAIMANT: DRIFTWOOD PROPERTIES, LLC

PROJECT LOCATION: Northern terminus of Driftwood Drive, Laguna Beach, Orange County.

ASSESSOR'S PARCEL NO.: 056-240-65 and 656-191-40

DEVELOPMENT RIGHT CLAIMED: Right to graded pads and the right to maintain those pads, including fuel modification in compliance with the requirements of the City of Laguna Beach.

SUBSTANTIVE FILE DOCUMENTS: Latham and Watkins (2007) letter dated November 20, 2007 from Rick Zbur to California Coastal Commission Re Driftwood Properties Claim of Vested Rights Application…with attachments including vested rights claim application, vicinity map, aerial photographs dated 1959, 1962, 1965, and 1972, letters from the City of Laguna Beach to Driftwood Properties from October 2007, oblique aerial photograph dated 1956, and Grant Deed recorded in April 2004; Latham and Watkins (2008a) letter dated March 7, 2008 from Rick Zbur to Karl Schwing Re Driftwood Properties: Response to Commission's Notice of Incomplete Claim of Vested Rights…with attachments including vicinity map, aerial photos dated 1959, Pre-May 18, 1962, May 18, 1962, 1965 and 1972, receipts for various erosion control measures undertaken in 2004, bill for biological services from February 2008, letters from the City of Laguna Beach to Driftwood Properties from October 2007, copy of emergency Coastal Development Permit 5-07-440-G, copy of preliminary title report, and oblique aerial photograph dated 1956; Latham and Watkins (2008b) letter dated April 1, 2008 from Rick Zbur to Karl Schwing Re Driftwood Properties: Response to Commission's March 17, 2008 letter…with attachments including vicinity map, aerial photograph from 1959, aerial photograph titled 'Pre-May 18, 1962 Site Graded', aerial photograph dated May 18, 1962, aerial photograph dated 1965, aerial photograph dated 1972, copies of index cards related to grading on nearby sites, copies of various County of Orange Grading and Building Code Ordinances beginning with Ordinance 1183 from 1959, copies of various City of Laguna Beach Grading and Building Code ordinances beginning in 1976; Latham and Watkins (2008c) letter dated June 2, 2008 from Rick

Zbur to Karl Schwing Re Driftwood Properties: Response to April 23, 2008 Commission Letter…with attachments including cost estimate to grade property today, 1958 Uniform Building Code Volumes I and III, May 2008 Biological Report by PCR, and graphic identifying location of claim of vested right; Teasdale (2008) Brief in Support of Notice of Incomplete Claim of Vested Rights by Betty C. Carrie Teasdale dated April 8, 2008 with attachments including excerpts from 1927 Uniform Building Code, Health and Safety Code Section 19120 enacted in 1939, Health and Safety Code Sections 19130-19133 enacted in 1941, copy of ordinance 351, excerpts from The Codified Ordinances of the County of Orange adopted November 29, 1961 by Ordinance No. 1414; Copy of assessors map obtained from the County of Orange identifying zoning date stamped April 15, 1962; e-mail from Penny Elia to Louise Warren, Karl Schwing and Andrew Willis regarding Blasting in South Laguna dated April 17, 2008; e-mail with attachments from Penny Elia to Karl Schwing and Andrew Willis regarding Excerpt from Tracts 1616 and 2067 - contemporary permits in Hobo Aliso Ridge neighborhood; Erosion Control Plan, Driftwood Estates prepared by RBF Consulting dated 11/5/04 which depicts existing site topography.

ACTION: Commission Hearing and Vote

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights made by Driftwood Properties, LLC (Driftwood) regarding the graded pads on the property referred to as Driftwood Estates and located at the northern end of Driftwood Drive in the City of Laguna Beach, Orange County (Driftwood Estates). Driftwood also claims a vested right to "maintain" these graded pads, including, but not limited to, removal of vegetation for fuel modification purposes, if necessary. The staff also recommends denial of this second claim.

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 were obtained at the time the development occurred and, in good faith reliance on those permits, the owner performed substantial work and incurred substantial liabilities.

Vested rights law is designed to allow people to complete fully authorized development despite an intervening change in the law that might affect those approvals. Thus, even if one had a vested right to complete fully authorized grading, that vested right only entitles one to complete the grading; any future development is subject to the law existing at the time of the future work. Driftwood asserts the grading on this property was completed before May 18, 1962. Even if such grading were fully authorized, once the grading was complete, any future use or development on such property is subject to existing law when that future development takes place, including the Coastal Act.

Driftwood has not provided the Commission with evidence that any permits or approvals were obtained prior to the grading. In the absence of any evidence that the appropriate permits for this development were obtained, Driftwood claims that no grading permits, or any other approvals, were required to extensively grade property in Orange County before August 1962. However, a review of the 1961 Codified Ordinances for Orange County shows that the owner of Driftwood Estates was required to obtain, at a minimum, a certificate of use and occupancy and potentially an excavation permit and a variance before grading the property. In addition, anecdotal evidence suggests that explosives were used for this initial grading, so a permit to use explosives would have been required as well. Thus, Driftwood has failed to meet its burden to prove that the grading for which it seeks a vested right was undertaken lawfully. Its claim for a vested right must therefore be denied.

Driftwood also claims that even if grading or other permits were required at the time the pads were graded, it is entitled to a presumption that the grading was undertaken lawfully. This argument is unsupported by the Coastal Act or by any case law interpreting the requirements for establishing vested rights under the Coastal Act. Driftwood's argument is that the Commission may simply assume as fact the primary evidence that Driftwood is required to produce to substantiate its claim. None of the legal authority cited by Driftwood supports this argument, particularly in the context of a claim for vested rights. Driftwood has thus failed to prove that it is entitled to a vested right to the graded pads, as it cannot base its claim for a vested right on a presumption that all necessary approvals were obtained.

Even if one were to assume that the grading that took place on the property needed no governmental approvals, as Driftwood claims, Driftwood has presented no clear evidence or documentation that the graded pads and adjacent areas were regularly cleared of vegetation or "maintained" after they were graded and prior to the enactment of the Coastal Act. An analysis of aerial photographs from 1962 through 1977 reveals that the graded pads in fact revegetated between 1962 and 1977. A 1970 image may provide evidence of vegetation removal in a limited area (less than .1 acre), but this is the only evidence of which Commission staff is aware of any possible vegetation removal in the approximately 15 years between grading and the effective date of the Coastal Act.

Moreover, even if some maintenance had occurred between 1962 and 1977, the graded pads were clearly vegetated at the time the Coastal Act was enacted, as shown in the January 1977 aerial photograph from the Commission's archives. (Exhibit #11, page 12). In order to prevail on a claim for a vested right to continue clearing those pads, Driftwood would need to show that it had pre-Coastal Act authorizations to clear the pads and that the property owner had performed substantial work and incurred substantial liabilities in reliance on those authorizations. Driftwood has presented no such evidence; therefore it cannot sustain a claim for a vested right to clear these pads of vegetation.

For these reasons, staff concludes that there is no basis to find a vested right to the existing graded pads or to maintenance of those pads.

I. STAFF RECOMMENDATION FOR DENIAL OF CLAIM

The Executive Director has made an initial determination that Claim of Vested Rights 5-07-412-VRC has not been substantiated. Staff recommends that Claim of Vested 5-07-412-VRC be rejected.

Motion: *"I move that the Commission determine that Claim of Vested Rights 5-07-412-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion 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 5-07-412-VRC is not substantiated and adopts the Findings set forth below.

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 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, ….

[1] The Coastal Act is at Public Resources Code sections 30000 to 30900.

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 to complete 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 Act of 1972 (commencing 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, i.e., the Coastal Act, for the site at issue is January 1, 1977. The subject property was not subject to the Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative") because it was outside the area covered by Proposition 20, and therefore no coastal development permit was needed from the California Coastal Zone Conservation Commission prior to conducting development in the years 1973 through 1976. Pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no CDP would be required to complete 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.

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. 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 the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from CDP requirements to complete that specific development only. Any substantial changes to the 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.

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. 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.[2] 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.[3] 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 Community Developers, Inc. v. South Coast Regional Commission* (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 that construction in accordance with the terms of the permit. The court contrasted the affirmative approval of the proposed project through the issuance of a permit with the existence of a zoning classification, which provides no specific authorization for any given 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 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 Community Developers, inc. v. South Coast Regional Commission, 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.[4] 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

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[2] Quoting *Spindler Realty Corp. v. Monning*, 243 Cal. App.2d 255, 269, quoting *Anderson v. City Council*, 229 Cal. App.2d 79, 89.
[3] Quoting City of Long Beach v. Mansell, 3 Cal. 3d 462, 496-97.
[4] *See, e.g., Patterson v. Central Coast Regional Commission* (1976), 58 Cal. App. 3d. 833; *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785; *Tosh v. California Coastal Commission* (1979) 99 Cal.App.3d 388; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729. *Halaco Engineering Co. v. South Central Coast Regional Commission* (1986), 42 Cal. 3d 52 (metal recycling); *Monterey Sand Co., Inc. v. California Coastal Commission* (1987), 191 Cal. App. 3d 169 (sand dredging).

complete such construction. *Avco Community Developers, Inc. v. South Coast Regional Commission* (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 include a building permit or other legal authorization.
>
> 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.

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 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 Regional Commission* (1976) 17 Cal.3d 785, 797)). In evaluating a claimed vested right to continue a nonconforming business or activity (i.e., a use that fails to conform to current zoning laws/regulations), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687 (holding that a property owner had obtained a vested right to continue mining operations at a quarry that had been in continuous use for more than 50 years).

B. Background Regarding Property

1. The Property

The property at issue is a 5.8 acre portion of approximately 69 acres (consisting of two legally created parcels) located at the northern terminus of Driftwood Drive in Laguna Beach in Orange County (Exhibits 1 and 2).[5] The property is currently zoned R1, which would allow one single

[5] There is some question as to the exact boundaries of the property at issue, as the City of Laguna Beach approved two lot line adjustments on the property in 1995, but did not issue the necessary CDPs for these adjustments. A

family residence per parcel. The steeply sloping hillside property contains large areas of dense southern maritime chaparral (a rare, sensitive plant community) and big-leaved Crownbeard (listed as 'threatened' by the State and Federal governments). A watercourse extends across the eastern region of the property, terminating near a municipal water tank. Hobo Canyon and a second significant drainage course border the northwestern edge of the property. Crownbeard inhabits the watercourses and adjacent areas and the graded pads.

Driftwood alleges that an approximately 8.1 acre portion of the property was graded prior to May 1962, creating approximately 14 flat graded pads. Information from local citizens suggests that the property was graded in part by using dynamite to blast the existing bedrock on the steep slopes, and Driftwood has not presented evidence as to how the building sites were initially graded.

The subject property is currently owned by Driftwood Properties LLC and is identified as Assessor Parcel Numbers 056-240-65 and 656-191-40. Driftwood Properties LLC acquired a total of 120.99 acres, including the subject property, from the Esslinger Family Trust in Spring 2004. A member of the Esslinger family, or the Esslinger Family Trust, held title to the property when the initial grading took place. The property is currently managed by the Athens Group.

2. Previous Commission Action

Several prior permits (with amendments thereto) have been granted by the Commission to the predecessor in interest to Driftwood Properties LLC, the Esslinger Family Trust, for storm drain improvements within their property that included a mobile home park and the subject property now owned by Driftwood Properties LLC: coastal development permits G5-95-286, 5-95-286, 5-95-286 A, 5-96-048, and 5-98-151. In addition, there have been several enforcement actions connected with this site, including actions related to clearance of major vegetation on the site, placement of sandbags near the graded pads, and whether a coastal development permit was needed or obtained for a lot line adjustment. For details on the substance of these permits and enforcement actions please see Exhibit #5.

C. Development Claimed As Exempt From Coastal Act Requirements

Driftwood claims that it has a vested right to an unspecified number of graded pads on a 5.8 acre portion of the property commonly known as Driftwood Estates and that it may maintain those pads, including, but not limited to, removing vegetation on the pads for fire safety purposes, as required by the City of Laguna Beach. Driftwood has submitted aerial photographs from 1962 (Exhibits #13 and #14), 1965 (Exhibit #16) and 1972 (Exhibit #17) that show generalized outlines of the graded areas to which it is claiming a vested right. In its June 2, 2008 submission

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determination of the exact boundaries of the property generally is not critical to the determination of Driftwood's claim for a vested right, therefore the Commission does not address the boundary issue in this report. By not discussing this issue, however, the Commission is in no way conceding that the current configuration of the lots is legal, nor does the Commission waive its right to seek enforcement action related to the illegal lot line adjustments through a separate action.

to the Commission, Driftwood clarified that it claims a vested right to all graded areas within a 5.8 acre portion on the site, as depicted in the attached exhibit. (Exhibit #2).

D. Evidence Presented by Claimant

In support of its application, Driftwood has presented the following factual evidence: (1) aerial photographs depicting the site in 1959 (Exhibit #12), an unspecified date pre-May 1962 (Exhibit #13), May 18, 1962 (Exhibit #14), 1965 (Exhibit #16) and 1972 (exhibit #17), which, as of 1962, show the generalized outlines of the graded pads; (2) letters dated October 2007 from the City of Laguna Beach regarding fire hazards; (3) a grant deed recorded in 2004 conveying the subject property from the Esslinger Family Trust to Driftwood Properties, LLC; (4) invoices from October 2004 related to placement of sandbags on the property, and an invoice from the City of Laguna Beach for "Biological Support Services" dated February 29, 2008; (5) an emergency permit for placement of up to 300 sandbags on the property from the California Coastal Commission dated December 13, 2007; (6) a preliminary title report; (7) copies of what appear to be index cards relating to the issuance of select grading permits by the County of Orange from 1963-1966 for properties in the general area of the subject site, but they do not appear to relate to the graded area that is the subject of this vested rights claim (these index cards generally include the date, an address, a permit number and the amount of grading); (8) various ordinances approved by the County of Orange relating to adoption of building or grading codes from 1959 to 2003; (9) various ordinances approved by the City of Laguna Beach adopting grading codes from 1976 to 2004; (10) a grading cost estimate for the cost of grading the property if it were graded in 2008; (11) Volumes I and III of the 1958 Uniform Building Code; (12) "Driftwood Properties Biological Resources/ESHA Assessment" prepared by PRC Services Corporation in May 2008; and (13) a diagram showing the areas of the property where Driftwood claims a vested right (Exhibit #2).

In order to evaluate a claim of a vested right, the relevant evidence focuses on what development took place and when, what governmental authorizations were required at that time, whether those authorizations were secured, and the liabilities the developer incurred in conducting the development in good faith reliance on such governmental authorizations. Thus, in this case, the evidence submitted by Driftwood that is relevant to the Commission's determination of its claim to a vested right are the aerial photographs showing development on the property and evidence pertaining to ordinances and approvals required by Orange County or other governmental entities when the grading took place. (Exhibits #3, #4, #7-9).

The aerial photographs show that the property was not graded in 1959. A May 18, 1962 aerial photograph, apparently obtained from the University of California at Santa Barbara archives, depicts several graded areas on the property. The generalized outlines of these pads are visible in aerial photographs in 1965 and 1972, and the pads themselves appear to revegetate over time.[6] Although not submitted by Driftwood, Commission staff has located aerial photographs of the property from 1970 (Exhibit #11, page 11), 1977 (Exhibit #11, page 12), 1979 (Exhibit #19), 1986 (Exhibit #11, page 13), 1993 (Exhibit #11, page 14), 2001 (Exhibit #20) and 2007 (Exhibit

[6] With the exception of the May 18, 1962 photograph, Commission staff has not been provided with the source of the photographs submitted by Driftwood nor has it been able to verify the dates of those photographs.

#11, page 15). These images show the pads in the process of revegetating, although the area consisting of the three graded pads immediately north of APN 056-191-29 (approximately .1 acres) appear to have been subject to vegetation removal prior to May 1970 and in between 1978 and 1986. (Exhibit #11)

The only pre-grading ordinance Driftwood has supplied to the Commission is Ordinance Number 1183, adopted on March 11, 1959, wherein the County of Orange adopts the 1958 Uniform Building Code (UBC) to regulate construction in Orange County and the 1958 UBC itself (Exhibit #7). The July 1962 Orange County ordinance submitted by Driftwood, adopting an excavation and grading code, as well as the various copies of cards referring to grading permits after the grading took place at Driftwood Estates, show only that grading permits were required in Orange County after August 1962, but they do not prove what permits were required prior to those dates, when the grading took place at Driftwood Estates.

The evidence submitted by Driftwood related to work undertaken on the property after the enactment of the Coastal Act, such as receipts from 2004 and letters from the City dated 2007, do not shed light on activities undertaken or permits required before the Coastal Act was passed, which is the relevant inquiry here.

E. Analysis of Claim of Vested Rights for the Graded Pads.

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. *Avco*, 17 Cal.3d at 791 (a property owner may obtain a vested right solely to complete construction according to the terms of a permit).

Once a property owner has completed the development allowed through existing approvals, he must comply with all current laws. *Spindler*, 243 Cal.App.2d at 268-69 (property owner had a vested right to complete authorized grading, but it had to comply with new zoning laws when obtaining permits for additional development on the property, even though the completed grading was designed for structures that were no longer allowed under the new zoning); *Avco*, 17 Cal.3d at 793 ("government cannot be estopped to enforce the laws in effect when the permit is issued.").

Driftwood may therefore only prove a vested right to complete development begun, after securing all necessary governmental approvals, prior to January 1, 1977. If the development was completed lawfully (i.e. with all required permits) prior to the enactment of the Coastal Act, any future modifications to that development are still subject to existing law at the time those new modifications or development take place. *Id.* For example, if one were claiming a vested right to complete construction of a house that had been fully authorized prior to the enactment of the Coastal Act, one could obtain a vested right to complete the house as approved, but any future maintenance, additions, or remodels of the house would be subject to the requirements of the Coastal Act.

Thus, even if Driftwood could sustain its burden of proving the owner of Driftwood Estates had secured all necessary permits when it graded the property, which it cannot, as discussed below, any subsequent development on the property is still subject to any existing laws at the time the new development takes place. Driftwood must therefore comply with the provisions of the Coastal Act in order to undertake any development, such as removal of major vegetation from the graded pads, regardless of whether it has a vested right in those pads.

1. Driftwood Has Presented No Evidence of Any Necessary Approved Permits Obtained Prior to the Commencement or Completion of Grading.

In order to establish a vested right, a claimant must present evidence that all necessary government approvals were obtained prior to the development for which it seeks to establish a vested right. Although Driftwood claims that the law in effect in early 1962 required no approvals in order to undertake extensive grading at Driftwood Estates, the evidence shows that at a minimum, Orange County did require a certificate of use and occupancy and, likely, an excavation permit, a variance, and an explosives permit to grade the pads. Driftwood has presented no evidence that these or any other permits were obtained prior to grading the property.[7] It has therefore failed to sustain its burden of proof to establish a vested right to the subject graded pads.

As described above, the legal basis for a vested rights claim is equitable estoppel. *Billings v. California Coastal Commission*, (1980) 103 Cal.App.3d 729, 735 ("The vested rights rule is neither a common law rule nor a constitutional principle, but a manifestation of equitable estoppel"). The theory supporting these claims is that if one has obtained all necessary permits to undertake development, and one has performed substantial work or incurred substantial liability in good faith reliance on those permits, then it would be unjust for a government agency to rescind those approvals after a change in the applicable law. Thus, in order to establish a vested right, the claimant must show that it had all necessary government authorizations. *J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844, (citing, *People v. County of Kern* (1974) 39 Cal.App.3d 830, 838 (unless owner possesses all necessary permits, the mere expenditure of funds or commencement of construction does not vest any rights in the development).)

Here, Driftwood has not submitted a permit or other evidence of any approvals obtained prior to the commencement of grading at Driftwood Estates. It simply claims that the owner of Driftwood Estates needed no governmental approvals before it graded the pads on the property in early 1962. In support of this claim, Driftwood has submitted an Orange County ordinance from 1959 (Ordinance #1183) wherein Orange County adopted the 1958 Uniform Building Code to regulate construction of buildings and structures in Orange County. The 1958 UBC focuses on regulation of the construction of structures, so it does not include regulations related to grading. Driftwood also submitted Ordinance #1504, dated July 25, 1962, in which the Board of Supervisors adopted an excavation and grading code. Finally, Driftwood has submitted index

[7] The opponents of Driftwood's vested rights application have submitted a brief describing other reasons why Driftwood's claim is unsubstantiated. That brief is a substantive file document and is available upon request.

cards that evidence grading permits obtained by a number of different entities after the date on which the Driftwood Estates property was graded. This evidence shows that after the subject grading took place, Orange County adopted an excavation and grading code and that various entities obtained grading permits, although from what Commission staff can discern none of these index cards relate to grading on the 5.8 acres subject to this vested rights claim. This evidence does not prove that a grading permit was not necessary prior to those dates, when the grading on the property actually took place. In fact, the Orange County zoning code makes reference to a required excavation permit, suggesting that such permits were required when the subject grading took place.

Regardless of whether the owner of Driftwood Estates needed a specific grading permit, however, it still needed some governmental authorizations prior to grading, as described below. Driftwood cannot sustain its vested rights claim without presenting evidence that these approvals were obtained.

In the early 1960s, the Codified Ordinances of Orange County required a certificate of use and occupancy before vacant land could be occupied or used, except for use for agricultural purposes not relevant to this claim for a vested right.[8] The code required a "[w]ritten application for a certificate of use and occupancy for use of vacant land or for a change in the character of the use of land, … before any such land shall be so occupied or used." Ordinance #351, §23 (Exhibit #6, page 11); The Codified Ordinances of Orange County, 1961 (1961 Code) §78.0292(c)(Exhibit #8, page 37). Each certificate of use and occupancy was required to include a statement that the proposed use of the land complied with all of the provisions of the applicable zoning code. *Id.* at §78.0292(d).

Extensive grading of undeveloped land consists of a use of land as well as a "change in the character of the use of land," for which a certificate of use and occupancy was required. Such certificates certified that the proposed use of vacant land was consistent with the applicable zoning code. The portion of the applicant's property that was graded was located in the R1 zone, as it is today. Under the 1961 Code one single family residence was allowed per legal parcel in the R1 zone. 1961 Code §78.0214.2. The subject property spans two legal parcels, so at most, two single family residences would have been allowed in the graded area consistent with the R1 zoning designation. In addition, the 1961 Code specified that the minimum building site size in the R1 zone was 7,200 square feet (in the 1935 code it was 6,000 square feet in the R1 zone). 1961 Code §78.0214.6(a); Ordinance #351 §10(c).

The graded site consists of approximately 14 flat graded building pads, rather than the two that would have been allowed under the zoning code, and at least nine of those pads are well under

[8] See Section 23 of Ordinance #351, enacted in 1935 and Section 78.0292 of the 1961 Codified Ordinances of Orange County for the requirements for obtaining a certificate of use and occupancy. Although the precise date that the grading on the subject property took place is unknown, Driftwood and the Commission agree that it was some time between 1959 and May of 1962. Section 23 of Ordinance #351 is identical in all respects that are material here with the provisions of Section 78.0292 of the 1961 code. Thus, it is reasonable that these same provisions would have applied between 1935 and any amendments to the 1961 code. Cites in this staff report will be to both Ordinance #351 and the 1961 Codified Ordinances. Driftwood bears the burden of proving that these provisions did not apply on the date the grading took place on this property.

the minimum allowed building site, as they range in size from 900 square feet to 2,600 square feet. Thus, the property as it was graded was inconsistent with the Orange County zoning code.

A certificate of use and occupancy therefore would not have been issued for this grading, unless the owner of the property had obtained a variance to develop the property inconsistent with the zoning code. However, under both the 1961 Code and Ordinance #351, the site as graded would not have qualified for a variance. Section 19 of Ordinance #351 allows variances to reduce the lot area requirements under certain conditions, but the lot area could not be reduced more than 50%. The 1961 Code only allowed variances for building site reductions of less than 10%. Therefore, at least nine of the graded building pads were well under the minimum size required even if the prior owner had sought a variance. Driftwood bears the burden of proving that the prior owner obtained the required certificate of use and occupancy and a variance for the grading that took place on the site in the early 1960s. It has not presented any evidence that these authorizations were obtained or that they could have been obtained for the development on the property.

Furthermore, both Ordinance #351 and the 1961 Code reference a requirement for an excavation permit. Specifically, they state: "[n]o permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy." Ordinance #351 §23; 1961 Code §78.0292(e). While Commission staff has been unable to find the specific sections of these codes that contained the excavation permit requirements, clearly such a requirement existed both in 1935 and in 1961, or it would not have been referenced in relation to the application requirements for a certificate of use and occupancy. Driftwood's claim for a vested right should therefore be rejected on the additional ground that it has not provided the Commission with evidence that an appropriate permit for excavation was obtained before the grading took place.

Finally, members of the local community have presented evidence that the property was graded using explosive materials. (Exhibit #21) Section 12101 of the 1961 Health and Safety Code required that the local fire chief issue a permit before any person could receive or possess explosives. Cal. Health & Safety Code (1961) §12101. (Exhibit #9). The application for such permit required the place where and the purposes for which the explosives were intended to be used. *Id.* at § 12102(b). If explosives were used to grade the Driftwood Estates property, as alleged by local residents, then a permit would have been required prior to such use. Driftwood has not presented evidence that such a permit was obtained before explosives were used on the property.

The foundation for any vested rights claim is that the claimed activity was undertaken based on appropriate governmental approvals. A claimant cannot establish a vested right to development without first proving that it obtained the necessary authority to develop. In the absence of any evidence of appropriate approvals, a claimant cannot show that he relied on such approvals to his detriment, so he cannot estop a government agency, through a claim for vested rights, from applying applicable laws. Driftwood has presented no evidence that any governmental approvals were obtained before the grading took place at Driftwood Estates. Driftwood instead relies on its tenuous claim that not a single governmental authorization was required before the prior owner undertook extensive grading at the site. This claim is not credible, as, at a minimum, the owner

of the site needed a certificate of use and occupancy and possibly a variance, an excavation permit or a permit to receive or possess explosives for the grading. Because Driftwood has presented no evidence of these required approvals, it has failed to sustain its burden of proof, and it therefore has no vested right to the graded pads.

2. For a Vested Rights Claim, There Is No Presumption That The Grading Was Conducted Lawfully.

Although Driftwood claims that no governmental approvals were necessary before grading the property prior to May 1962, it alternately asserts that even if permits were necessary, it still has a vested right to the graded pads because it is entitled to a presumption that the pads were graded legally. Driftwood is essentially claiming that it may simply rely on a general presumption to prove an essential element of its claim for a vested right. Driftwood has not cited a single case in which a court found a vested right by assuming the necessary governmental approvals had been obtained. The very basis of a claim for a vested right is that the development subject to the right was begun in good faith reliance on the necessary governmental authorization, and no court has simply presumed that such activities were lawful, much less that they were undertaken in good faith reliance on such approvals. If this argument were adopted, it would inappropriately shift the burden of proof from the applicant to the agency, as the applicant could claim in every case that it is simply entitled to a presumption that it obtained all necessary governmental approvals prior to undertaking development. This novel argument is clearly contrary to the substantial body of vested rights law.

The analysis for a vested rights claim starts with a review of the permits obtained by the applicant and an analysis of the scope of those approvals. *See, e.g., Avco* 17 Cal.3d at 789, *Billings* 103 Cal.App.3d at 733-34, *Aries*, 48 Cal.App.3d at 544-46, *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 722-23. In order to prevail in a claim for vested rights, the applicant must show that he obtained governmental approvals and that he relied on those approvals to his detriment. *Raley v. California Tahoe Regional Planning Agency,* (1977) 68 Cal.App.3d 965, 977-78 ("the vested rights rule establishes a stage of progress when reliance upon governmental assurances estops the government from asserting new or different regulations."). Without presenting evidence of governmental approvals, the applicant has not sustained its burden of proving that he relied on those approvals to his detriment. As the court stated in *Anderson v. City Council* (1964) 229 Cal.App.2d 79, 89, ("[w]here no … permit has been issued, it is difficult to conceive of any basis for … estoppel.").

In *Aries v. California Coastal Commission*, the court reiterated that an essential element of a vested rights claim is evidence of valid governmental approvals.

> In other words, an owner of property acquires a vested right to construct a building only where the conduct of the government amounts to a representation that such construction is fully approved and legal, subject only to minor alterations, and in reliance on such representation the owner materially changes position. Good faith reliance on a governmental permit is essential to the acquisition of a vested right. *Aries*, 48 Cal.App.3d at 548.

It is difficult to conceive of how a property owner could prove justifiable reliance without presenting any evidence of the permit or authorization on which he supposedly relied. The Commission staff is not aware of a vested rights case in which a court found a vested right to development in the absence of any evidence establishing that the claimant had obtained necessary approvals for the subject development. Without any legal support, therefore, Driftwood is asking the Commission to simply assume one of the key elements of a claim for vested rights – that the applicant received all necessary approvals to undertake the development.

Driftwood has presented no evidence to support its claim that the owner of Driftwood Estates obtained all necessary permits for the grading; it instead relies on several provisions of the California Evidence Code to suggest that it is entitled to a presumption that the prior owner obtained the appropriate permits for the grading. The very code on which Driftwood relies, however, states that "a presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." Cal. Evidence Code §600(a) (emphasis added).[9] A presumption cannot take the place of the evidence that Driftwood must produce to establish its claim. In addition, as explained in Evidence Code §600, a presumption is based on established facts in a case – Driftwood has not presented any facts from which a presumption that the prior owner of Driftwood Estates obtained necessary permits can be drawn. None of the other authorities Driftwood cites support an argument that, in the absence of supporting facts, a court may simply assume the key evidence needed for a plaintiff to establish his case, especially where, as here, the evidence supports the opposite assumption. As described in the prior section, the evidence shows that the grading was inconsistent with applicable zoning code requirements, so it is unlikely that any approvals or authorizations could have been obtained by the prior owner for development that was inconsistent with applicable law. Driftwood claims that it undertook an extensive search of the records of Orange County and found no record of approvals for the subject grading, and then concludes that because no such records were found the Commission should assume no such approvals were necessary. However, both the 1961 Code and Ordinance #351 required that a record of all certificates of use and occupancy be kept on file in the offices of the Director of Building and Safety (or, in the case of Ordinance #351 in the offices of the Building Inspector). If such a certificate of use and occupancy existed, therefore, Driftwood should have found it when searching the County's archives.

Driftwood relies on the case of *Ehlers v. Bihn* (1925) 71 Cal.App. 479, 487 to claim that there is a presumption that the law has been obeyed. In *Ehlers*, however, the facts related to performance under a contract to sell grapes, and it was not a vested rights claim. In that case, the

[9] Driftwood also cites various other sections of the California Evidence Code to support its claim that a necessary piece of evidence may simply be presumed. Section 606 states that presumptions affecting the burden of proof shift the burden of proof to the party against whom the presumption operates. Cal. Evid. Code §606. Section 660 defines certain types of presumption that affect the burden of proof. *Id.* §660. Section 664 creates a presumption that an official duty has been regularly performed. *Id.* §664. Taken together, these code sections mean that the burden of proof may shift to a party claiming that an official duty has not been regularly performed. Even if such statutory presumptions could be brought to bear here to obviate Driftwood's obligation to present evidence in support of its claim, Driftwood has not identified what presumption of a regularly performed official duty could support its claim that it received necessary permits prior to grading. It is not the regularly performed duty of county officials to solicit applications for land use permits.

testimony showed that the plaintiff had delivered her grapes in good condition and that there was no evidence presented by the defendant to the contrary. *Id.* The court then stated that in the absence of evidence to the contrary, the presumption is that the law has been obeyed. *Id.* In this context, the court was supporting its conclusion that, given the evidence showing the grapes had been delivered as required under the contract, and in the absence of evidence to the contrary, it could presume that the contract had been obeyed. The court did not simply presume, in the absence of supporting evidence, that the plaintiff had performed her obligations under the contract. This is the factual leap that Driftwood would like the Commission to take here.

In *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, another case relied upon by Driftwood but which is also not a vested rights case, the court reviewed the entire administrative record related to San Diego's adoption of an EIR for new development and with one exception noted that the City of Poway pointed to no evidence that San Diego did not appropriately exercise independent review of the relevant EIR. *Id.* at 1042. Ample evidence, in the form of the entire administrative record, was produced in that case to support a presumption that the City obeyed applicable law when reviewing the EIR. Here, Driftwood has not presented any evidence at all to support a presumption that the grading was performed legally.[10]

In sum, Driftwood cannot meet its burden of proof to establish a vested rights claim by asserting that the Commission may just assume the subject grading was conducted lawfully – no case or statute supports this position.[11] Driftwood's argument would allow one to assume the existence of the primary evidence necessary to establish a vested rights claim – the governmental approval upon which the claimant justifiably relied. Neither the cases cited by Driftwood nor the Evidence Code sections it cites support its position. To the contrary, these authorities make it clear that presumptions must be based on established facts and that presumptions do not constitute evidence. Driftwood has presented no evidence on the basis of which the Commission could find that Driftwood's predecessor had obtained the appropriate permits to grade Driftwood Estates. Instead, the evidence shows that the grading violated applicable zoning standards and therefore was unlikely to have received necessary authorizations. Thus, Driftwood has not sustained its burden of establishing a vested right to the graded pads.

F. Analysis of Claim of Vested Rights to "Maintain" the Graded Pads.

Even if one could obtain a vested right in a topographical feature, such as a graded pad, as opposed to a right to complete already authorized development, Driftwood has not presented the evidence that would be required to substantiate such a claim, such as evidence that the prior

[10] Driftwood suggests that the absence of a notice of violation from the County, the City of Laguna Beach or the Commission supports its presumption that the grading was legal. Neither the City nor the Commission had jurisdiction over the property when it was originally graded. As to the County, Driftwood has not presented any evidence that the County was even aware of the grading, much less that, had it been so aware, it would have had an affirmative duty to issue a notice of violation of any applicable land use codes. The existence of such a duty would have been extremely unlikely, as it would be contrary to generally accepted principles of prosecutorial discretion. Thus, one cannot presume, solely based on the absence of notices of violation, that there were no violations.

[11] In a March 7, 2008 letter from Rick Zbur to Karl Schwing (Exhibit 4), Driftwood cites four additional cases that it claims support its presumption that the grading was legal. None of these cases support a claim that a court may use a presumption, in the absence of any supporting facts, to assume the existence of evidence the plaintiff must produce to meet its burden of proof.

owner consistently removed vegetation from the graded pads between 1962 and 1977. Ultimately, Driftwood seeks to establish a vested right to remove vegetation from the graded pads without presenting evidence that such maintenance activities took place prior to the enactment of the Coastal Act.

1. Driftwood Has Not Presented Any Evidence That The Property Contained Cleared, Graded Pads on January 1, 1977.

One cannot sustain a claim for a vested right without establishing that one has all necessary approvals for such development and has performed substantial work and incurred substantial liabilities in good faith reliance on those approvals. Thus, the development to which one asserts a vested right must have actually been started before a vested right can be established. Driftwood has not presented any clear evidence that vegetation was regularly removed from the graded pads after the initial grading took place and before January 1, 1977.

Although Driftwood seeks a determination that it has a vested right to clear vegetation from the graded pads at Driftwood Estates, it has not demonstrated that on January 1, 1977, the effective date of the Coastal Act, these pads were clear of vegetation or in the process of being cleared of vegetation. It has not provided the Commission with evidence that the development to which it claims a vested right took place prior to the effective date of the Coastal Act. The available evidence instead shows that it is unlikely that any regular vegetation clearance took place between the time of the initial grading and the effective date of the Coastal Act.

A review of aerial photographs shows that the graded pads appear to have revegetated between 1962 and 1979. (Exhibit #s 11-19). In particular, the January 16, 1977 image (Exhibit #11, page 12) clearly illustrates the conditions on-site and shows vegetation in the area of the graded pads. The evidence therefore supports the conclusion that the pads were vegetated on January 1, 1977. Thus, Driftwood cannot obtain a vested right to clear these graded pads when as of the effective date of the Coastal Act they were vegetated.

2. Driftwood Has Failed to Substantiate Its Claim to a Vested Right to Maintain the Graded Pads.

Even if Driftwood had presented evidence that the graded pads were cleared of vegetation, pursuant to all required permits, on January 1, 1977, this does not provide it with the right to continually clear the graded pads without complying with Coastal Act requirements. As discussed above, a vested right provides a claimant with the right to complete fully authorized development, but any future activity must still comply with current existing laws. Thus, one could complete construction of a building to which one had a vested right, but any subsequent work on that building would have to comply with existing laws, such as building permit requirements.

The case law defining the scope of a vested rights claim assesses one's right to complete development already approved by a governmental authority, despite a change in the law that might affect the completion of such development. *See, e.g., Avco,* 17 Cal.3d at 791 ("It has long

been the rule in this state and in other jurisdictions 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 construction in accordance with the terms of the permit." (emphasis added)); *Billings*, 103 Cal.App.3d at 735 ("A vested right to complete the project arises only after the property owner has performed substantial work, incurred substantial liability and shown good faith reliance upon a governmental permit." (emphasis added)). Once the work authorized under existing permits has been completed, existing laws apply to any future use or development of the property. *Avco*, 17 Cal.3d at 793. Thus, at most, Driftwood could complete development it had substantially performed pursuant to necessary permits before the Coastal Act was enacted. It cannot start new development on the property without obtaining any new permits required for such activity.

Furthermore, even if one could obtain a vested right for "maintenance," which is a dubious assertion, Driftwood has presented no evidence that the graded pads were "maintained" prior to the enactment of the Coastal Act. In its March 17, 2007 letter Commission staff specifically requested that Driftwood present evidence of maintenance activities at Driftwood Estates, but Driftwood has presented no evidence of ongoing maintenance at the site, much less that the property owner obtained necessary approvals for this maintenance. (Exhibit #22). In fact, the available aerial photographs show that these pads were allowed to revegetate after the initial grading in 1962. (Exhibits #11-19). Any maintenance activities on the graded pads would therefore be subject to the provisions of the Coastal Act, as the evidence shows that the pads were not "maintained" prior to the enactment of the Coastal Act, so Driftwood could not have a vested right to such maintenance activities.

3. Removal of Major Vegetation From the Graded Pads Is Not Exempt Repair and Maintenance.

As explained above, Driftwood's clearance of vegetation from the graded pads is subject to the provisions of the Coastal Act, as it has no vested right to such ongoing maintenance. The Coastal Act provides a separate exemption for maintenance of legal structures. *See* Cal. Pub. Res. Code § 30610(d). Driftwood asserts in its vested rights claim that the only development it is currently proposing on the property is "exempt" ongoing maintenance. Driftwood Properties, LLC's "Claim of Vested Right," p. 2, question #6 ("No new development is currently proposed related to this claim other than exempt ongoing maintenance activities.")(Exhibit #3, page 5).

Section 30610 of the Coastal Act exempts "repair or maintenance activities that do not result in addition to, or enlargement or expansion of, the object of those repair or maintenance activities" from the requirement to obtain a coastal development permit. Pub. Resources Code § 30610(d). It also provides, however, that this exemption will not apply to repair and maintenance activities that the Commission determines "involve a risk of substantial adverse environmental impact." *Id.* Section 13252 of the Commission's regulations defines the types of repair and maintenance activities that require CDPs. These include: "Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, … [or] within 50 feet of a[n] … environmentally sensitive habitat area." 14 CCR §13252(a)(3) (emphasis added).

Even assuming that Driftwood had a vested right to the graded pads, which it doesn't, Driftwood's maintenance of these pads would still only be exempt only if this work did not take place in an environmentally sensitive habitat area (ESHA) or within 50 feet of such area. The Commission's biologist, John Dixon, has determined that the area immediately surrounding the graded pads constitutes ESHA. (Exhibits #10-11). This determination is uncontroverted, as Driftwood agrees that these areas constitute ESHA. (Exhibit #2). Therefore, any development of the graded pads would take place within 50 feet of ESHA and would not be exempt repair and maintenance under Section 13232(a)(3). Thus, even if Driftwood had a vested right to the graded pads, it is still subject to current law and would be required to obtain a CDP prior to removing major vegetation from the graded pads.

In addition, Dr. Dixon has determined that the graded pads themselves should be considered degraded ESHA, as they would be ESHA today were it not for past post-Coastal Act enactment vegetation clearance, so for this reason, too, removal of vegetation on these pads would require the Commission's approval through issuance of a CDP. (Exhibit #s 10-11). Driftwood disagrees with Dr. Dixon's determination and claims that the graded pads do not consist of degraded ESHA. Regardless of whether Dr. Dixon or Driftwood's analysis is correct on this point, however, removal of vegetation on these graded pads requires a CDP because this removal would take place within 50 feet of ESHA, even under Driftwood's analysis of the location of ESHA on the site. Thus, the Commission need not determine at this time whether the graded pads consist of degraded ESHA. Driftwood is required to obtain a CDP to remove vegetation from the graded pads because they are within 50 feet of ESHA, regardless of whether the pads themselves are ESHA, and it has not done so.

G. The Statute of Limitations Does Not Bar Driftwood's Vested Rights Claim.

Driftwood claims that the Coastal Act's statute of limitation, set forth at Section 30805.5, bars any challenge to its predecessor in interest's grading of the property. Driftwood Claim of Vested Right, Attachment A; March 7, 2008 letter from Rick Zbur to Karl Schwing, pg. 5 (Exhibit #4, page 5). The application before the Commission, however, is Driftwood's affirmative assertion that it has a vested right to the graded pads at Driftwood Estates. The Commission cannot of its own accord initiate a claim to establish a vested right, so it cannot forfeit its right to hear such claims due to a lapse in time, when it has no control over when such claims are brought. The ability to bring a claim for a vested right rests with the property owner or other entity attempting to establish that right. Any delay in bringing this claim is thus the result of Driftwood's, or its predecessor in interest's, own failure to assert its claim in a more timely manner. The Coastal Act's statute of limitation is unrelated to Driftwood's own attempt to establish a vested right to development that took place prior to the enactment of the Coastal Act.[12]

[12] If Driftwood were correct that the Commission is unable to deny a claim for a vested right brought more than three years after the completion of such development, it would lead to the absurd result that the Commission would have been under an obligation to fully adjudicate all vested rights claims for development constructed prior to January 1, 1977 throughout the entire Coastal Zone by January 1, 1980. Even if the Commission were able to initiate claims for vested rights, which it is not, it would have been impossible for it to have considered all such claims within three years of January 1, 1977. Driftwood's argument thus has no basis in law and would lead to an absurd result.

The Coastal Act statute of limitation is also irrelevant to the vested rights claim because it pertains solely to actions brought to recover civil fines or penalties. Section 30805.5 states: "Any action pursuant to Sections 30805 or 30822 to recover civil fines or penalties under this chapter shall be commenced not later than three years from the date on which the cause of action for the recovery is known or should have been known." Pub. Res. Code §30805.5. The Commission has not brought an action against Driftwood to obtain civil fines or penalties based on the grading that took place in 1962. Even if it had, that is not the subject of the vested rights application that Driftwood has submitted, and it is not relevant to the Commission's determination that Driftwood has no such vested right. Therefore, the statute of limitations in Section 30805.5 does not bar the Commission from hearing and ruling on Driftwood's application to establish a vested right.

H. Conclusion

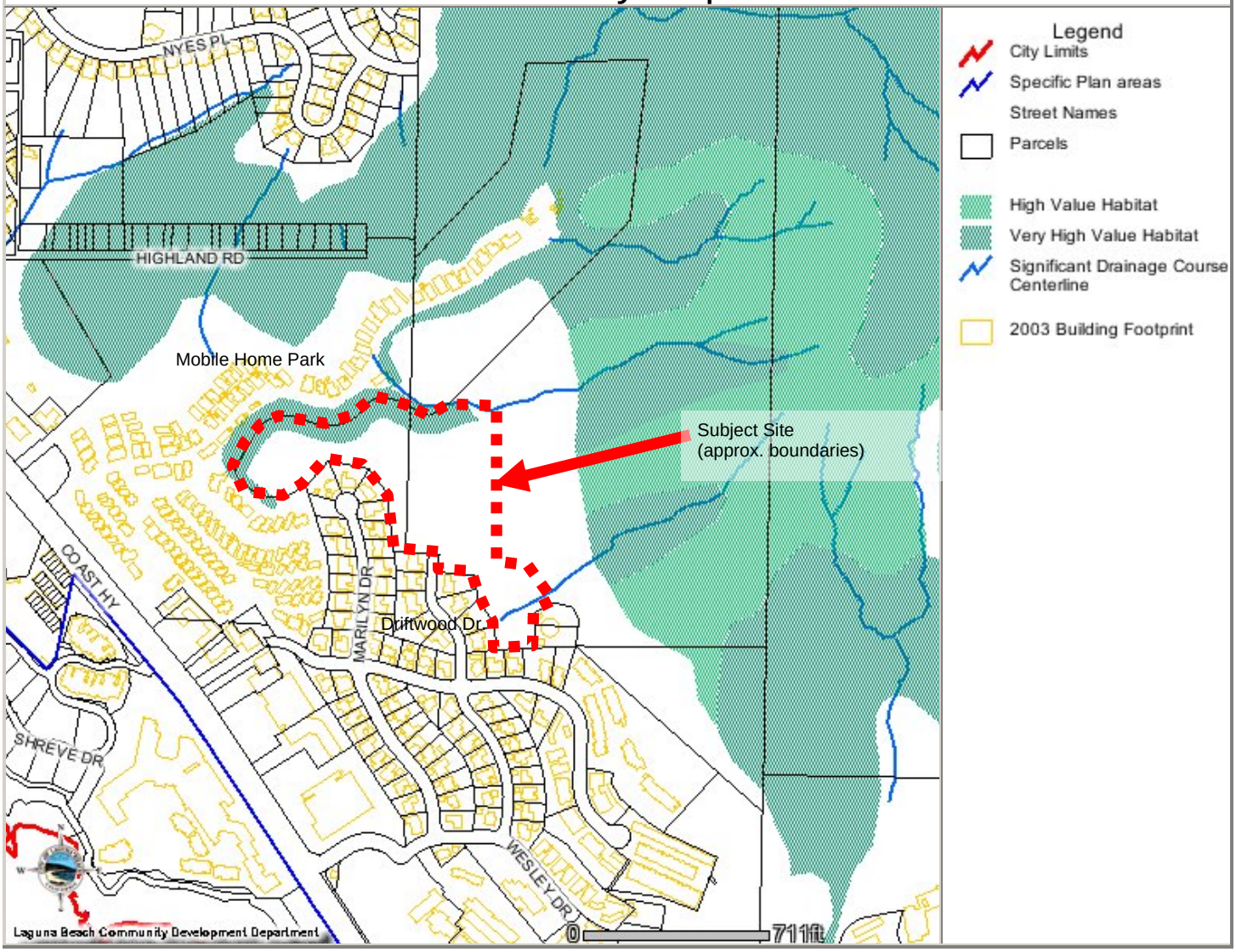
For all the reasons set forth above, the Commission finds that Driftwood has not met the burden of proving its claim of vested rights for the graded pads or "maintenance" of the graded pads located at Driftwood Estates.

Click on the links below to go to those exhibits in separate files.

List of Exhibits
5-07-412-VRC

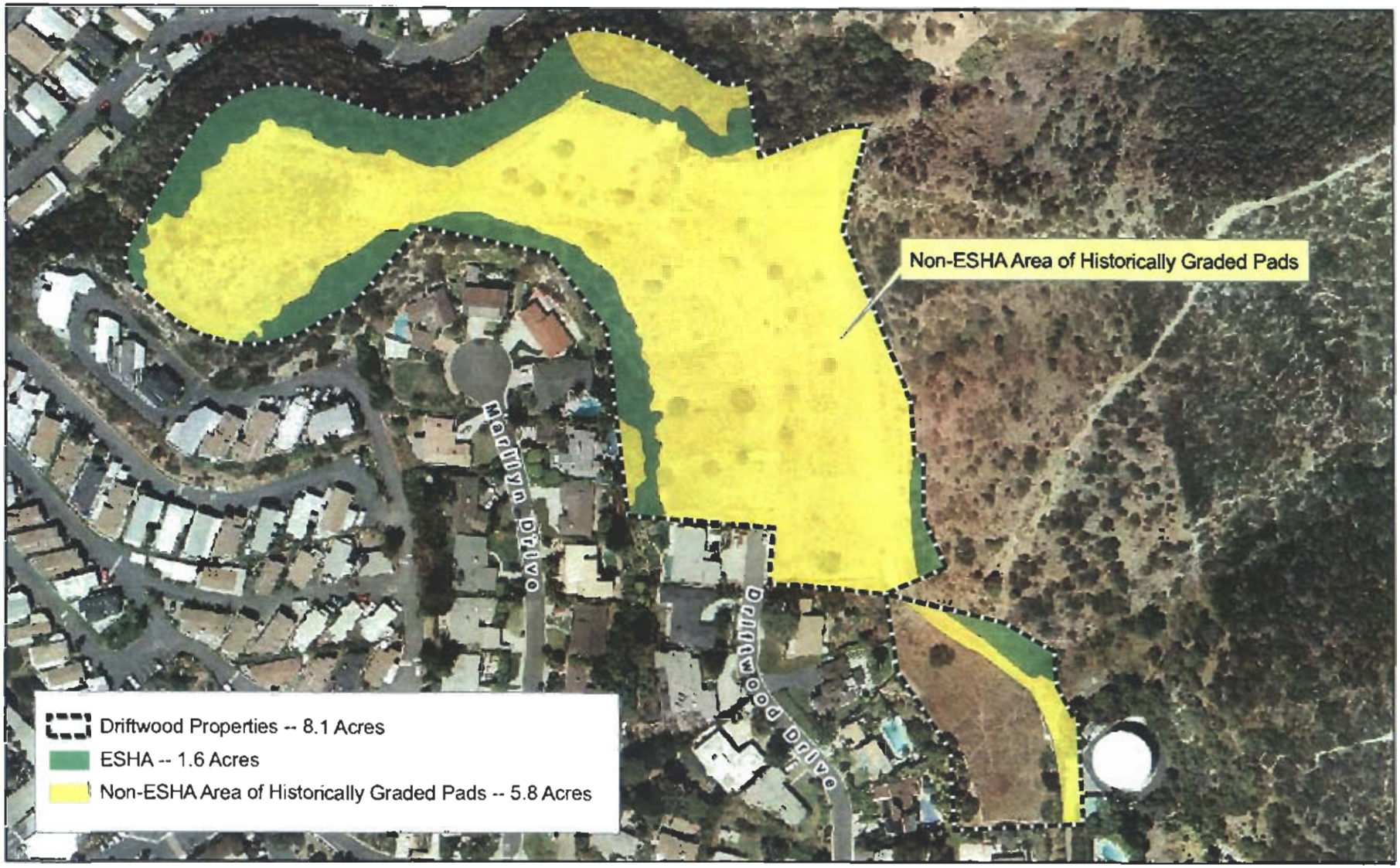
1	Vicinity Map
2	Limits of Vested Rights Claim Area and ESHA Map by Applicant
3	Vested Rights Claim Application and Cover Letter by Latham & Watkins dated 11/20/07
4	Letter dated March 7, 2008 by Latham & Watkins
5	Prior Commission History at Subject Site
6	Ordinance 351
7	Ordinance 1183
8	The Codified Ordinances of Orange County, 1961 (1961 Code)
9	1961 Health and Safety Code
10	Memo by John Dixon dated 4-16-2007
11	Memo by John Dixon dated 7-14-2008 with accompanying aerial photographs from 1931, 1964, 1970, 1977, 1986, 1993, and 2007 and ground level photos from various years
12	1959 Aerial Photo Provided by Applicant
13	Pre-May 1962 Aerial Photo Provided by Applicant
14	May 18, 1962 Aerial Photo Provided by Applicant
15	1964 Aerial Photo from CCC Archive
16	1965 Aerial Photo Provided by Applicant
17	1972 Aerial Photo Provided by Applicant
18	1978 Aerial Photo from CCC Archive
19	1979 Aerial Photo from CCC Archive
20	2001 Aerial Photo from CCC Archive
21	E-mail from Penny Elia dated April 17, 2008 regarding Blasting in South Laguna
22	Letter from California Coastal Commission to Applicant dated 3-17-2008

Vicinity Map



Note: Parcel lines depicted are illustrative only - they may not depict parcel lines approved pursuant to a coastal development permit

Exhibit 1
California Coastal Commission
Vested Rights Claim Application No. 5-07-412-VRC



Claim of Vested Right to 5.8 Acre
Non-ESHA Area of Historically Graded Pads

Driftwood Properties

The Athens Group

0 170 340 Feet

Exhibit 2
1 of 1
Vested Rights Claim Area and ESHA Designation by Applicant Application No. 5-07-412-VRC

Richard S. Zbur
(213) 891-8722

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +1.213.485.1234 Fax: +1.213.891.8763
www.lw.com

LATHAM & WATKINS LLP

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November 20, 2007

File No. 043668-0001

VIA FEDERAL EXPRESS AND HAND DELIVERY

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Driftwood Properties – Claim of Vested Rights Application

Dear Commission Staff:

I write on behalf of Driftwood Properties, LLC ("Driftwood"), owner of the property historically referred to as Driftwood Estates, located at the northern end of Driftwood Drive, in Laguna Beach, Orange County ("Driftwood Estates Property" or the "Property"). Enclosed please find Driftwood's application supporting its Claim of Vested Rights to the 1962 graded development pads and maintenance of those pads, including for necessary fuel modification and erosion control measures.

As you know, Driftwood purchased the Property in September 2004 subject to existing conditions, over 40 years after the site was graded under the jurisdiction of Orange County. Since 2004, Driftwood has worked cooperatively with Coastal Commission staff and the City of Laguna Beach to maintain the competing interests of fuel modification and erosion control, as necessary for safety purposes and as directed by the City of Laguna Beach.

On May 4, 2007, Coastal Commission staff issued notices of violation for the placement of sandbags, 1995 lot line adjustments approved by the City and recorded by the County, and other historic activities at the site that pre-date Driftwood's ownership. On June 15, 2007, Driftwood submitted a detailed response to the Commission disagreeing that Driftwood or the prior owner acted in violation of the Coastal Act. Among other responses, Driftwood takes strong exception to the unsupported view by Coastal Commission staff that the graded site, which had vegetation removed dating back to approximately 1962 and exists in a graded condition, constitutes "degraded ESHA," despite biological reports that contradict this position.

Despite Driftwood's objection to the notices, the June response letter clearly stated Driftwood's commitment to work cooperatively with staff and reach a mutually satisfactory resolution through a voluntary consent decree order, an after-the-fact Coastal Development Permit, or other mechanism. Specifically, Driftwood agreed to refrain from any

further sandbag or fuel modification activity until there is resolution of this issue or directed by the City due to emergency conditions, with prior notice to the Commission. True to its word, the only activities on the graded site since June 15, 2007 has been restoration activities performed pursuant to Consent Restoration Order No. CCC-06-RO-03 and emergency fuel modification activities undertaken by the Fire Department during the October fire storms, under an emergency determination of fire threat nuisance and with prior notice and oversight by Coastal Commission staff. (*See* October 31, 2007 letter to Coastal Commission correcting erroneous statements made during public comment and setting forth the emergency conditions and actions taken).

Driftwood continues to comply with its agreement to refrain from any further activities on the Property. Driftwood continues to desire to work cooperatively with staff. As you are aware, Driftwood proposed a resolution of the immediate need to replace sandbags and other temporary erosion flood control measures and the NOVs through a voluntary consent order. This consent order would allow necessary, targeted placement and replacement of sandbags and fuel modification. Driftwood further proposed that we agree to disagree about staff's position on "degraded ESHA" (with no recent site visit by Commission Biologist Dr. Dixon) which we believe is a major policy issue that requires a full and fair hearing before the Commission. Driftwood proposed that the issue of whether the graded pads constitute ESHA be resolved when the Commission considers Driftwood's proposed project which is in the entitlement process with the City of Laguna Beach and should be before the Commission in one to two years. Because Commission staff has indicted that its initial view is that it would not enter into a consent order to allow replacement of the sandbags without an agreement by Driftwood that the site is "degraded ESHA," which Driftwood is not willing to acknowledge, we submit the attached application to bring this policy issue to the Commission for a full and fair hearing on this important issue which affects Driftwood's ability to maintain and develop the site. We do not believe that such an important issue and policy should be determined as part of the enforcement process, especially if the Property Owner is deprived of a fair process and an opportunity to brief Commissions on the issues.

In the meantime, Driftwood remains committed to discussing a voluntary consent order or some other resolution as set forth in the June 15, 2007 response letter, to which we still eagerly await a response. We are willing to withdraw the Claim of Vested Rights application if the staff would like to discuss an alternative means of resolution so long as the resolution includes the ability to replace sandbags and perform fuel modification as necessary for safety reasons and so long as the resolution does not require an acknowledgement or agreement that the site contains "degraded ESHA" as currently maintained by the Commission staff. We would like to set up a meeting to discuss these issues with you within the next couple weeks.

Sincerely,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Enclosures

cc: Commissioners, CCC
Lisa Haage, Chief of Enforcement, CCC
Christine Chestnut, CCC
Andrew Willis, CCC
Sherilyn Sarb, CCC
Pat Veesart, CCC
Teresa Henry, CCC
Karl Schwing, CCC
Alex Helperin, CCC
John Montgomery, City of Laguna Beach
Alex Hill, Driftwood Properties, LLC
John Mansour, The Athens Group
Martyn Hoffmann, The Athens Group
Loren Montgomery, Esq.

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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):

Driftwood Properties, LLC ("Driftwood" or "Property Owner")
c/o The Athens Group - Martyn Hoffmann
31106 Coast Highway, Laguna Beach, CA 92651, (949) 499-4794

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

Rick Zbur and Loren Montgomery, Latham & Watkins, LLP
633 West Fifth Street, Suite 4000, Los Angeles, CA 90071, (213) 485-1234.

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.

Property Owner has a vested right in the graded pads and the maintenance of those graded pads, including fuel modification necessary for safety purposes in compliance with requirements of the City of Laguna Beach. The property is located at the Northern Terminus of Driftwood Drive, Laguna Beach, Orange County, identified in the County records at APN 056-240-65 and APN 656-191-40 ("Driftwood Estates Property" or the "Property"). (*See* Exhibit 1A-1D).

4. California Environmental Quality Act/Project Status.

Check one of the following: Not Applicable. Grading took place circa 1962, well prior to the enactment of CEQA (in 1970), the Coastal Zone Conservation Act (in 1972), and the Subdivision Map Act (in 1974), and the California Coastal Act (in 1976). These laws were not in affect at the time of the grading and development on the Property. Ongoing maintenance activities do not require discretionary approvals.

a. Categorically exempt _____. Class: _____. Item: _____.

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: _____ Date Submitted _____
Date Filed _____

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.

See Attachment A.

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

Not Applicable. No new development is currently proposed related to this claim other than exempt ongoing maintenance activities. This Claim of Vested Rights would allow maintenance of the existing grading pads, including necessary fuel modification (fire safety). (*See* Exhibit 2.) Potential additional future development will be sought pursuant to a separate coastal development permit and City of Laguna Beach review and 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.

Not Applicable.

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).

See Attachment B.

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

Grading completed circa 1962, under the jurisdiction of the County of Orange, prior to incorporation by the City of Laguna Beach. *See* Attachment B.

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.

Not Applicable.

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

Not Applicable.

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

The Claim of Vested Rights is for ongoing maintenance of existing conditions.

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

Grading already complete.

14. Authorization of Agent.

Property owned by Driftwood Properties LLC. (*See* Exhibit 3 [Grant Deed].)

I hereby authorize Rick Zbur and Loren Montgomery to act as my representatives and bind me in all matters 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.

Signature of Claimant(s) or Agent

Attachment A

Aerial photographs demonstrate that grading of Driftwood Estates Property took place circa 1962, well prior to the enactment of the Coastal Zone Conservation Act in 1972 and the Coastal Act in 1976. (*See* Exhibits 1A-1D.) Maintenance of the graded pads has been ongoing since 1962 as necessary.

The grading occurred prior to the enactment of the Coastal Act under the jurisdiction of the County of Orange, over 40 years ago. Driftwood has a vested right to the maintenance of the graded condition. This right is presumed legal and cannot be challenged at this late date for the following reasons. First, the grading is presumed legal because there is no evidence to the contrary. "[I]n the absence of evidence to the contrary, the presumption is that the law has been obeyed." (*Ehlers v. Bihn* (1925) 71 Cal. App. 479, 487 [citing Cal. Civil Code § 3548 ("The law has been obeyed."]; *see also City of Poway v. City of San Diego* (1984) 155 Cal. App. 3d 1037, 1042 [finding defendant acted legally when it prepared a draft EIR on a proposed development project where no evidence existed to the contrary].) Second, the City of Laguna Beach annexed the Driftwood Estates Property in December 31, 1987, well after the grading occurred and any grading permitted by the County is presumed legal after annexation. (*See City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal. 3d 1184, 1193 n. 6 [permits acquired before incorporation valid after incorporation] [citing Gov. Code § 65865.3]; *see also* Health & Safety Code § 19829.) Third, the grading on the Driftwood Estates Property predates the passage of the Coastal Act in 1976 and the California Coastal Zone Conservation Act of 1972; thus, a coastal development permit was not required for the grading. (Pub. Res. Code § 30608.) Additionally, the grading on the property, which was completed over forty years ago and maintained ever since, has never been challenged and the three-year statute of limitations for such a challenge ran years ago. (*See, e.g.,* Pub. Res. Code § 30805.5 [detailing the Coastal Act's three year statute of limitations].)

Attachment B

Driftwood has a vested right to maintain the existing graded pads in their pre-Coastal Act condition, including critical fuel modification. Driftwood estimates that annual maintenance costs in 2008 would be $10,000 to $15,000 and would increase somewhat annually thereafter.

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Richard S. Zbur
(213) 891-8722

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +1.213.485.1234 Fax: +1.213.891.8763
www.lw.com

LATHAM & WATKINS LLP

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Moscow	Tokyo
Munich	Washington, D.C.

File No. 043668-0001

March 7, 2008

VIA FEDERAL EXPRESS

Karl Schwing
Supervisor, Regulation & Planning
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Driftwood Properties – Response To Commission's Notice Of Incomplete Claim of Vested Rights

Dear Mr. Schwing:

I write in response to your November 29, 2007 letter on behalf of Driftwood Properties, LLC ("Driftwood"), owner of the property historically referred to as Driftwood Estates, located at the northern end of Driftwood Drive, in Laguna Beach, Orange County ("Driftwood Property" or the "Property"). Your letter requests various documents that the Commission claims are necessary to deem "filed" (pursuant to Cal. Code of Regulations, tit. 14, Div. 5.5 ("CCR") §§ 13201-06) Driftwood's Claim of Vested Rights Application, received by the Commission on November 20, 2007 ("Application"). For the reasons detailed in this letter, these documents are not necessary for the Commission to make a determination regarding Driftwood's Application. Driftwood, therefore, asks the Commission to deem Driftwood's Application "filed."

I. A VESTED RIGHT EXISTS IN THE GRADED PADS ON THE DRIFTWOOD PROPERTY

A. The Pads Were Graded Lawfully On Or Before 1962

Driftwood purchased the Property in September 2004, subject to existing conditions, over 40 years after the Property was graded under the jurisdiction of the County of Orange ("County"). Maintenance of the graded pads has been ongoing, as necessary. As detailed in Driftwood's Application and this letter, Driftwood has a vested right in the graded pads and the maintenance of those pads. Your November 29, 2007 letter requested permits and other documentation regarding the historic grading of the Driftwood Property. As discussed more fully below, in response to your request, Driftwood extensively researched the history of the grading code requirements for the Driftwood Property and conducted an exhaustive search of available public files for the Driftwood Property.

The legal research regarding the applicable historic building and grading code requirements indicates that until August 24, 1962, the County had no grading permit

requirements. (Compare County Ordinance 1183, effective April 10, 1959 [adopting Uniform Building Code, 1958 Edition, which includes no grading permit requirements] with County Ordinance 1504, effective August 24, 1962 [adopting sections "Regulating the Excavation, Grading An Filling of Land; and Providing Regulatory Standards for Surface and Sub-surface Drainage of Properties," which prohibits grading without a permit in section 71.047].) The Excavation and Grading Code, effective August 24, 1962, provided that "[n]o person shall commence or perform any grading . . . without first having obtained a permit to do so from the Superintendent." (Codified Ordinances of the County of Orange, Div. 1, tit. 7 § 71.047.) To obtain a permit, the Code also required an applicant to submit an application, grading plans and specifications, and reports in addition to permit fees, plan check fees, and a bond. (*Id.* §§ 71.048, 71.049, 71.0410.)

Aerial photographs located during Driftwood's research through photographic archives demonstrate that grading of Driftwood Property took place before May 18, 1962. (See Exhibits 1A-1G.) Thus, the prior owner graded the Property over ten years *before* the enactment of the Coastal Zone Conservation Act in 1972 and the Coastal Act in 1976 and months before the County had a grading permit requirement. Thus, the prior owner's grading of the Driftwood Property was conducted legally.[1]

The Coastal Act states "[n]o person who has obtained a vested right in a development prior to the effective date of [the Coastal Act] . . . shall be required to secure approval for the development pursuant to [the Coastal Act]." (Pub. Res. Code § 30608.) The Coastal Act defines "development" broadly to include "grading, removing, dredging, mining, or extraction of any materials . . . ." (Pub. Res. Code § 30106.)

Although the Coastal Act does not define a "vested right in a development," in California, a vested right in development arises after the property owner has performed substantial work and incurred substantial liability in good faith reliance upon a lawful right to develop. (See *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal. 3d 785, 793 [finding no vested right in illegal construction because to vest, development must "comply with the laws applicable at the time . . . ."]; *Pardee Construction* Co. *v. California Coastal Commission* (1979) 95 Cal.App.3d 471, 479-80 [finding vested right in legal development where performed substantial work and incurred substantial liabilities in good faith reliance on the fact that it was legal]; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729, 735-36 [finding no vested right in illegal development]; *Aries Development Co.*

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[1] When conducting its historical research, Driftwood searched historic archives in addition to all files related to the Property at the City of Laguna Beach, the County, the Regional Water Quality Control Board, and the Commission. Driftwood also searched archived historic files relating to the annexation of the Property at the City and the County. Not surprisingly (in light of the lack of grading requirements at the time), Driftwood located no historical records related to the grading of the Property. Importantly, Driftwood also did not locate any documentation indicating the grading was conducted in violation of any law applicable at the time. Thus, the evidence demonstrates that the grading on the Driftwood Property was legal and no evidence exists to the contrary.

v. Coastal Zone Conservation Commission (1975) 48 Cal.App.3d 524, 544-45 [finding vested right in legal grading, but no vested right in illegal tentative tract map or site plan approval]; *Environmental Coalition of Orange County, Inc. v. Avco Community Developers, Inc.* (1974) 40 Cal.App.3d 513, 523 [finding vested right in legal grading]; *Spindler Realty Corp. v. Monning* (1966) 243 Cal. App.2d 255, 264 [finding vested right in legal grading, but no vested right in further development].)

Such vested rights in lawful development (even lawful development conducted where there is no permit requirement) have a long history in California law. Since the 1970s, these vested rights have been codified in statutes such as the Coastal Zone Conservation Act, the Coastal Act, the California Environmental Quality Act ("CEQA"), and the Subdivision Map Act ("Map Act"). (See Pub. Res. Code § 27404 [Coastal Zone Conservation Act]; Pub. Res. Code § 30608 [Coastal Act]; Pub. Res. Code §§ 21169, 21170 [CEQA]; Pub. Res. Code § 66412.6 [Map Act].) The court in *Cooper v. County of Los Angeles* acknowledged as much when it concluded that "Public Resources Code sections 21169 and 21170 [referring to CEQA] in part constitute a codification of the doctrine of 'vested rights' . . . ." (*Cooper v. County of Los Angeles* (1975) 49 Cal.App.3d 34, 42.) These sections codify in part the Constitutional right of a property owner to maintain a vested right to lawfully commenced development. (See *Aries Development Co. v. Coastal Zone Conservation Commission* (1975) 48 Cal.App.3d 524, 543 [vested rights exemption in the Coastal Zone Conservation Act section 27404 "is grounded upon the constitutional principle that property may not be taken without due process of law."].) The doctrine of vested rights "has been recognized as permitting a landowner to complete a project in the face of a new law purporting to prohibit the development of the project where the landowner, in reliance upon governmental action, has in good faith suffered substantial detriment thereby acquiring a 'vested right' to proceed to develop the property." (*Cooper, supra*, 49 Cal.App.3d at p. 42.)

For these reasons, Driftwood has a vested right in the graded pads on the Driftwood Property because the prior owner lawfully completed the grading of the Property before May 18, 1962 in good faith reliance on the fact that such activity was lawful.

B. Even If There Had Been A Grading Code Requirement, The Grading Is Presumed Legal

Even if the County had a grading permit requirement in place at the time of the grading of the Property, the grading is presumed legal and there is no evidence to the contrary. As detailed above, Driftwood has not located any proof of permits or the associated application materials in its search of the historic files. To the contrary, Driftwood has located photos in a historic archives demonstrating that the grading occurred before May 18, 1962. Additionally, Driftwood has not located any evidence suggesting any violation of the grading code on the Driftwood Property.[2]

"In the absence of evidence to the contrary, the presumption is that the law has been obeyed" by Driftwood and by the County. (See *Ehlers v. Bihn* (1925) 71 Cal.App.479, 487

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[2] See footnote 1 above.

[citing Cal. Civil Code § 3548 ("The law has been obeyed."].) Additionally, the County is presumed to have regularly performed its official duty (1) to issue a grading permit (if required) where grading occurred on the Driftwood Property circa 1962 and (2) to oversee the Property to ensure any grading was conducted according to law. (See Cal. Evid. Code § 664 ["It is presumed that official duty has been regularly performed"].)

In *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, the Court rejected appellant's petition to set aside the city's approval of a construction project for failure to exercise independent judgment when approving the environmental impact report. (*Id.* at p. 1042.) The Court found that the city acted legally when it prepared a draft environmental impact report on a proposed development project where no evidence existed to the contrary. (*Id.*) Similarly, in this case, no evidence exists to suggest that the prior owner of the Driftwood Property acted illegally when grading the Property circa 1962. No timely notice of violation was ever issued by the County, the City of Laguna Beach, or the California Coastal Commission to indicate that the grading was improper. No other documentation suggests that the grading was improper. In the absence of such evidence, the presumptions operate to establish the legality of the grading.

These presumptions are discussed extensively through a long line of cases, involving a broad range of circumstances. (See *People v. Goldberg* (1957) 152 Cal.App.2d 562, 572 [presuming probation report conformed with the law where no evidence to the contrary and where report absent from the record before the court]; *Harlow v. United Title Guaranty Company* (1956) 145 Cal.App.2d 672, 674-75 [presuming that deceased income taxpayer made cash payments to plaintiff at time indicated on his tax return due to presumption that the law has been obeyed]; *Peabody v. Barham* (1942) 52 Cal.App.2d 581, 584 [refusing to find potentially ambiguous statement libelous because "[o]ne of the strongest of disputable presumptions is that a person is innocent of crime and that the law has been obeyed."]; *Patterson v. Southern Trust Co.* (1926) 80 Cal.App.411, 414 [in action to quiet title, presuming bank complied with the law because "in the absence of evidence to the contrary, we must presume that the law has been observed and that the regular course of business has been followed."] [overruled on other grounds in *MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536, 551].) Similarly, in the absence of evidence to the contrary, the prior owner's circa 1962 grading is presumed legal.

Since the prior owner is presumed to have conducted itself legally when grading before May 18, 1962, it is also presumed that the prior owner acted in good faith reliance on a properly issued permit or the lack of a permit requirement. (See *Spindler v. Monning* (1966) 243 Cal. App. 2d 255, 261, 264 [finding vested right in grading permit where owner acted in good faith reliance on lawful right to grade and a substantial portion of the grading had been performed].)

C. The Prior Owner Performed Substantial Work And Incurred Substantial Liability Sufficient To Trigger A Vested Right

The prior owner completed *all* the grading work before May 18, 1962, vesting the grading. In *Spindler Realty Corp. v. Monning* (1966) 243 Cal.App.2d 255, Spindler acquired a grading permit in September 1961 for approximately 21 acres in the Santa Monica Mountains.

(*Id.* at pp. 259-60.) The Court of Appeal affirmed the trial court's finding that by October 26, 1961, Spindler vested his grading permit because "'a substantial portion of the grading under the grading permit had been performed' on the subject property." (*Id.* at pp. 261, 264.) In an almost identical situation, the prior owner completed the grading of the approximately 8.1 acre Driftwood Property before May 18, 1962. (See Exhibits 1C-E.) Thus, the right to have graded pads on the Property was vested back in 1962.

Because the grading occurred over 40 years ago by the prior owner of the Property, Driftwood has no records documenting the costs incurred by the prior owner for grading which was completed over 40 years ago. In *Spindler*, even though the Court of Appeal mentions the fact that "Spindler, in good faith, entered into a contract . . . for the grading of the subject property," agreeing to pay at least $562,796 based on the actual amount of work done. Neither the trial court or the Court of Appeal rely on this expenditure to establish the vested right in the grading permit. (*Id.* at p. 261.) Instead, the courts rely solely on the finding that a substantial portion of the grading under the grading permit had been performed. (*Id.*) Thus, to establish a vested right in the grading, Driftwood need not document exactly what the prior owner spent 40 years ago. (See also *Cooper, supra,* 49 Cal.App.3d at p. 42 [finding either percentage of development or percentage of costs expended to be appropriate measures under the vesting test].) In this case, the fact that the grading has been completed, *in full*, for over 40 years, satisfies any concern over the extent of the progress made under the permit. No information regarding the costs of the development is necessary. The work is done. The development is vested.

II. DRIFTWOOD'S VESTED RIGHTS IN THE GRADED PADS CANNOT BE CHALLENGED AT THIS LATE DATE

A. The Statute Of Limitations For The Grading Has Expired

The pre-May 18, 1962 grading on the Driftwood Property predates the passage of the Coastal Act in 1976 and the California Coastal Zone Conservation Act of 1972; thus, a coastal development permit was not required. (Pub. Res. Code § 30608.) Additionally, the grading on the Property, which was completed over forty years ago and maintained ever since, has never been challenged and the three-year statute of limitations for such a challenge ran years ago. (See, e.g., Pub. Res. Code § 30805.5 [detailing the Coastal Act's three year statute of limitations].)

The grading occurred before May 18, 1962. The County's Excavation and Grading Code did not become effective until August 24, 1962. Before that time, the County did not have a permit requirement for grading activities. The statute of limitations to challenge any grading in 1962 ran long ago. Thus, any claim against the vested right in the grading is 40 years late.

B. Upon Annexation, The Grading Was Presumed Legal And Any Challenge Too Late, Thus The Grading Vested And Continues To Be Vested

The City of Laguna Beach annexed the Driftwood Property in December 31, 1987, well after the grading occurred and any time period to challenge the permit or the grading had lapsed. Thus, the grading under the County's jurisdiction is presumed permitted by the County, and thus is presumed legal after annexation. (See *City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1193 n. 6 [governmental approvals acquired before incorporation valid after incorporation] [citing Gov. Code § 65865.3 (development agreements entered into prior to annexation "shall remain valid for the duration of the agreement")]; see also Health & Safety Code § 19829 ["[a] building permit issued by a county for construction on real property subsequently annexed to a city shall remain valid for the life of the building permit, as issued."].)

III. APPLICATION SHOULD BE DEEMED FILED

The Commission's November 29, 2007 letter states that "[i]n order to compete your claim form please submit the following" and lists six groups of items, detailed in Attachment A to this letter. Driftwood has provided all information available and responsive to the six groups of items in Attachment A, and thus, Driftwood has responded in full to the Commission's requests to the extent the information is available. As a result, Driftwood has complied with the CCR section 13202 because it has provided all information available to it and its Application should be deemed "filed."

To the extent information requested is not provided, as detailed in this letter and the Application, the information requested relates to whether or not Driftwood has a vested right in the circa 1962 grading of the Property and the maintenance of that grading. Thus, the omission does not bar the Application, but goes to the legality of the grading. As detailed above, the grading of the Driftwood Property is legal and is presumed legal.

As such, please deem Driftwood's Application "filed" at this time, then we would like to set up a meeting to discuss these issues. If you have any questions, please do not hesitate to contact me at (213) 891-8722.

Sincerely,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Enclosures

cc: Commissioners, CCC
Lisa Haage, Chief of Enforcement, CCC

Christine Chestnut, CCC
Andrew Willis, CCC
Sherilyn Sarb, CCC
Pat Veesart, CCC
Teresa Henry, CCC
Alex Helperin, CCC
John Montgomery, City of Laguna Beach
Alex Hill, Driftwood Properties, LLC
John Mansour, The Athens Group
Greg Vail, The Athens Group
Beth Collins-Burgard, Esq.

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Attachment A

The Commission's November 29, 2007 letter lists six groups of items that the Commission claims Driftwood must submit to the Commission "[i]n order to complete [Driftwood's] claim form." This attachment lists each of the six groups of items in bold and details Driftwood's response to the request.

1) **Evidence showing that property owner in 1962 and/or claimant obtained all governmental approvals necessary to grade and maintain the subject pads, including, but not limited to, copies of valid permits obtained prior to incorporation and passage of the Coastal Act and any other relevant documents from the County of Orange permit files related to these approvals.**

The Commission's Claim of Vested Rights form ("Form") asks applicants to "[l]ist all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval" and to "[a]ttach copies of all approvals." The Form does not require evidence showing that the prior owner obtained (over 40 years ago) all the approvals necessary to grade and maintain the pads.

As detailed in Driftwood's November 20, 2007 Application, the grading occurred over 40 years ago with a prior owner, prior to the enactment of the Coastal Act. Driftwood reviewed the County's historic building and grading code, historic photographic archives, and all the historic files which it could access regarding the Driftwood Property. Driftwood's research indicates that the grading occurred before May 18, 1962, before the County enacted the Excavation and Grading Code, effective August 24, 1962. Thus, no grading permit was necessary at the time the prior owner graded the Driftwood Property. Additionally, Driftwood's review of historic files, not surprisingly, revealed no documentation of the grading or any evidence of any violation of any grading code on the Property. Thus, not only does the evidence establish that the prior owner graded the Property legally, as a matter of law, the prior owner is presumed to have graded the Property legally.

Driftwood has provided the Commission with all the information to which it has access. As discussed in Driftwood's November 20, 2007 Application and this letter, no additional evidence is necessary to establish a vested right in the grading and maintenance of the pads on the Driftwood Property in light of the presumption of legality, the fact that the grading was legal, the passage of time, and the fact that the because the grading was legal at annexation, it continues to be legal.

2) **Evidence showing the property owner in 1962 and/or claimant carried out the development that was approved and complied with all conditions of all government approvals that were necessary to grade and maintain the subject pads.**

The Form does not require evidence that "all conditions of all government approvals that were necessary to grade and maintain the subject pads." For the reasons discussed in this letter,

the grading which was legal and in the absence of evidence to the contrary, Driftwood, the County, and the City are presumed to have complied with the law.

3) **Copies of grading plans approved by the County of Orange.**

The Form does not require copies of grading plans. As described above, the fact that Driftwood cannot submit this form with the Application should not preclude the Commission from deeming Driftwood's Application "filed," as this is not a Coastal Act or Coastal Act regulation requirement.

4) **All available records of expenses incurred since 1962 by the property owner and/or claimant to grade the pads and to maintain the pads since the original grading took place.**

Records of expenses in 1962 are not available to Driftwood since the grading was conducted by a prior owner and successor in the property interest. Additionally, as detailed in the attached letter, evidence of expenses are not necessary to establish a vested right here where grading conducted and completed in 1962. (See Exhibits 1C-E.) Nonetheless, Driftwood has attached receipts and invoices evidencing some of the expenses it has itself incurred for maintenance of the graded pads. (Exhibit 2.)

5) **Copies of any permits or other authorizations obtained from the City of Laguna Beach for maintenance of the graded pads from date of incorporation to present, or evidence no permits are necessary.**

Driftwood has provided evidence that no grading permit was necessary when the prior owner graded the pads on the Property. Additionally, grading conducted in or before May 1962 by a prior owner is presumed legal. Regarding maintenance of the graded pads, Driftwood has only owned the Property since 2004, however, attached are two authorizations for maintenance of the graded pads. (See Exhibit 3 [October 23, 2007 letter from City of Laguna Beach regarding Property and fuel modification and fire emergency] and Exhibit 4 [December 13, 2007 Emergency Coastal Development Permit for Driftwood regarding placement of sandbags on the Property and flooding].) Additional information regarding Driftwood's understanding of historical maintenance of the graded pads can be located in the June 15, 2007 letter sent on behalf of Driftwood to the Commission.

6) **Contact info for the entity that first graded the pads and evidence demonstrating the relationship between Driftwood Estates and that entity.**

Photographic evidence demonstrates that the prior owner Esslinger Trusts (Kenneth J. Cummins, as Trustee of the Esslinger Family, Trust Fiduciary Administrative Service, 4041 MacArthur Blvd., Suite 360, Newport Beach, CA 92660, Tel: 949-833-8565, Fax: 949-833-1292) first graded the pads on the Property in or before May 1962. The Esslinger Trust is a previous record owner of the Property. (Exhibit 5.)

Previous Commission Action

a. Prior Permit History

Several prior permits (with amendments thereto) have been granted by the Commission to the predecessor in interest to Driftwood Properties LLC, the Esslinger Family Trust, for storm drain improvements within their property that included a mobile home park and the subject property now owned by Driftwood Properties LLC: coastal development permits G5-95-286, 5-95-286, 5-95-286 A, 5-96-048[1], and 5-98-151. Some of these permits authorized development within the area that is the subject of this vested rights claim; however, most of the authorized development was to occur within the mobile home park.

On December 21, 1995 the Executive Director issued Emergency Permit G5-95-286 to the Laguna Terrace Mobile Home Park for drainage improvements consisting of removal of existing speed bumps, construction of wooden barriers, asphalt curbs and catch basins. None of the development authorized in the emergency action was to occur within the area subject to the vested rights claim. On August 16, 1996 the Commission approved coastal development permit 5-95-286, in-part being the follow-up to the emergency permit for construction of interim flood protection facilities, plus additional development including street modifications within the mobile home park, installation of catch basins, modifications to the storm drain system, construction of four debris control structures on the main canyon and side canyons, and a 45' by 50' by 6' deep detention/desilting basin with pipe connection to existing downdrain. Only the detention/desilting basin and pipe connection were to be within the area of the vested rights claim. An amendment to CDP 5-95-286 was approved by the Commission in May 1998 and consists of the installation of a 2,534 linear foot storm drain pipe in the right-of-way of a mobile home park road, lateral drains and an outlet structure. None of this additional development was proposed within the area of the vested rights claim.

Next, Coastal Development Permit 5-98-151 was approved by the Commission on August 13, 1998. The permit approved construction of a 140 foot long, 3 foot wide ditch and placement of an 18 inch diameter storm drain pipe. Grading of 50 cubic yards of cut and 15 cubic yards of fill was also approved. The storm drain would lead from a 50 by 50 foot retention basin and connect to a 48 inch storm drain pipe. The 18 inch diameter pipe approved under this permit was to replace an existing 18 inch pipe. The proposed ditch with pipe would extend from the detention/desilting basin approved within the vested rights claim area down a slope to the mobile home park located outside the vested rights claim area.

The permit was approved with three special conditions. Special condition 1 required a landscaping and erosion control plan for the area of slope disturbed by the project. Special Condition 2 required the applicant to inform the Executive Director of the location of the disposal site for the excess cut material. Special condition 3 required that coastal

[1] Coastal Development Permit application 5-96-048 was approved on the Administrative Calendar on May 8, 1996. The permit authorized removal of 2,000 to 2,500 cubic yards of sediment from the mouths of four canyons. None of this development was authorized in the area of the vested rights claim.

sage scrub in the project vicinity be flagged and all contractors made aware of its presence and the requirement to avoid impacts.

The special conditions of the permit were not met and the permit was not issued, however on September 16, 1999, the Commission approved an amendment to CDP 5-98-151 (5-98-151-A1) to construct 700 feet of 18-inch reinforced concrete pipe storm drain and six sediment basins on 7.78 acres of land. All of the development approved in this application would be within or partly within the area of the vested rights claim. The approval was subject to three conditions addressing required best management practices and approval from the Regional Water Quality Control Board. Although drainage devices were ultimately constructed on the property, that development was not consistent with the development approved by the Commission.

On December 13, 2007, the Executive Director issued Emergency Coastal Development Permit 5-07-440-G for the placement of up to 300 sandbags to add to an existing sandbag berm to raise the berm elevation such that water would be directed away from homes and toward the street and storm drain system. Existing sandbags stockpiled on a paved driveway were to be used - no additional sandbags were to be imported to the site to carry out the work proposed. No change to the footprint of existing sandbags located on the site was proposed. No vegetation clearance was proposed. As required by the permit, the sandbags were removed in March 2008.

b. Enforcement Actions

On October 24, 2005, staff received a report that an area around a watercourse on the Driftwood property had been cleared of vegetation. Staff confirmed during a meeting with a representative of Athens, in his capacity as an agent of Driftwood, on November 1, 2005, that a violation had occurred. According to Athens, in October of 2005, Athens, acting as an agent of Driftwood, cleared vegetation in three areas on the property for fuel modification purposes. Prior to the fuel modification activities, Athens hired biologists to flag sensitive species in the areas, so that those conducting the activities would not disturb or remove them. The biologists evaluated and flagged sensitive species in only two of the areas. The third area was overlooked, and Crownbeard was removed from that area.

Staff sent a violation letter to Athens on December 29, 2005, which confirmed receipt of a draft restoration plan that Athens had submitted and expressed staff's willingness to work cooperatively with Athens to resolve the violation amicably through a consent order. Between November 2005 and June 2006, Staff worked closely with Athens to reach an effective, amicable resolution to the violation. On June 23, 2006, authorized signatories for both Driftwood and Athens signed Consent Restoration Order No. CCC-06-RO-03. The Commission issued the order July 13, 2006.

c. Notice of Violation for Placement of Sandbags and Vegetation Clearance

In December 2005, Driftwood notified Commission staff that it planned to replace 500 of approximately 5,500 sandbags it stated were present on the property, which 500

sandbags are located along the terminus of the watercourse on the property. In January 2006, Driftwood submitted a CDP application, No. 5-06-014, for these replacement activities. That application was ultimately withdrawn in July 2006. A second application, No. 5-06-382, was submitted in October of 2006 that included a request for after-the-fact approval for the placement of approximately 5,500 sandbags and other pre-existing drainage control devices installed by a previous landowner, replacement of approximately 500 sandbags, and a 2-year maintenance provision allowing for future replacement of sandbags and drainage control devices. Permit application No. 5-06-382 was scheduled to be considered by the Commission on May 10, 2007, but was withdrawn by the applicant upon learning of staff's intent to recommend denial of the request. No subsequent application was filed, and, consequently, no CDP has been obtained for sandbags presently located on the property.

Commission staff also reviewed historical aerial and ground-level photographs, city records, and biological surveys, which showed that vegetation was removed from the areas in and adjacent to the pads located on the property on three occasions following the grading in the early 1960's: 1) at some time between 1979 and 1986, 2) at some time between 1993 and 1997 or 1998, 3) and again in 1999. None of these actions was authorized in a CDP. After the last of these instances, the disturbed areas were rapidly colonized by coastal sage scrub, southern maritime chaparral, including bigleaf crownbeard, and transitional or successional species. Had this site been left undisturbed following the grading in the early 1960's, it most likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral.[2] No CDPs were issued for the removal of major vegetation; placement of approximately 5,500 sandbags presently on the property, [3] sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads.

Commission staff sent a Notice of Violation letter to Driftwood on May 4, 2007.

[2] J. Dixon memo to R. Todaro re habitat characteristics on Athens Group property dated 04-16-07.
[3] Emergency Permit No. 5-07-440-G authorized the temporary placement of up to 300 sandbags on an existing unpermitted sandbag berm at the mouth of a watercourse on the property.

~~ORDINANCE NO. 350~~

~~AN ORDINANCE REGULATING THE ESTABLISHING, CONDUCTING AND CARRYING ON OF GUN CLUBS OR SHOOTING CLUBS IN THE COUNTY OF ORANGE, PROVIDING FOR THE GRANTING OF LICENSES THEREFOR, THE PRESCRIBING THE PENALTIES FOR THE VIOLATION OF ANY OF THE PROVISIONS OF SAID ORDINANCE.~~

Repealed by Ordinance No. 386.

ORDINANCE 351

AN ORDINANCE ESTABLISHING LAND CLASSIFICATIONS AND DISTRICTS WITHIN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY AND REGULATING THE USES OF PROPERTY THEREIN, ADOPTING SECTIONAL MAPS OF SAID DISTRICTS, DEFINING THE TERMS USED IN SAID ORDINANCE, PROVIDING FOR THE ADJUSTMENT, ENFORCEMENT AND AMENDMENT THEREOF AND PRESCRIBING PENALTIES FOR ITS VIOLATION.

The Board of Supervisors of the County of Orange do ordain as follows:

Section 1: GENERAL PURPOSE AND ADOPTION OF OFFICIAL USE PLAN.

For the public health, safety and general welfare and in order (1) to secure for the citizens of Orange County the social and economic advantages resulting from an orderly, planned use of its land resources, (2) to provide a definite, official land use plan for Orange County and (3) to guide, control and regulate the future growth and development of said county in accordance with said plan, there is hereby adopted and established an official Districting Plan for Orange County. Said plan is adopted pursuant to the authority of Chapter 833, Statutes of 1929, State of California.

Section 2: DEFINITIONS.

This ordinance, embodying and making effective the Land Use Plan of Orange County, shall be known as "The Districting Ordinance" and for the purpose of this ordinance certain words and terms are defined as follows:

Words used in present tense include the future, words in the singular number include the plural and words in the plural number include the singular; the word "building" includes the word "structure" and the word "shall" is mandatory and not directory. The term "Board of Supervisors" when used shall mean the Board of Supervisors of Orange County and "Planning Commission" shall mean the County Planning Commission of Orange County.

"Accessory Building": A subordinate building or portion of the main building, the use of which is incidental to that of the main building, on the same lot.

Where an accessory building is attached to and made a part of the main building, at least fifty per cent (50%) in length of one of the walls of such accessory building shall be an integral part of the main building and such accessory building shall comply in all respects with the requirements of this ordinance applicable to a main building. An accessory building, unless attached to and made a part of the main building as above provided for, shall be not closer than five (5) feet to the main building.

"Accessory Use": A use customarily incidental and accessory to the principal use of a lot or a building or other structure located upon the same lot as the accessory use.

"Alley": A public way which affords a secondary means of access to abutting property.

"Apartment House": Any building or portion thereof more than one (1) story in height, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three (3) or more families living independently of each other and doing their cooking in the said building.

"Automobile Court" or "Camp":

1. A group of two or more detached or semi-detached buildings, containing guest rooms and/or apartments with automobile storage space provided in connection therewith, used and/or designed for use primarily by automobile transients.

2. Land used or intended to be used for camping purposes by automobile transients.

"Basement": A story partly underground and having at least one-half (½) of its height, measured from its floor to its finished ceiling, above the average adjoining grade. A basement shall be counted as a story if the vertical distance from the average adjoining grade to its ceiling is over five (5) feet.

"Building": A structure having a roof supported by columns or walls.

"Building Height": The vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building to the ceiling of the uppermost story.

"Building Site": The ground area of a building or buildings together with all open spaces as required by this ordinance.

"Bungalow Court": Three or more detached one-story single or two-family dwellings located upon a single lot under one ownership together with all open spaces as required by this ordinance.

"Club": An association of persons for some common purpose but not including groups organized primarily to render a service which is customarily carried on as a business.

"Dwelling, One Family": A building containing but one kitchen, designed and/or used to house not more than one family, including all necessary employees of such family.

"Dwelling, Two-Family": A building containing not more than two kitchens, designed and/or used to house not more than two families, living independent of each other, including all necessary employees of each such family.

"Dwelling, Group": A combination or arrangement of dwellings, whether detached or not, on one (1) building site.

"Dwelling, Multiple Family": A building not more than one (1) story in height designed and/or used to house three or more families living independent of each other, including all necessary employees of each such family.

"Family": One person living alone or two or more persons living together whether related to each other or not.

"Garage, Private": An accessory building or an accessory portion of the main building designed and/or used only for the shelter or storage of vehicles owned or operated by the occupants of the main building.

"Home Occupation": Any vocation, trade or profession carried on within a dwelling by the inhabitants thereof, where only electric power not exceeding one (1) horsepower is used, no merchandise or other articles are displayed for advertising purposes and no assistants are employed except as permitted in certain districts.

"Hotel": Any building or portion thereof, containing six (6) or more guest rooms used or intended or designed to be used, let or hired out to be occupied, or which are occupied by six or more guests, whe-

ther the compensation for hire be paid directly or indirectly in money, goods, wares, merchandise, labor or otherwise and shall include hotels, lodging and rooming houses, dormitories, turkish baths, bachelor hotels, studio hotels, public and private clubs and any such building of any nature whatsoever so occupied, designed or intended to be occupied, except jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes and similar buildings where human beings are housed and detained under legal restraint.

"Kitchen": Any room used or intended or designed to be used for cooking and/or preparation of food.

"Lot": Any area of land under one ownership abutting upon at least one public street or a recorded easement.

"Lot, Corner": A lot located at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of the two streets, and having a width not greater than seventy-five (75) feet.

"Lot, Interior": A lot which is not a "corner lot" is an interior lot.

"Lot, Through": An "interior lot" having frontage on two (2) parallel or approximately parallel streets.

"Stand, Temporary": A movable structure used or intended to be used for a period not to exceed one (1) year for the display and/or sale of seasonal products of agricultural districts.

"Story": Any portion of a building included between the finished ceiling next above it, or the finished undersurface of the roof directly over that particular floor.

"Street": A public or private thoroughfare which affords a primary means of access to abutting property is a street to that property for the purpose of this ordinance.

"Structure": Anything constructed or erected and the use of which requires more or less permanent location on the ground or attachment to something having a permanent location on the ground, but not including walls and fences less than eight (8) feet in height and other improvements of a minor character.

"Structural Alterations": Any change in the supporting members of a building or structure such as bearing walls, columns, beams or girders, floor joists or roof joists.

"Yard": An unoccupied space on a lot on which a building is situated and, except where otherwise provided in this ordinance, open and unobstructed from the ground to the sky.

"Yard, Front": A yard extending across the front of the lot between the inner side yard lines and measured between the front line of the lot and either:

(a) The nearest line of the main building, or

(b) The nearest line of any enclosed or covered porch.

"Yard, Rear": A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building nearest said rear line of the lot.

"Yard, Side": A yard on each side of the building between the building and the side line of the lot and extending from the street line of the lot to the rear yard.

Section 3: **ESTABLISHING DISTRICTS AND LIMITING THE USES OF LAND THEREIN.**

In order to classify, regulate, restrict and segregate the uses of land, buildings and structures, and to regulate and restrict the height and bulk of buildings, and to regulate the area of yards, courts and other open spaces about buildings, the unincorporated territory of Orange County is hereby divided into twleve (12) Districts as follows:

RA—"Roadside Agricultural" Districts.
E1—"Estates" Districts.
E2—"Small Farms" Districts.
E3—"Mountain Estates" Districts.
R1—"Single Family Residence" Districts.
R2—"Group Dwelling" Districts.
R3—"Apartment" Districts..
C1—"Local Business" Districts.
C2—"General Business" Districts.
M1—"Light Industrial" Districts.
M2—"Unrestricted" Districts.
M3—"Unclassified" Districts.

The boundaries of said districts shall be determined and defined from time to time by the adoption of sectional district maps covering portions of Orange County, each of which said sectional district maps shall be, upon its final adoption, a part of the official Master Plan of said county.

Each sectional district map showing the classifications and boundaries of districts, after its final adoption in the manner required by law, shall be and become a part of this ordinance and said map and all notations, references and other information shown thereon shall thereafter be as much a part of this ordinance as if all the matters and information set forth by said map were fully described herein.

Where uncertainty exists as to the boundaries of any districts shown on said sectional district maps, the following rules shall apply:

(a) Where such boundaries are indicated as approximately following street and alley lines or lot lines, such lines shall be construed to be such boundaries.

(b) In unsubdivided property and where a district boundary divides a lot, the locations of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scale appearing on such sectional district map.

(c) In case any uncertainty exists, the Planning Commission shall determine the location of boundaries.

(d) Where a public street or alley is officially vacated or abandoned the regulations applicable to abutting property shall apply to such vacated or abandoned street or alley.

The boundaries of such districts as are shown upon any sectional district map adopted by this ordinance or amendment thereto are hereby adopted and approved and the regulations of this ordinance governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures and other matters as hereinafter set forth are hereby established and declared to be in effect upon all land included within the boundaries of each and every district shown upon each said sectional district map.

Except as hereinafter provided:

(1) No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designed

or intended to be used for any purpose or in any manner other than a use listed in this ordinance or amendments thereto as permitted in the district in which such land, building, structure or premises is located.

(2) No building or structure shall be erected nor shall any existing building or structure be moved, reconstructed or structurally altered to exceed in height the limit established by this ordinance or amendments thereto for the district in which such building or structure is located.

(3) No building or structure shall be erected, nor shall any existing building or structure be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area and yard regulations established by this ordinance or amendments thereto for the district in which such building or structure is located.

(4) No yard or other open space provided about any building or structure for the purpose of complying with the regulations of this ordinance or amendments thereto shall be considered as providing a yard or open space for any other building or structure.

Section 4: ESTABLISHING M-3 (UNCLASSIFIED) DISTRICTS.

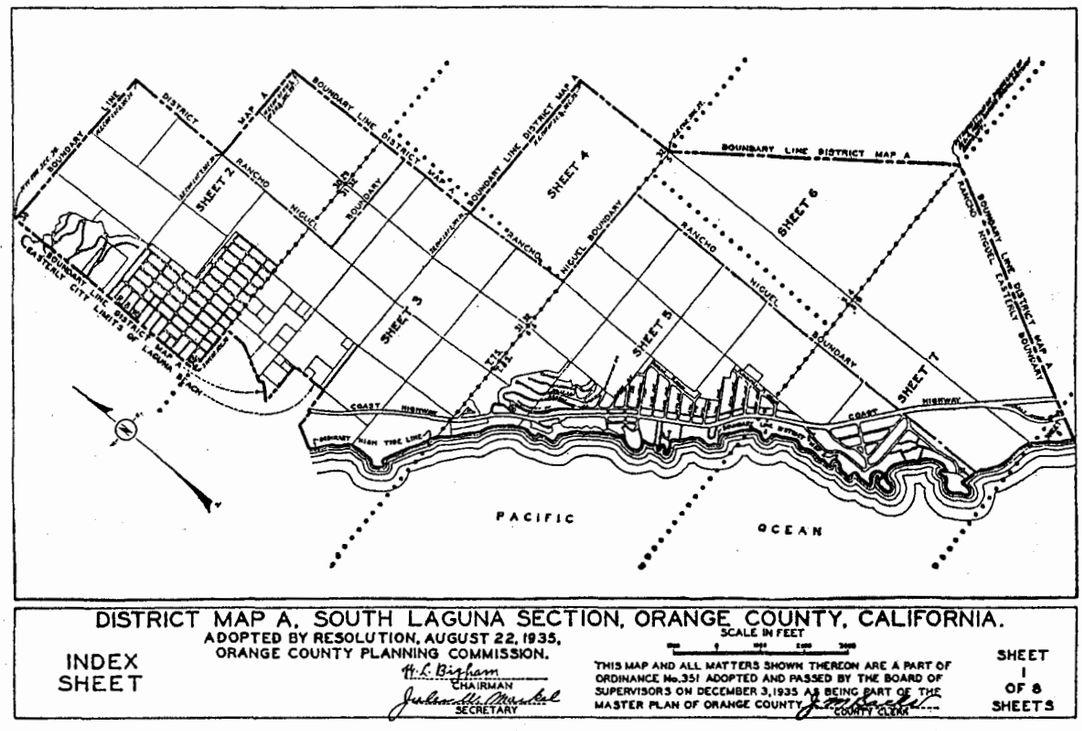
All the unincorporated territory of Orange County, including the National Forest and all privately owned land therein, which is not included in any other district or districts by the adoption of sectional district maps as provided in this ordinance or amendments thereto is hereby designated and established as an M-3 (Unclassified) District.

Except as provided in Section 17 of this ordinance, any land, building, structure or premises in the M-3 (Unclassified) District may be used, occupied or maintained for any purpose, provided, however, that no building, structure or improvement, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be erected, constructed, altered, enlarged or moved into or within said M-3 District until and unless a permit therefor shall first have been obtained as provided in this ordinance.

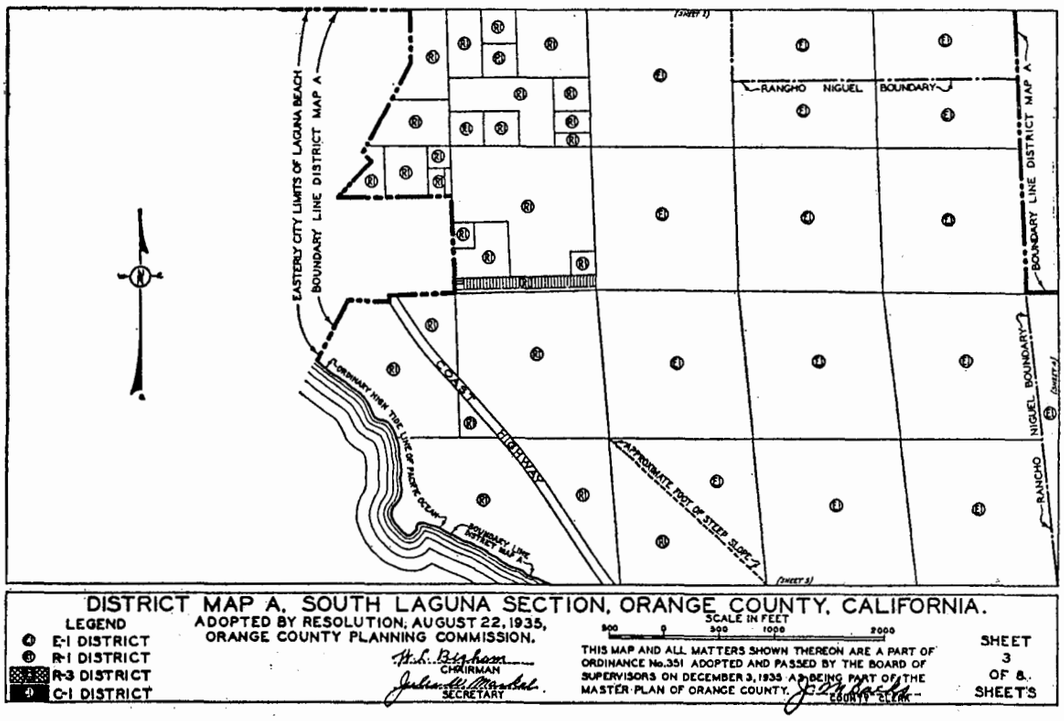
Section 5: ADOPTING SECTION DISTRICTS MAPS.

Each sectional district map of Orange County, as shown in the schedule below, is hereby adopted and made a part of this ordinance as a subsection of Section 5 hereof. Each sheet of each sectional district map, including each index sheet, shall be a sub-subsection of Section 5 hereof. All regulations governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures and other matters as set forth in this ordinance are hereby declared to be in effect within the several districts shown upon each and every sheet of the following official sectional districts maps of Orange County:

District Map A, South Laguna Section, Eight (8) Sheets
- Sheet 1, Index Map, Adopted Dec. 3, 1935
- Sheet 2, Adopted Dec. 3, 1935
- Sheet 3, Adopted Dec. 3, 1935
- Sheet 4, Adopted Dec. 3, 1935
- Sheet 5, Adopted Dec. 3, 1935
- Sheet 6, Adopted Dec. 3, 1935
- Sheet 7, Adopted Dec. 3, 1935
- Sheet 8, Adopted Dec. 3, 1935



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.
ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.
H. L. Bigham CHAIRMAN
Julia M. Marshall SECRETARY
SCALE IN FEET
THIS MAP AND ALL MATTERS SHOWN THEREON ARE A PART OF ORDINANCE No. 351 ADOPTED AND PASSED BY THE BOARD OF SUPERVISORS ON DECEMBER 3, 1935 AS BEING PART OF THE MASTER PLAN OF ORANGE COUNTY. COUNTY CLERK
INDEX SHEET
SHEET 1 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

W. L. Bigham
CHAIRMAN
Julian W. Marshall
SECRETARY

SCALE IN FEET
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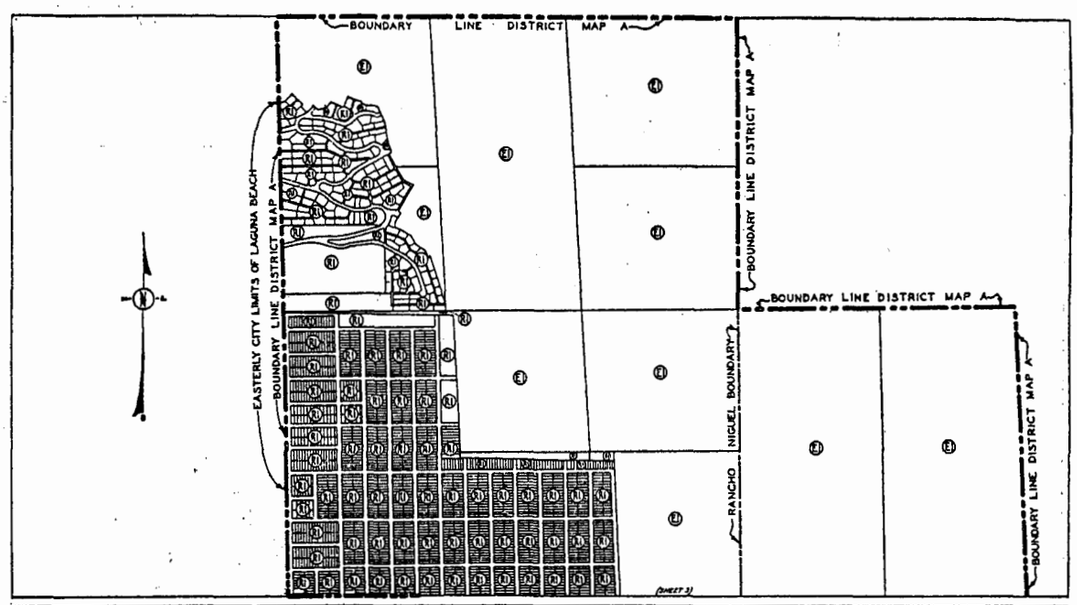
COUNTY CLERK

SHEET 3 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

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CHAIRMAN
Julian W. Marshall
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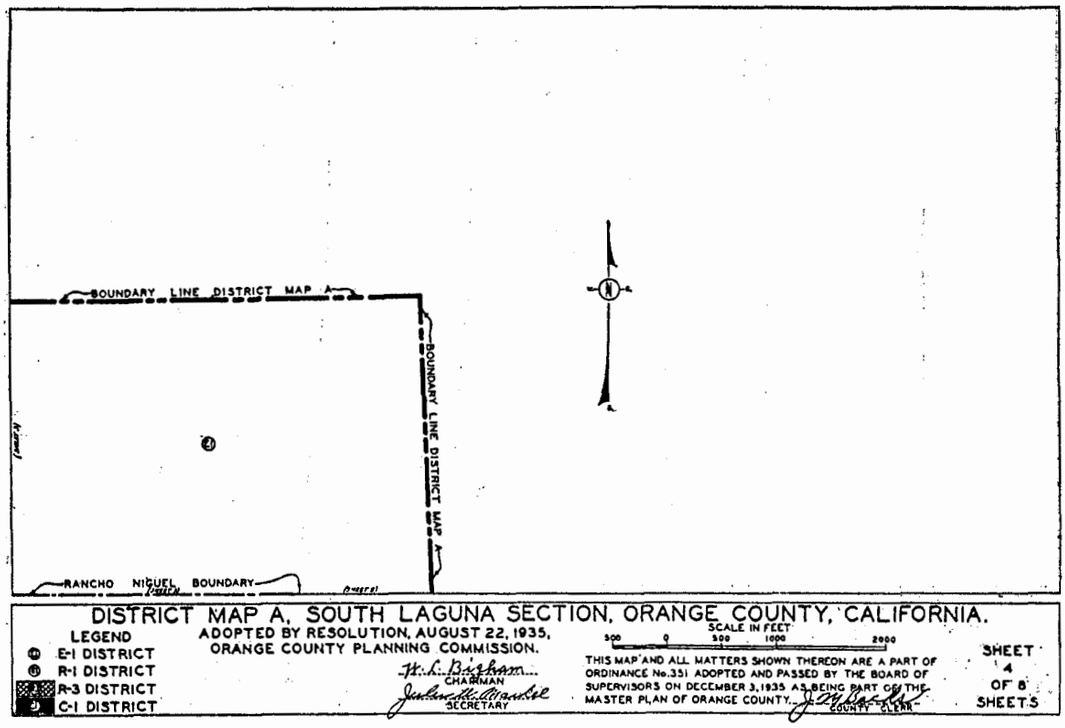
COUNTY CLERK

SHEET 2 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
- E-1 DISTRICT
- R-1 DISTRICT
- R-3 DISTRICT
- C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

W. L. Bigham CHAIRMAN

Julian M. Marshall SECRETARY

SCALE IN FEET 500 0 500 1000 2000

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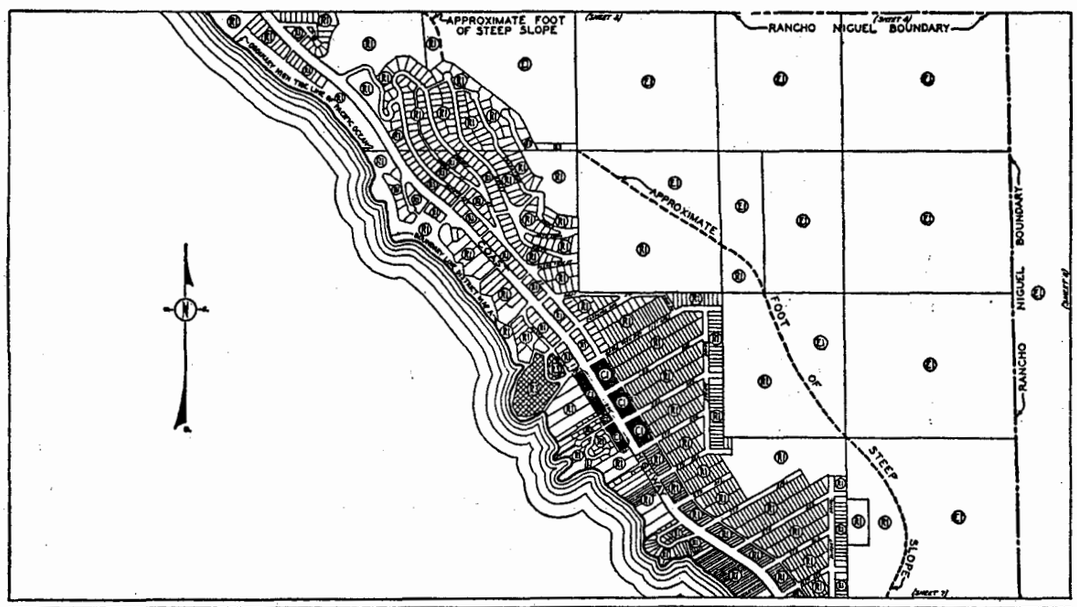
J. M. Backs COUNTY CLERK

SHEET 4 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
- E-1 DISTRICT
- R-1 DISTRICT
- R-3 DISTRICT
- C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

W. L. Bigham CHAIRMAN

Julian M. Marshall SECRETARY

SCALE IN FEET 500 0 500 1000 2000

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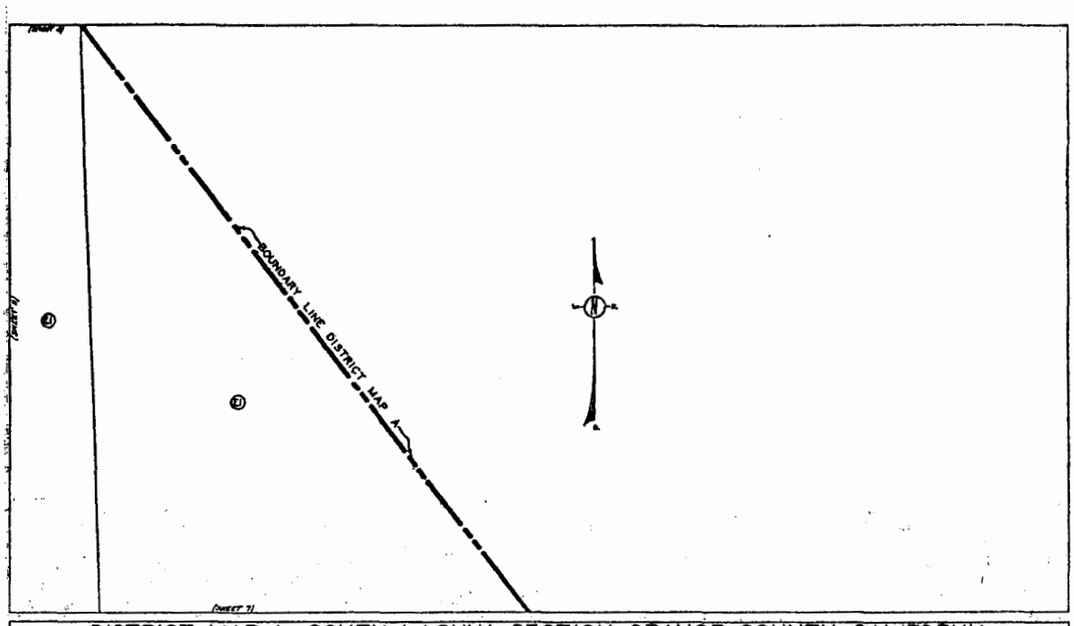
J. M. Backs COUNTY CLERK

SHEET 5 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.
W. L. Bigham CHAIRMAN
Julian W. Mandel SECRETARY

SCALE IN FEET
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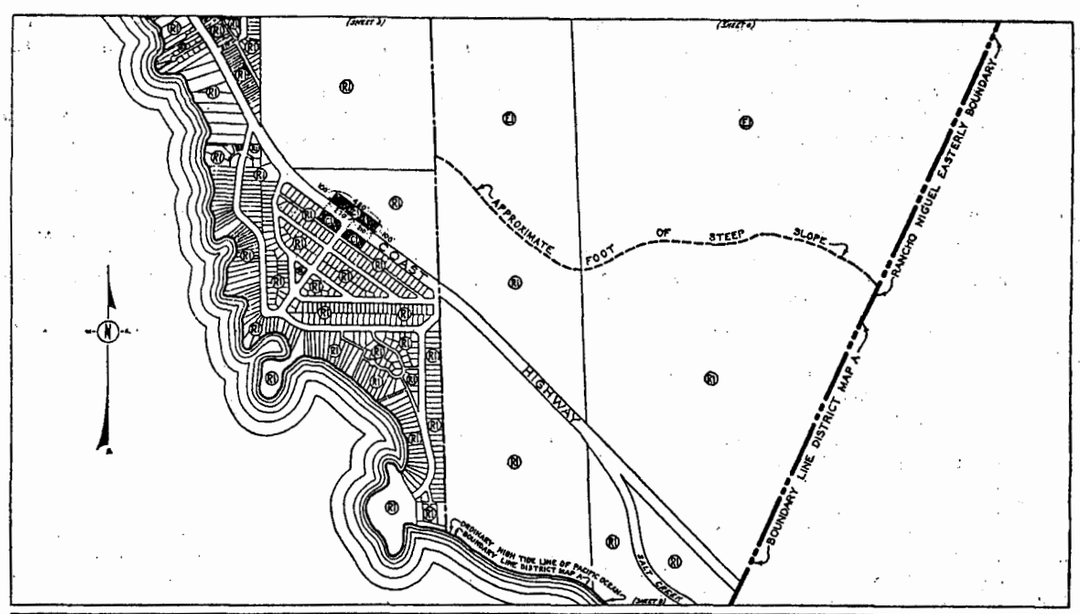
J. M. Backs COUNTY CLERK

SHEET 6 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.
W. L. Bigham CHAIRMAN
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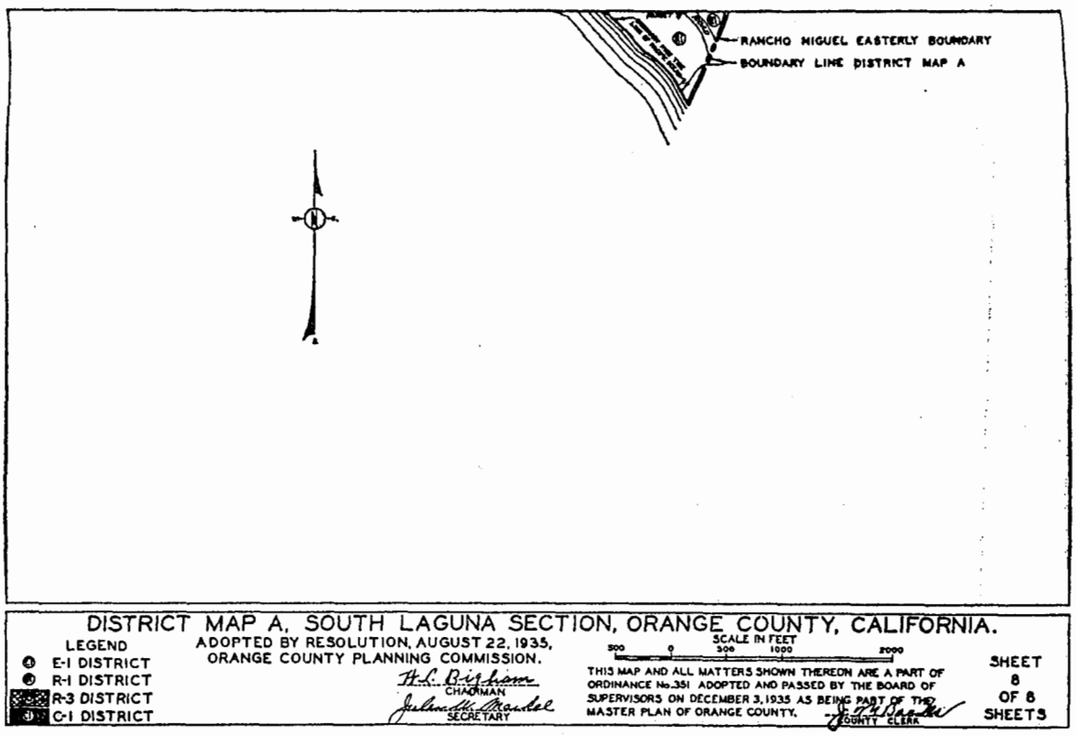
SHEET 7 OF 8 SHEETS



Section 6: RA—"ROADSIDE AGRICULTURAL" DISTRICT REGULATIONS.

(a) Uses permitted

1—Agriculture, horticulture and general farming, including dairying, livestock and poultry raising, kennels, nurseries and greenhouses and other similar enterprises or uses, except ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Oil drilling and such storage facilities as are necessary to handle the production from each well, mining or quarrying and other earth-extraction industries, provided that no such use shall be permitted within five hundred (500) feet of any public park, school, or State Highway, or Class A county road as shown upon the official Highway Plan of Orange County, or any E1, E2, E3, R1, R2, or R3 District as established by official District Maps adopted under Section 5 hereof.

3—Airports and landing fields.

4—Golf, swimming, tennis, polo, yacht and country clubs, athletic fields, parks, playgrounds and recreation buildings of a public or quasi-public character, but not including race tracks, boxing or athletic arenas or any recreation or amusement enterprises operated on a commercial basis.

5—Churches, schools, colleges, hospitals, sanitariums and clinics.

6—One and two family dwellings, bungalow courts, dwelling groups, multiple family dwellings and apartment houses, including home occupations, offices and studios, provided not more than one (1) assistant is employed in connection therewith.

7—Accessory buildings, structures, and uses, and also special uses as provided in Section 18, including unlighted bulletin boards and signs, not exceeding an aggregate area of twenty (20) square feet, bearing official notices only or pertaining only to the sale of products grown or produced or services rendered upon the premises, or advertising only the lease, hire or sale of only the particular property upon which displayed. No billboard or other advertising sign, structure or device of any character shall be permitted in any RA (Roadside Agricultural) District.

8—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels.
b—Public utility buildings and structures.
c—Commercial stables.
d—Cemeteries, mausoleums and crematories.

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be six thousand (6000) square feet, and no two-family dwelling, bungalow court, dwelling group, multiple family dwelling or apartment house shall be permitted which provides less than one thousand (1000) square feet of land area per family or housekeeping unit.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, the main and accessory buildings shall be not less than one hundred (100) feet and all temporary buildings and structures not less than fifty (50) feet from the center line of the highway or road.

(e) Side Yard Required.

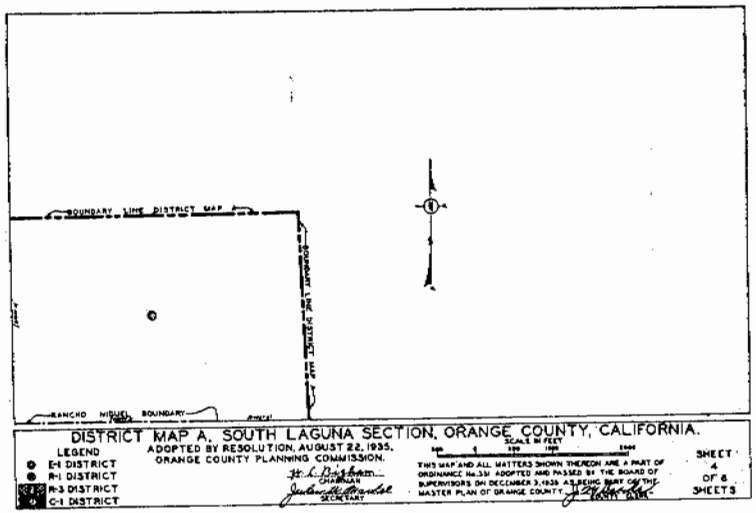
Minimum five (5) feet, except as provided in Sections 18 and 19.

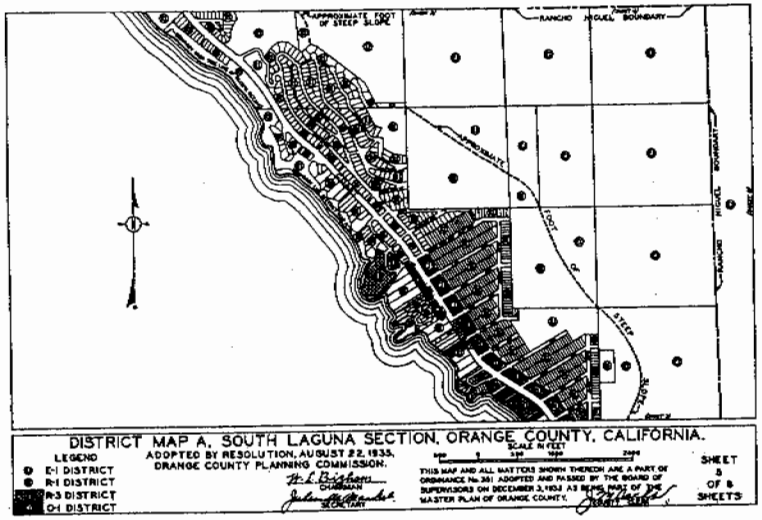
(f) Rear Yard Required.

Minimum twenty-five (25) feet, except as provided in Sections 18 and 19.

(g) Distance Between Dwellings on Same Lot.

No dwelling or other main building one (1) story in height shall be closer than ten (10) feet to any other dwelling or main building of equal height and no dwelling or other main building two (2) stories





in height shall be closer than fifteen (15) feet to any other dwelling or main building.

Section 7: E-1 "ESTATES" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming including all types of agriculture and horticulture except (a) commercial dairies (b) commercial kennels, rabbit, fox, goat and other animal raising farms (c) egg-producing ranches and farms devoted primarily to the hatching, raising, fattening and/or butchering of chickens, pigeons, turkeys and other poultry on a commercial scale (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Flower and vegetable gardening.

3—Nurseries and greenhouses used only for the purposes of propagation and culture and not for retail sales.

4—Public parks and golf, swimming, tennis, polo, yacht and country clubs and similar uses, but not including any sport, athletic recreation or amusement enterprise operated as a business or for commercial purposes.

5—One family dwellings of a permanent character placed in permanent locations, including permanent guest cottages and employees' quarters under conditions prescribed in Section 18.

6—Home occupations, offices and studios, provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

7—Accessory buildings, structures and uses, and also such special uses as provided in Section 18, including buildings and structures commonly required for the operation of an ordinary farm or ranch, provided each such building or structure is built in compliance with the yard regulations of the E1 (Estates) District.

8—One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising sign, structure or device of any character shall be permitted in any E1 (Estates) District.

9—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels
b Public utility buildings and structures
c—Commercial stables
d—Cemeteries, mausoleums and crematories
e—Churches, museums and libraries
f—Schools, colleges, public playgrounds and athletic fields
g—Airplane landing fields for private use.
h—High voltage power transmission lines

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site for each one family dwelling shall be one (1) acre.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no buildings shall be erected closer than seventy-five (75) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than twenty (20) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than fifty (50) feet.

Section 8: E-2 "SMALL FARMS" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming, including all types of argiculture and horticulture, kennels and small animal farms, poultry and squab farms and similar types of farming except commercial dairies having herds of five (5) or more cows, goat, hog and commercial livestock feeding ranches and farms operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Golf, polo, swimming, tennis, yacht and country clubs, but not including any sport, recreation or amusement enterprises operated as a business, or for commercial purposes.

3—Public parks, playgrounds and athletic fields.

4—One and two family dwellings.

5—Accessory buildings, structures and uses, and also such special uses as provided in Section 18.

6—Home occupations, provided not more than one (1) unlighted sign not exceeding two (2) square feet in area is displayed in connection therewith.

7—One (1) unlighted sign not exceeding six (6) square feet in area pertainingg only to the sale, lease or hirc of only the particular buiiding, property or premises upon which displayed. Except as otherwise provided no other advertising sign, structure device of any character shall be permitted in any E2 (Small Farms) District.

8—Churches, museums, libraries.

9—Schools, colleges.

10—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels
b—Public utility buildings and structures
c—Commercial stables
d—Cemeteries, mausoleums and crematories
e—Airplane landing fields for private use
f—High voltage power transmission lines
g—Commercial dairies having herds of less than five (5) cows

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be twenty-thousand (20,000) square feet.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no buildings shall be erected closer than seventy-five (75) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than ten (10) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than forty (40) feet.

Section 9: E-3 "MOUNTAIN ESTATES" DISTRICT REGULATIONS.

(a) Uses permitted.

All uses permitted in the E-2 District. (See Section 8).

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be ten thousand (10,000) square feet.

(d) Front Yard Required.

Same as E-2 District. (See Section 8).

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than thirty (30) feet wide.

(f) Rear Yard Required.

Same as E-2 District. (See Section 8).

Section 10: R-1 "SINGLE FAMILY RESIDENCE" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming, including all types of agriculture and horticulture except (a) commercial dairies, (b) commercial kennels, rabbit, fox, goat and other animal-raising farms (c) egg producing ranches and farms devoted to the hatching, raising, fattening and/or butchering of chickens, turkeys and other poultry on a commercial scale, (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Flower and vegetable gardening.

3—Nurseries and greenhouses used only for purposes of propagation and culture and not for retail sales.

4—Public parks, golf, swimming, tennis, polo, yacht and country clubs and similar recreational uses, but not including any sport, athletic, recreation or amusement enterprise operated as a business or for commercial purposes.

5—One-family dwellings of a permanent character placed in permanent locations.

6—Home occupations, offices and studios provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

7—Accessory buildings, structures and uses, and also such special uses as provided in Section 18, including buildings and structures commonly required for the operation of an ordinary farm or ranch of ten (10) or more acres, provided each such farm or ranch accessory building is built not closer than 100 feet to any public street or highway or exterior property boundary.

8—One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising signs, structures or devices of any character shall be permitted in any any R1 (Single Family Residence) District.

9—*The following additional uses, subject to the issuance of conditional permits therefor, as* prescribed in Section 19:

a—Residential hotels
b—Public utility buildings and structures
c—Churches, museums and libraries
d—Schools, colleges, public playgrounds and athletic fields

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area for each one-family dwelling shall be six thousand (6000) square feet.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no building shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yards Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than five (5) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than twenty-five (25) feet.

Section 11: R-2 "GROUP DWELLINGS" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—All uses permitted in the R-1 District (See Section 10).
2—Two family dwellings.
3—Dwelling groups, bungalow courts and multiple family dwellings.
4—Schools, colleges, churches, libraries and museums.

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be six thousand (6000) square feet and no two family dwelling, bungalow court, dwelling group or multiple family dwelling shall be permitted which provides less than one thousand (1000) square feet of land area per family or housekeeping unit.

(d) Front Yard Required.

Same as R-1 District (See Section 10).

(e) Side Yards Required.

Except as provided in Sections 18 and 19, each side yard shall have a minimum width of five (5) feet and such side yard shall be increased by two and one-half (2½) feet for each dwelling or family unit in excess of two (2) served by such side yard, but in no case to exceed ten (10) feet.

(f) Rear Yard Required.

Same as R-1 District (See Section 10).

(g) Distance Between Dwellings on Same Lot.

Except as provided in Sections 18 and 19, the minimum building site for each dwelling shall be six thousand (6000) square feet.

(d) Front Yard Required.

Same as the C1 District (See Section 13).

(e) Side Yards Required.

Same as the C1 District. (See Section 13).

(f) Rear Yard Required.

Same as the C1 District (See Section 13.)

Section 16: M-2 "UNRESTRICTED" DISTRICT REGULATIONS.

(a) Uses permitted

Any use except for residential purposes and those uses prohibited by law.

(b) Building Height Limit.

None.

(c) Front Yard Required.

Same as the C-1 District (See Section 13).

(d) Side Yard Required.

None.

(e) Rear Yard Required.

Same as C-1 District (See Section 13).

Section 17: M-3 "UNCLASSIFIED" DISTRICT REGULATIONS.

(a) Uses Permitted.

Any uses not otherwise prohibited by law, except the following types of industries and land uses when located within five hundred (500) feet of any occupied dwelling except such as may exist upon the property, any public park or school, State Highway, Class A county road as shown upon the official Highway Plan of Orange County, subdivided lands restricted to residential use by recorded deed restrictions, any E1, E2, E3, R1, R2 or R3 Districts as established by this ordinance or amendments thereto.

Acid manufacture
Asphalt mixing plant
Cement, lime and gypsum manufacture
Distillation of bones
Dog and cat food factory
Fish cannery
Manufacture or storage of explosives
Fertilizer works
Garbage, offal or dead animal reduction or disposal
Gasoline or oil storage above ground, except petroleum products stored for private use
Glue manufacture
Oil refining
Quarries
Ranches for the feeding of garbage to hogs or other animals
Rock crushing
Rubbish dumps
Slaughter house

(b) Building Site Required.

Except as provided in Sections 18 and 19, the minimum building site for each dwelling shall be six thousand (6000) square feet.

Section 18: GENERAL PROVISIONS AND EXCEPTIONS.

The foregoing regulations shall be subject to the following exceptions:

(a) Uses.

1—In the RA (Roadside Agricultural) E2 (Small Farms) and E3 (Mountain Estates) Districts, temporary stands for the sale of products grown or produced on the premises shall be permitted as accessory uses provided the applicant for permit to erect such stand agrees to remove same during seasons when not in use.

2—In the E1 (Estates) District, accessory buildings shall be held to include guests' cottages, provided not more than one (1) guest cottage is built for each acre of land comprising the building site and each said guest cottage is built in conformity with the yard regulations of said E-1 District.

3—The following accessory uses, in addition to those hereinbefore mentioned, shall be permitted in any district, provided that such accessory uses do not alter the character of the premises in respect to their use for the purpose permitted in such respective districts.

(a) The renting of rooms and/or the providing of table board for not to exceed five (5) paying guests in a dwelling as an accessory use to that of its occupancy as a dwelling of the character permitted in the respective districts.

(b) The operation of necessary facilities and equipment in connection with schools, colleges, universities, hospitals and other institutions permitted in the respective districts.

(c) News and refreshment stands in connection with passenger stations.

(d) Recreation, refreshment and service buildings in public parks, playgrounds and golf courses.

(e) Real estate offices of a temporary character when built according to plans and in locations approved by the Planning Commission.

(b) Height)

1—Towers, gables, spires, penthouses, scenery lofts, cupolas, water tanks, silos, artificial windbreaks, wind mills and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the district in which such structures are located, provided, however, that no structure in excess of the allowable building height shall be used for sleeping or eating quarters or for any commercial purpose other than such as may be incidental to the permitted uses of the main building.

2—Where the average slope of a lot is greater than one (1) foot rise or fall in seven (7) feet of distance from the established street elevation of the property line an additional story will be permitted on the downhill side of any building.

(c) Area Exceptions.

1—Any lot shown upon an official subdivision map duly approved and recorded or any lot for which a deed is of record in the office of the County Recorder of Orange County or any lot for which a contract of sale is in full force and effect at the time this ordinance becomes effective may be used as a building site.

2—Front yard regulations in each district shall be subject to modification where official highway maps have been adopted establishing definite future widths for highways as shown upon the official Highway Plan of Orange County. The front yards required in the several districts shall be measured from the proposed street and highway lines as shown upon the official highway maps and shall be as follows:

Where the Official Highway Width is	80 Ft.	100 Ft.	120 Ft.
In the RA District the Front Yard shall be	25 Ft.	25 Ft.	25 Ft.
" " E1 " " " " " "	35 "	25 "	15 "
" " E2 " " " " " "	25 "	25 "	15 "
" " E3 " " " " " "	25 "	25 "	15 "
" " R1 " " " " " "	25 "	25 "	15 "
" " R2 " " " " " "	25 "	15 "	15 "
" " R3 " " " " " "	15 "	15 "	10 "
" " C1 " " " " " "	15 "	15 "	.. "

3—On streets eighty (80) feet or more in width when not shown upon the official Highway Plan of Orange County the front yard shall be equal to one-fifth (1/5) of the width of the street.

4—In computing the depth of a rear yard from any building where such yard opens on a street, alley, public park or beach, one-half (½) of the width of such street, alley, park or beach may be deemed to be a portion of the rear yard.

5—A detached accessory building not exceeding one (1) story in height may occupy not more than fifty (50) percent of the area of a rear yard.

6—Detached accessory buildings in Districts RA, E1, E2, E3, R1, R2 and R3, shall conform to the following regulations as to their location upon the lot, provided, however, that where the slope of the front half of the lot is greater than one (1) foot rise or fall in a seven (7) foot run from the established street elevation at the property line, or where the elevation of the front half of the lot is more than four (4) feet above or below the established street elevation at the property line, a private garage may be built to the street and side lines.

a—In the case of an interior lot abutting upon one street no detached accessory building shall be erected, altered or moved so as to encroach upon the front half of the lot.

b—In the case of an interior lot abutting upon two or more streets, no accessory building shall be erected, altered or moved so as to encroach upon the one-quarter (¼) of the lot nearest either street.

c—In the case of a corner lot abutting upon two (2) streets, no accessory building shall be erected, altered or moved so as to encroach upon the area between such respective streets and lines drawn parallel to such streets respectively in a manner to divide the lot into two (2) equal areas.

d—In case of a corner lot abutting on more than two (2) streets no detached accessory building shall be erected, altered or moved so as to be nearer any street line than one-fifth (1/5) of the width or length of the lot.

e—No detached accessory building shall be erected, altered or moved so as to be within five (5) feet of the side line of the front half of an adjacent lot.

f—Notwithstanding any requirements in this section, the foregoing rules shall not require any detached accessory building to be more than seventy-five (75) feet from any street bounding the lot.

7—Porches, terraces and outside stairways, unroofed, unenclosed, above and below floor, or steps, shall not project more than three (3) feet into any rear or side yard.

Section 19: VARIANCES AND CONDITIONAL PERMITS.

The Board of Supervisors, after receipt of a report and the recommendation of the Planning Commission in each case, as hereinafter provided, shall have the power to grant adjustment and variances in the application of provisions of this ordinance, and to authorize the issuance of conditional permits for the following purposes:

1—To authorize under such conditions as the Planning Commission may prescribe the issuance of permits for the use of lots in any subdivision pending the amendment of district boundaries within said subdivision in accordance with recommendation of the Planning Commission, provided the map of such subdivision has been approved by the Planning Commission and the Board of Supervisors subsequent to the passage of this ordinance and is duly recorded in the office of the County Recorder of Orange County.

2—To authorize the issuance of permits for the use of lots for dwelling purposes only for seasonal and recreational use having areas less than six thousand (6000) square feet when located in a subdivision of beach sand property adjacent to and within one thousand (1000) feet of tide water of the Pacific Ocean, provided the map of such subdivision has been approved by the Planning Commission and the Board of Supervisors subsequent to the passage of this ordinance and is duly recorded in the office of the County Recorder of Orange County, such authority to be granted only upon the following conditions:

a—Application for variance to be made by the subdivider at the time of filing of subdivision map for the approval of the Planning Commission.

b—Minimum lot area to be four thousand (4000) square feet.

c—Minimum lot width to be forty (40) feet.

d—Minimum front and rear yards to be ten (10) feet each.

e—Minimum side yards to be four (4) feet each.

f—Maximum height of dwellings two (2) stories and not to exceed thirty-five (35) feet.

g—All other regulations of the District not in conflict with the above requirements to be complied with.

3—To allow the use, for any purpose permitted in a C-1 (Local Business) District, of land in any district abutting such C-1 District when such land is contiguous to or within one hundred feet of any land or building used for commercial purposes within any C-1 District or any land or building used for commercial purposes under any conditional permit issued pursuant to this authority.

4—To allow a reduction of lot area requirements and front, side and rear yard regulations where in the judgment of the Planning Commission the shape of the building site, topography, the location of existing buildings or other conditions make a strict compliance with said regulations impossible without practical difficulty or hardship, but in no case except as hereinafter provided shall these regulations be reduced more than fifty (50) percent, or in such a manner as to violate the intent and purpose of this ordinance.

5—To adjust front yard requirements on existing streets or ways less than forty (40) feet in width where, in the judgment of the Planning Commission, such streets or ways are of minor importance for traffic purposes.

6—To allow the extension of a district where the boundary line thereof divides a lot in one ownership at the time of the passage of this ordinance.

7—To allow the construction of commercial buildings with sidewalks, arcades, or similar architectural features where such construction requires a variance of front yard regulations and is in conformity with a general architectural plan applicable to the entire frontage of a block.

8—To allow specified types of uses and buildings in the RA, E1, E2, E3, R1, R2 and R3 Districts, as provided in the use regulations of such districts, under conditions which will preserve the integrity and character of the district, the utility and value of adjacent property and the general welfare of the neighborhood, such conditions being specifically as follows:

a—Temporary stands, upon condition that (1) design of the stand be approved by the Building Inspector, (2) the stand be removed when not in use.

b—Residential hotels, upon condition (1) the building site contain not less than ten (10) acres, (2) building coverage not to exceed thirty-five (35) percent of the area of the site, (3) fifty (50) percent or more of the guest rooms be provided in detached buildings and (4) all building and plot plans be approved by the Planning Commission.

c—Public utility buildings and structures, upon condition that all plans be approved by the Planning Commission.

d—Commercial Stables, upon condition that the location and building plans all have approval of the Planning Commission.

e—Cemeteries, mausoleums and crematories, upon condition that (1) the area of any cemetery be not less than forty (40) acres and (2) that all landscape and architectural plans be approved by the Planning Commission.

f—Churches, museums and libraries, upon condition that (1) the location and building and plot plans be submitted and approved by the Planning Commission.

g—Schools, colleges, public playgrounds and athletic fields, upon condition that (1) an area adequate, in the judgment of the Planning Commission, be provided to reduce possibility of injury to adjoining residential properties and (2) building and plot plans to be approved by the Planning Commission.

h—Airplane landing fields for private use, upon condition that (1) the location and all plans be approved by the Planning Commission.

i—High voltage power transmission lines, upon condition that the location plans be approved by the Planning Commission before purchase of rights-of-way.

j—Commercial dairies, having herds of less than five (5) cows, provided that no feeding pens, milking sheds and other buildings or structures designed or used for confinement of the herd be located closer than five hundred (500) feet to any occupied dwelling except such as may be located upon the premises.

k—Apartment hotels, upon condition that (1) the area covered by buildings shall not exceed forty (40) percent of the area of the building site, (2) necessory commercial uses shall have no direct entrances from any street and shall maintain no signs or advertising displays of any kind visible from the exterior and (3) all building and plot plans shall be approved by the Planning Commission.

l—Storage garages, upon condition that the location and building plans be approved by the Planning Commission.

9—To permit the reconstruction and/or remodeling of a non-conforming building in accordance with plans and specifications approved by the Planning Commission where in the judgment of said Commission such reconstruction and/or remodeling will, in the matter of front, side and rear yards, structural character and exterior appearance of said building, make said non-conforming building safer and more healthful and bring it and its subsequent uses into fairer conformity with its surroundings.

Application for any permissible variance of regulations or for any special use as provided herein shall be made to the Planning Commission in the form of a written application for a permit. Said application shall be accompanied by:

a—Complete plans and description of the property involved and the proposed use with ground plans and elevations of all proposed buildings and structures.

b—Evidence, satisfactory to the Planning Commission of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six (6) months after issuance of permit.

Upon receipt in proper form of any such application, the Planning Commission shall post said application and all maps, plans and other accompanying material in its offices for public inspection for a period of not less than one (1) week and shall hold a public hearing thereon, notice of which shall be given by one (1) publication in a legal newspaper circulating in the particular section of the county affected by said application: At said hearing the applicant shall present a statement and adequate evidence, in such form as the Planning Commission may require, showing:

1—That there are special circumstances or conditions applicable to the property referred to in the application.

2—That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.

3—That the granting of such application will not materially affect the health or safety of persons residing or working in the neighborhood and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

If the Planning Commission finds that detriment or injury to the neighborhood will not result from issuance of a permit as applied for it may approve said permit and transmit the same together with the complete report of its findings and recommendations to the Board of Supervisors for approval and endorsement. In the event the Planning Commission disapproves any such application, no permit shall be issued therefor except upon order of the Board of Supervisors passed by a full affirmative vote of all members thereof.

In approving any variance or recommending the issuance of any conditional permit under the provisions of this section, the Planning Commission shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulation or provision to which such variance is granted or provide adequately for the maintenance of the integrity and character of the district in which such conditional permit is granted. Where necessary, the Board of Supervisors may require guarantees, in such form as it may deem proper under the circumstances, to insure that the conditions designated in connection therewith are being or will be complied with.

Section 20: NON-CONFORMING USES.

The lawful use of land existing at the time of the passage of this ordinance, although such use does not conform to the provisions hereof, may be continued, but if such non-conforming use is discontinued any future use of said land shall be in conformity with the provisions of this ordinance.

The lawful use of a building existing at the time of the passage of this ordinance may be continued,

although such use does not conform with the provisions hereof, and such use may be extended throughout the building provided no structural alterations, except those required by law or ordinance or permitted under Section 19 of this Ordinance, are made therein. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification.

No existing building designed, arranged or intended for or devoted to a use not permitted under the regulations of this ordinance for the district in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a use permitted under the regulations specified by this ordinance for such district in which said building is located; provided, however, that work done in any period of twelve (12) months on ordinary structural alterations or replacements of walls, fixtures or plumbing not exceeding twenty-five (25) percent of the assessed value of the building according to the assessment thereof by the Assessor of the County for the fiscal year in which such work is done shall be permitted, provided that the cubical contents of the building as it existed at the time of the passage of this ordinance be not increased.

If at any time any building in existence or maintained at the time of the adoption of this ordinance which does not conform to the regulations for the district in which it is located, shall be destroyed by fire, explosion, Act of God or act of the public enemy to the extent of more than seventy-five (75) percent of the assessed value thereof, according to the assessment thereof by the said Assessor for the fiscal year during which such destruction occurs, then and without further action by Board of Supervisors the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by this ordinance for the district in which such land and building are located.

The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed.

In every case in which, under the provisions of any ordinance of Orange County, or any statute in effect at the time this ordinance takes effect, a license or permit is required for the maintenance of any structure or the establishing, maintaining and/or conducting of any business use, and any structure or business use exists as a non-conforming use under the provisions of this ordinance, then no such license or permit shall be authorized, issued, renewed, reissued or extended for said business use unless and until a use and occupancy permit shall first have been secured for the continued maintenance of said structure or use.

Section 21: INTERPRETATION, PURPOSE AND CONFLICT.

In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity or general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings, or requires larger space than is imposed or required by other ordinances, rules or regulations, or by easements, covenants or agreements, the provisions of this ordinance shall govern.

Section 22: BUILDING PERMITS.

Before commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure within any district shown upon any sectional district map of Orange County duly adopted and made a part of this ordinance or any M-3 (Unclassified) District established hereunder, a permit for each separate building and/or structure, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be secured from the Building Inspector of said county by the owner or his agent for said work and it shall be unlawful to commence said work until and unless said permit shall have been obtained.

The issuance of a building permit under the authority of this section shall not be deemed or construed to permit or authorize any violation of any of the provisions of this ordinance or amendments thereto or of any other ordinance or law.

Section 23: CERTIFICATES OF USE AND OCCUPANCY.

No vacant land in any district established under the provisions of this ordinance except in an M-2 (Unrestricted) and an M-3 (Unclassified) District, shall hereafter be occupied or used, except for agricultural uses other than livestock farming or dairying, and no building hereafter erected, structurally altered or moved in any such district shall be occupied or used until a certificate of use and occupancy shall have been issued therefor by the aforesaid Building Inspector.

Application for a certificate of use and occupancy for a new building, or for an existing building which has been altered or moved shall be made at the same time as the application for a building permit. Said certificate shall be issued within three (3) days after a written request for the same shall have been made to the said Building Inspector after the erection, alteration or moving of such building or part thereof shall have been completed in conformity with the provisions of this ordinance. Pending the issuance of such a certificate, a temporary certificate of use and occupancy may be issued by the said Building Inspector for a period of not exceeding six (6) months during the completon of alterations or during partial occupancy or use of a building pending its completion. Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the County relating to the use or occupancy of the premises or any other matter covered by this ordinance, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

Written application for a certificate of use and occupancy for the use of vacant land or for a change in the character of the use of land, as herein provided, shall be made before any such land shall be so occupied or used, except for agricultural purposes other than livestock farming or dairying. Such a certificate of use and occupancy shall be issued within three (3) days after the application therefor has been made, provided such use is in conformity with the provisions of this ordinance.

Every certificate of use and occupancy shall state that the building or proposed use of building or land complies with all provisions of law and of this ordinance. A record of all certificates of use and occupancy shall be kept on file in the office of the said Building Inspector and copies shall be furnished on request, to any person having a proprietary or tenancy interest in the building or land affected. No fee shall be charged for a certificate of use and occupancy.

No permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy.

Section 24: PLANS.

All applications for building permits shall be accompanied by a drawing or a plot plan made to scale, showing the lot and the building site or sites, the proposed location of the building or buildings on the lot, accurate dimensions of building and lot and such other information as may be necessary to provide for the enforcemsnt of this ordinance.

Section 25: APPROVAL OF PLANS.

Before any building or structure which is designed or intended to be used for commercial purposes is erected, constructed, altered or moved within a C1 or C2 District, upon property abutting any Primary or Secondary State Highway, or Class A county road, as shown upon any official Highway Plan of Orange County, drawings or sketches showing the exterior elevations of the proposed building or structure, the types of materials and colors to be used, and signs to be displayed shall be filed with the Planning Commission and shall be approved by said Planning Commission or its designated agent before any permit for the construction of said building or structure shall be issued.

The Planning Commission may designate the Building Inspector of Orange County as its agent to receive and approve said plans in behalf of said Commission when in his judgment the plans conform to the general architectural requirements established for the district in which the building is to be located. The Building Inspector shall act upon all such plans within thirty (30) days after their receipt, and failure to notify the applicant of disapproval of said plans within such period, unless the applicant consents to an extention of time, shall constitute approval of the plans insofar as this section of this ordinance is concerned.

For the guidance of the Building Inspector in passing upon all plans submitted in compliance with this section, the Planning Commission shall by resolution duly recorded in its minutes adopt certain general rules and specifications and such illustrative architectural drawings showing desirable standards and types of design, materials, colors and styles of signs and lettering as will provided a basis and guide for the approval of plans for proposed buildings in each C1 and C2 District. The Planning Commission shall appoint and designate one of its members as chairman of an unofficial Architectural Advisory Committee of three (3), two of whom shall be registered architects, to cooperate with the Building Inspector and to serve with him in behalf of the Planning Commission in passing upon architectural plans filed as required herein.

In reviewing and judging such plans, the Building Inspector shall give primary consideration to the general rules, specifications and official illustrative material designated by the Planning Commission as controlling with respect to the particular district in which the proposed building is to be erected, constructed, altered or moved. If the Building Inspector acting as agent of the Planning Commission and after consultation with the Architectural Advisory Committee disapproves any plan, he shall immediately file said plans and a statement of his reasons for disapproval with the secretary of the Planning Commission. The Planning Commission, not later than its first regular meeting thereafter, shall either approve said plans or any revision thereof and direct the Building Inspector to issue a permit for the building in question or disapprove the plans.

In case of final disapproval by the Planning Commission of any plans submitted in compliance with this section, copies of the plans with the findings of the Planning Commission and reasons for their disapproval attached shall be filed immediately with the Clerk of the Board of Supervisors and said Board at its next regular meeting shall either approve said plans and order the issuance of a permit for the building in question or return the plans to the applicant with a statement indicating the reasons for disapproval.

Section 26: COMPLETION OF BUILDING.

Nothing hersin contained shall require any change in the plans, construction or designated use of a building for which a building permit has heretofore been issued and upon which actual construction has begun.

Actual construction is hereby defined to be the actual placing of construction materials in their permanent position fastened in a permanent manner, except that where a basement is being excavated such excavating shall be deemed to be actual construction or where demolishing or removal of an existing building or structure has been begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, providing in all cases that actual construction work be diligently carriend on until the completion of the building or structure involved.

Section 27: AMENDMENTS AND CHANGES OF DISTRICT BOUNDARIES.

The Board of Supervisors of the County of Orange may from time to time, after report thereupon by the Planning Commission and after public hearings as required by law, amend, supplement or change the regulations and districts herein or subsequently established. An amendment, supplement or change may be initiated by the Board of Supervisors, by the Planning Commission, or by petition of property owners.

Whenever the owner of any land or building desires a re-classification of his property he shall present to the Board of Supervisors a petition duly signed and acknowledged by him requesting an amendment, supplement or change of the regulations prescribed for such property. The Board of Supervisors shall refer the petition to the Planning Commission for such hearings as may be required by law for amendments, extensions or additions to the districting plan, for recommendations upon the boundaries of the district to be changed and such other matters as may be related to said petition, and shall take final action upon said petition within ninety (90) days after the filing thereof.

The Board of Supervisors after receipt of report and recommendation from the Planning Commission, shall hold a final hearing thereupon, duly advertised as required by law. If at the time of the final hearing before the Board of Supervisors a protest against such amendment, supplement or change is presented duly signed and acknowledged by the owners of twenty (20) percent or more of the area for which a change of classification is requested or proposed, or by the owners of twenty (20) percent of all dwellings within three hundred (300) feet thereof, or by the owners of twenty (20) percent of all land adjacent thereto and within three hundred (300) feet thereof, no such amendment, change or supplement shall be adopted except by a four-fifths (4/5) vote of the full membership of the Board of Supervisors.

The Planning Commission is authorized to make a uniform charge not to exceed ten dollars ($10.00) payable to the County Treasurer, to partially cover the cost of making maps, sending out notices and other incidental administrative expenses involved in any petition for a change in these regulations, said charge being due and payable at the time of filing any petition or request for change.

Section 28: ENFORCEMENT, LEGAL PROCEEDURE, PENALTIES.

It shall be the duty of the Building Inspector of Orange County to enforce the provisions of this ordinance pertaining to the erection, construction, alteration, or addition to any building or structure.

It shall be the duty of the Health Department of Orange County to enforce the provisions of this ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure.

It shall be the duty of the Sheriff of Orange County and of all officers of said county otherwise charged with the enforcement of the law to enforce this ordinance and all the provisions of the same.

Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating any provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be

ORDINANCE NO. 1183

AN ORDINANCE OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, REQUIRING PERMITS AND PROVIDING RULES AND REGULATIONS FOR THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, CONVERSION, DEMOLITION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA, OF BUILDINGS, STRUCTURES AND TENTS; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; ADOPTING BY REFERENCE THE UNIFORM BUILDING CODE, 1958 EDITION, VOLUME I INCLUDING SECTIONS 5108 THROUGH 5113 AND TABLE 51-A OF THE APPENDIX THERETO, AND UNIFORM BUILDING CODE, VOLUME III, UNIFORM BUILDING CODE STANDARDS, 1958 EDITION; AND REPEALING ORDINANCES NOS. 922, 955, 1035 AND SECTION 1 OF 1049, AND SECTION 1 OF 1062 OF THE COUNTY OF ORANGE.

The Board of Supervisors of the County of Orange, State of California, do ordain as follows:

SECTION 1. There is hereby adopted by the Board of Supervisors of the County of Orange for the purpose of prescribing regulations for the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, of buildings, structures, and tents, that certain code known as Uniform Building Code, 1958 Edition, Volume I including Sections 5108 through 5113 and Table 51-A, of the Appendix thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition, and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code not less than three (3) copies have been and are now filed in the office of the Clerk of the County of Orange, and the same are hereby adopted and incorporated as fully as if set forth at length herein.

SECTION 2. The provisions of the Building Code of the County of Orange shall apply to and affect all of the unincorporated

territory of Orange County, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this Code, and hydraulic flood control structures.

SECTION 3. Whenever any of the following names or terms are used in said Uniform Building Code, each such name or term shall be deemed and construed to have the meaning ascribed to it in this section as follows: "BUILDING OFFICIAL" shall mean Superintendent of Building and Safety. "CITY" shall mean the County of Orange or the unincorporated territory of the County of Orange as the text may require. "CITY COUNCIL" shall mean the Board of Supervisors of the County of Orange.

SECTION 4. Sub-section (h) of Section 104 of said Uniform Building Code is hereby amended to read as follows:

"(h) Moved Buildings

A. Buildings or structures moved into or within the County shall comply with the provisions of this Code.

B. No building or structure shall be moved or relocated unless and until a permit to relocate the building or structure has been issued by the Superintendent of Building and Safety to the owner of the premises to which the particular building or structure is proposed to be moved. Such permit shall be designated as a 'relocation permit.'

C. Relocation Permit - Issuance - Enforcement.

1. Application - Conditions.

a. Every application to the Superintendent of Building and Safety for a relocation permit shall be in writing upon a form furnished by the County Building Inspection Department,

unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that one or more of the sections, subsections, paragraphs, sentences, clauses or phrases thereof be declared unconstitutional or invalid.

SECTION 42. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published once in the Huntington Beach News, a newspaper of general circulation printed and published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Willis H. Clarke
Chairman of the Board of Supervisors
of Orange County, California.

ATTEST:
[illegible]
Clerk of the Board and ex-officio Clerk
of the Board of Supervisors of
Orange County, California

By [illegible] Deputy

I, [illegible], County Clerk and ex-officio Clerk of the Board of Supervisors do hereby certify that at a regular meeting of the Board of Supervisors of Orange County, California, held on the 11th day of March, 1959, the foregoing Ordinance containing forty-two sections was considered section by section, and that the said Ordinance was then passed and adopted as a whole by the following vote:

AYES: SUPERVISORS O.H. FEATHERLY, WM. H. HERSTERN, WILLIAM J. PHILLIPS, O.M. NELSON AND WILLIS H. WARNER

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors of the County of Orange, State of California, the 11th day of March, 1959.

L. B. WALLACE
County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California

(SEAL)

By _____ Deputy

Publish Huntington Beach News
March 19, 1959

29.

RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

February 10, 1959

On motion of Supervisor Phillips, duly seconded and carried, the following Resolution was adopted:

WHEREAS, this Board proposes to enact an ordinance entitled "An Ordinance of the County of Orange, State of California, Requiring Permits and Providing Rules and Regulations for the Erection, Construction, Enlargement, Alteration, Repair, Moving, Removal, Conversion, Demolition, Occupancy, Equipment, Use, Height, Area, of Buildings, Structures and Tents; Providing Penalties for the Violation Thereof; Adopting By Reference the Uniform Building Code, 1958 Edition, Volume I including Sections 5108 through 5113 and Table 51-A of the Appendix Thereto; and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition; and Repealing Ordinances Nos. 1031, 925, 1035 and Section 1 of 1049, and Section 1 of 1067 of the County of Orange", and

WHEREAS, the purpose of the enactment of the proposed ordinance is to adopt by reference, the Uniform Building Code, 1958 Edition, Volume 1, including Sections 5106 through 5113 and Table 51-A of the Appendix thereto; and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition, and to provide rules and regulations governing, and require permits for, the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, and area of buildings, structures and tents, and providing penalties for the violation thereof; and

WHEREAS, three (3) copies of said Primary Code are on file for public inspection in the office of the Clerk of this Board, and

WHEREAS, the title of the proposed adopting ordinance and the title of the Primary Code to be adopted thereby have been read in

Resolution No. 59-164

public session of this Board as required by Section 50022.3 of the Government Code;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that Wednesday, the 11th day of March, 1959, at the hour of 9:30 o'clock A M., in the Chambers of this Board of Supervisors in the County Courthouse, Santa Ana, California, be and is hereby fixed as the time and place for a public hearing in the matter of the adoption of the said proposed ordinance and the adoption by reference of that certain code known and designated as the Uniform Building Code, 1958 Edition, Volume I, including Sections 5108 through 5113 and Table 51-A of the Appendix thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition.

BE IT FURTHER RESOLVED AND ORDERED that notice of the hearing herein scheduled shall be given by publication once a week for two successive weeks in the Huntington Beach News, a newspaper of general circulation printed and published in the County of Orange, the first publication thereof to be made at least fifteen (15) days preceding the hearing herein scheduled; that the said notice shall contain those matters as required by Section 50022.3 of the Government Code.

AYES: SUPERVISORS WILLIAM J. PHILLIPS, WM. H. HIRSTEIN, C.M. FARTHERLY, C.M. NELSON AND WILLIS H. WARNER

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, L. B. WALLACE, County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the 10th day of

ORANGE COUNTY
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THE CODIFIED ORDINANCES
OF THE
COUNTY OF ORANGE

Published by Order of the Board of Supervisors

WM. HIRSTEIN, Chairman
District No. 4

C. M. FEATHERLY
District No. 1

WILLIAM J. PHILLIPS
District No. 3

WILLIS H. WARNER
District No. 2

C. M. NELSON
District No. 5

Prepared by
THE OFFICE OF THE COUNTY COUNSEL

Adopted November 29, 1961
by Ordinance No. 1414

Sec. 78.021. Authority, general purpose and objectives.

This Article shall be known as "The Comprehensive Zoning Code." The Comprehensive Zoning Code is adopted pursuant to Section 11 of Article XI of the Constitution of the State of California and in compliance with Title 7 of the Planning and Zoning Law of the Government Code for the purpose of promoting the health, safety and general welfare. The Comprehensive Zoning Code is adopted in order to achieve the following objectives:

(a) To enhance and implement the General Plan;

(b) To provide a guide for the growth and development of the County in accordance with the General Plan;

(c) To secure for the citizens of Orange County the social and economic advantages resulting from an orderly planned use of its land resources;

(d) To encourage, classify, designate, regulate and segregate the uses of land, buildings and structures to serve the needs of agriculture, commerce, industry, residences and other purposes in appropriate places;

(e) To establish conditions which will allow all of these land uses to exist in harmony within the community;

(f) To prevent the overcrowding of land, to avoid undue concentration of population, and to maintain a suitable balance between structures and open spaces;

(g) To lessen congestion on streets and to promote a safe, efficient traffic circulation system;

(h) To ensure that adequate off-street parking and loading facilities will be installed and maintained;

(i) To facilitate adequate provisions for community utilities, such as transportation, water, sewage, schools, parks, and other public requirements;

(j) To protect and enhance real property values; and

(k) To promote the stability of existing land uses and to protect them from incompatible and harmful intrusions. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

Sec. 78.021.1. Interpretation and application of this Article.

(a) The provisions of this Article shall not be construed to repeal, amend, modify, impair, annul, or otherwise interfere with any other existing ordinance, easement, deed restriction, covenant, or other agreement between parties or any part thereof not specifically repealed, amended, modified, or annulled herein, except that where this Article imposes a greater limitation on the use of land or structures, or the height or bulk of structures, or requires greater open spaces, or greater areas or dimensions of sites than is imposed by any other ordinance, easement, deed restriction, covenant, or agreement on the same premises or property, this Article shall control.

(b) Nothing in this Article shall be construed to authorize the use of any premises or property in violation of this Article or any other applicable statute, ordinance, or regulation.

(c) Whenever reference is made to any portion of this Article, the reference applies to all amendments and additions now or hereafter made.

(d) If any section, subsection, paragraph, sentence, clause or phrase of this Article is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this Article. The Board of Supervisors hereby declares that it would have passed this Article and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that one or more of the sections, subsections, paragraphs, sentences, clauses or phrases thereof be declared unconstitutional or invalid.

(e) The district regulations, special regulations, and general provisions within this Article are intended to be minimum regulations and shall be uniform for each class or kind of building or use of land throughout each zone.

(1) No building, structure, or land shall hereafter be used or occupied, and no building or structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except

in conformity with all of the regulations herein specified for the district in which it is located.

(2) No building or other structure shall hereafter be erected or altered to exceed the height or bulk regulations; to accommodate or house a greater number of families or to contain more dwelling units; to occupy a greater percentage of lot area; or to have narrower or smaller front, side and rear yards or other open spaces than herein required; or in any other manner contrary to the provisions of this Article.

(3) No part of a yard or other open space, or off-street parking or loading area required in connection with any building or use for the purpose of complying with this Article shall be included as all or part of a yard, open space, or off-street parking or loading space similarly required for any other building or use.

(4) No yard or site existing at the time of passage of this Article shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or sites created after the effective date of this Article shall meet at least the minimum requirements established by this Article.

(f) The terms of this Article shall be subject to exception or variance. Variances shall be granted only in compliance with the regulations provided in Section 78.0270 (Variances, Use Permits, Conditional Permits and Use Variances). *(Ord. No. 2141, Sec. 4, eff. 4/20/67.)*

Section 78.022. Definitions.

All references to this Section shall include Sections 78.022.1 through 78.022.27.

For the purpose of carrying out the intent of this Article, words, phrases, and terms shall be deemed to have the meaning ascribed to them in the following sections covering definitions. In construing the provisions of this Article specific provisions shall supersede general provisions relating to the same subject.

When not inconsistent with the context, words used in the present tense include the future; words in the singular number include the plural; those in the plural number include the singular; the word "or" includes "and," and the word "and" includes the word "or".

The word "Article" refers to Title 7, Division 8, Article 2 of the Codified Ordinances of the County of Orange, which is the Comprehensive Zoning Code.

The word "Assessor" shall mean the County Assessor of the County of Orange.

The word "Board" or "Board of Supervisors" shall mean the Orange County Board of Supervisors, which is the governing body of the County.

The words "Building Department" shall mean the Department of Building and Safety of the County of Orange.

The word "City" shall mean any City situated in the County of Orange.

The word "Commission" or "Planning Commission" shall mean the Orange County Planning Commission.

The word "County" shall mean the County of Orange.

The words "County Counsel" shall mean the County Counsel of the County of Orange.

The words "County Recorder" shall mean the County Recorder of the County of Orange.

The words 'County Surveyor" shall mean the County Surveyor of the County of Orange.

The word "Director" or "Director of Planning" shall mean the manager of the County Planning Department as authorized by Chapter 3, Title 7 of the Government Code, Statutes of the State of California.

The words "Director of Building and Safety" shall mean the Director of the Department of Building and Safety of the County of Orange.

The word "Federal" shall mean the government of the United States of America.

The words "Flood Control Engineer" shall mean the Chief Engineer, Orange County Flood Control District appointed by the Board of Supervisors of the Orange County Flood Control District.

The words "Health Department" shall mean the Health Department of the County of Orange.

The words "Real Property Services Department" shall mean the Department of Real Property Services of the County of Orange.

The words "Road Commissioner" shall mean the Orange County Road Commissioner.

The word "shall" is mandatory; and the word "may" is permissive.

The word "State" shall mean the State of California.

The word "used" includes the words "arranged for", "designed for", "occupied" or "intended to be occupied for".

The words "Sectional District Map" shall mean an official Sectional District Map of the County of Orange which is a part of this Article.

The words "Zoning Code" or "Code" shall mean the Comprehensive Zoning Code of the County of Orange. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68.)*

BUILDING LINE

An imaginary line on a building site specifying the closest point from an ultimate right of way line or a property line where a main building may be located.

It may be a line shown as such on a map entitled "Precise Plan of Highway Alignment" or any other officially adopted precise plan, and any amendments thereto. If no such precise plan has been adopted, the building line shall be a line as specified on the chart entitled "Building Lines" in Section 78.0262.1.

When computed from the Building Lines Chart, the Building Line shall be at the required distance from, and measured at right angles to, the ultimate right of way line or property line.

BUILDING SITE

A legally created parcel, or contiguous parcels of land in single or joint ownership; which provides the area and the open spaces required by this Article, exclusive of all rights of way and all easements that prohibit the surface use of the property; which abuts a street or waterway; and which has a minimum of 20 continuous feet of vehicular and pedestrian access to a street or alley having a right of way width of not less than 20 feet.

BUILDING SITE COVERAGE

The relationship between the ground floor area of the building or buildings and the net area of the site.

Said net area shall be computed by deducting from the gross site area any ultimate street rights of way together with all rights of way and all easements that prohibit the surface use of the site in question.

Unenclosed post-supported roofs over patios and walkways, unenclosed post-supported eave overhangs, and swimming pools shall not constitute buildings for the purpose of this definition.

BUILDING SITE, PANHANDLE OR FLAG

A building site with access to a street by means of a corridor or accessway which is not less than 20 feet nor more than 40 feet in width.

BUILDING SITE, SHORELINE

A parcel of land abutting both (1) a public or private beach or public or private harbor and (2) a public or private street or highway.

STREET

A public or private vehicular right of way other than an alley.

STREET OPENING

A curb break, or a means, place, or way provided for the purpose of gaining vehicular access between a street and abutting property.

STRUCTURE

Anything constructed or erected requiring a fixed location on the ground or attached to something having a fixed location on the ground except business signs and other improvements of a minor character.

STRUCTURAL ALTERATIONS

Any change in the supporting members of a building or structure.

SWIMMING POOL

An artificial body of water having a depth in excess of 18 inches, designed, constructed and used for swimming, dipping or immersion purposes by men, women or children.
(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2290, Sec. 3, eff. 2/13/69; amended by Ord. No. 2415, Sec. 1, eff. 9/25/70.)

Sec. 78.022.20. Definitions. (T)

TRAVEL TRAILER

A vehicle designed for human habitation, for carrying persons and property on its own structure, and used for travel or recreational purposes.

TRAVEL TRAILER PARK

Any area or property where spaces are rented or held out for rent, for not more than 30 days, to one or more users of travel trailers.
(Ord. No. 2142, Sec. 4, eff. 4/20/67.)

Sec. 78.022.21. Definitions. (U)

ULTIMATE RIGHT OF WAY

The right of way shown as ultimate on an adopted Precise Plan of Highway Alignment; or the street rights of way shown within the boundary of a recorded tract map, a recorded parcel map, or a recorded PC Development Plan. The latest adopted or recorded document in the above cases shall take precedence. If none of these exist, the ultimate right of way shall be considered the right of way required by the highway classification as shown on the Master Plan of Arterial Highways. In all

other instances, the ultimate right of way shall be considered to be the existing right of way in the case of a private street, and the existing right of way, but not less than 60 feet, in the case of a public street.

USE

The purpose for which land or a building is occupied, arranged, designed or intended, or for which either land or building is or may be occupied or maintained. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2197, Sec. 2, eff. 1/26/68.)*

Sec. 78.022.22. Definitions. (V)

VEHICULAR ACCESSWAY

A private, nonexclusive vehicular easement affording access to abutting properties.
(Ord. No. 2142, Sec. 4, eff. 4/20/67.)

Sec. 78.022.23. Definitions. (W)

WATERWAY

A public or private navigable right of way.

WING WALL

An architectural feature in excess of six feet in height which is a continuation of a building wall projecting beyond the exterior walls of a building. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2197, Sec. 2, eff. 1/26/68.)*

Sec. 78.022.25. Definitions. (Y)

YARD

The open space within a building site that is unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the finished grade upward; except that eaves, fences, walls used as fences, poles, posts and other customary yard ornaments, accessories and furniture may be permitted in any yard subject to the regulations for the district in which it is located.
(Ord. No. 2142, Sec. 4, eff. 4/20/67.)

Sec. 78.023. Scope of The Comprehensive Zoning Code and adoption of zoning district maps.

This Article includes zoning district maps, general provisions, special regulations, and a set of general district regulations limiting and controlling the uses of land, the density of population, the uses and locations of structures, the height and bulk of structures, the open spaces around structures, the areas and dimensions of sites; the size, height, and location of signs; the installation and maintenance of screening and landscaping, the control of vehicular access, and the requirement of off-street parking and loading facilities. Sectional district maps, precise plan and specific plan maps, oil field maps, district C maps, and all other maps that were officially adopted pursuant to or as an amendment to Section 78.025 prior to the effective date of Ordinance No. 2142 are included within the term "zoning district map", and all such maps and all subsequently adopted zoning district maps are and shall be a part of this Section. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

Sec. 78.023.1. Establishment of districts and interpretation of district boundaries.

The unincorporated territory of the County of Orange is hereby divided into zones, or districts, as set forth in Title 7, Division 8, Article 2 of the Codified Ordinances of the County of Orange, as determined and defined by officially adopted zoning maps. Each zoning district map showing the classifications and boundaries of districts shall, upon adoption in the manner required by the Planning and Zoning Law, be a part of this Article.

Where uncertainty exists as to the boundaries of districts shown on an official zoning district map, the following rules shall apply:

(a) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines;

(b) Boundaries indicated as approximately following the right of way lines of streets, highways, or alleys shall be construed to follow such right of way lines, and in event of change in the right of way line shall be construed as moving with the right of way line;

(c) Boundaries indicated as approximately following shore lines shall be construed to follow such shore lines, and in the event of change of the shore line, shall be construed as moving with the actual shore line; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water, of flood control channels shall be construed to follow such centerlines;

(8) Temporary stands for the sale of agricultural or farming products grown or produced on the premises shall be permitted as accessory uses as provided in Section 78.0227.

(9) The following additional uses, subject to the issuance of Conditional Permits therefor, as provided in Section 78.0228:

a. Public utility buildings and structures.
b. Schools, including pre-schools or nursery schools and colleges.
c. Churches, museums, libraries.
d. Clinics, hospitals, sanitariums, rest homes.
e. Cemeteries, mausoleums and crematories.
f. Publicly owned parks.
g. Apiaries.

(b) *Building height limit:*

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Sections 78.0227 and 78.0228.

(c) *Building site area required:*

Except as provided in Sections 78.0227 and 78.0228, the minimum building site area shall be seventy-two hundred (7200) square feet.

NOTE: Front, side and rear yards shall be provided as required by Section 78.0227 (c) (2). (See "Building Lines" Chart, Section 78.022.)

(Ord. No. 351; added by Ord. No. 1081, Sec. 3; amended by Ord. No. 1217, Sec. 6; amended by Ord. No. 2037, Sec. 1, eff. 3/31/66.)

Sec. 78.029. E1 "Estates" District regulations.

(a) *Use Permitted:*

(1) Farming including all types of agriculture and horticulture except (a) commercial dairies (b) commercial kennels, rabbit, fox, goat and other animal raising farms (c) egg-producing ranches and farms devoted primarily to the hatching, raising, fattening and/or butchering of chickens, pigeons, turkeys and other poultry on a commercial scale (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

(2) Flower and vegetable gardening.

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(3) Nurseries and greenhouses used only for the purposes of propagation and culture and not for retail sales.

(4) Public parks.

(5) One-family dwellings of a permanent character placed in permanent locations, including permanent guests cottages and employees' quarters under conditions prescribed in Section 78.0227.

(6) Home occupations, offices and studios, provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

(7) Accessory buildings, structures and uses, and also such special uses as provided in Section 78.0227, including buildings and structures commonly required for the operation of an ordinary farm or ranch, provided each such building or structure is built in compliance with the yard regulations of the E1 "Estates" District.

(8) One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising sign, structure or device of any character shall be permitted in any E1 "Estates" District.

(9) The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 78.0228.

a. Residential hotels.
b. Public utility buildings and structures.
c. Commercial stables.
d. Cemeteries, mausoleums and crematories.
e. Churches, museums and libraries.
f. Schools, colleges, public playgrounds and athletic fields.
g. Airplane landing fields for private use.

(b) *Building height limit:*

Two (2) stories and not to exceed thirty-five (35) feet, except provided in Section 78.0227.

(c) *Building site area required:*

Except as provided in Sections 78.0227 and 78.0228, the minimum building site for each one-family dwelling shall be one (1) acre.

NOTE: Front, side and rear yards shall be provided as required by Section 78.0227 (c) (2). (See "Building Lines" chart, Section 78.022.)

(Ord. No. 351, Sec. 7; amended by Ord. No. 616, Sec. 1; amended by Ord. No. 1217, Sec. 6; amended by Ord. No. 1583, Sec. 3, eff. 4/5/63.)

Sec, 78.0210. Repealed. *(Ord. No. 2262, Sec. 1, eff. 10/17/68.)*

Sec. 78.0211. Repealed. *(Ord. No. 2262. Sec. 1, eff. 10/17/68.)*

Sec. 78.0212. RHE "Residential Hillside Estates" District regulations.

(a) Uses permitted:

Unless otherwise provided in Sections 78.0227 and 78.0228:

(1) Farming, including all types of agriculture and horticulture except (a) commercial dairies, (b) commercial kennels, rabbit, fox, goat and other animal raising farms, (c) egg-producing ranches and farms devoted to the hatching, raising, fattening and/or butchering of chickens, turkeys and other poultry on a commercial scale, (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

(2) Flower and vegetable gardening.

(3) Nurseries and greenhouses used only for the purposes of propagation and culture and not for retail sales.

(4) Public parks.

(5) One-family dwellings of a permanent character placed in permanent locations, including one permanent guest cottage for each building site.

(6) Home occupations, office and studios provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

(7) Accessory buildings, structures and uses, and also such special uses as provided in Section 78.0227, including buildings and structures commonly required for the operation of an ordinary farm or ranch of ten (10) or more acres, provided each such farm or ranch accessory building is built not closer than 100 feet to any public street or highway or exterior property boundary.

(8) One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising signs, structures or devices of any character shall be permitted in an RHE "Residential Hillside Estates" District.

(9) The following additional uses, subject to the issuance of Conditional Permits therefor as provided in Section 78.0228.

a. Residential hotels.
b. Public utility buildings and structures.
c. Churches, museums and libraries.
d. Schools, colleges, public playgrounds and athletic fields.

(b) Building height limit:

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Sections 78.0227 and 78.0228.

(c) Building site area required:

Except as provided in Sections 78.0227 and 78.0228, the minimum building site area for each one-family dwelling shall be ten thousand (10,000) square feet.

NOTE: Front, side and rear yards shall be provided as required by Section 78.0227 (c) (2). (See "Building Lines" chart, Section 78.022.) *(Ord. No. 351; added by Ord. No. 569, Sec. 3. amended by Ord. No. 616, Sec. 1; amended by Ord. No. 1217, Sec. 6.)*

Sec. 78.0213. E4 "Small Estates" District regulations.

All references to this Section shall include Sections 78.0213.1 through 78.0213.6. *(Ord. No. 351; added by Ord. No. 663, Sec. 2; amended by Ord. No. 980, Sec. 1; amended by Ord. No. 1217, Sec. 6; amended by Ord. No. 2237, Sec. 1, eff. 7/11/68.)*

Sec. 78.0213.1. Purpose and intent.

The E4 District is established to provide for the development of medium-low density single family residential neighborhoods in which open spaces and deep setbacks predominate. Only those additional uses are permitted that are complimentary to, and can exist in harmony with, a residential neighborhood. *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0213.2. Uses permitted.

Any of the following principal uses:

(a) Single family dwellings (one per building site).

(b) Parks and playgrounds, public and private (noncommercial).

(c) Riding and hiking trails.

(d) Horticulture of all types, unlighted and unenclosed by buildings and structures (noncommercial). *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0213.3. Uses permitted subject to a Use Permit as provided in Section 78.0270.

Any of the following principal uses:

(a) Communication equipment buildings.

(b) Community television receiving and distribution systems.

(c) Country clubs, golf courses, riding clubs, swimming clubs, tennis clubs, and yacht clubs.

(d) Educational institutions.
(e) Electric distribution substations.
(f) Fire and police stations.
(g) Microwave radio and television relay transmitters.
(h) Natural gas booster stations.
(i) Noncommercial kennels.
(j) Private water pumping stations.
(k) Public libraries.
(l) Sewage lift stations. *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0213.4. Temporary uses permitted in compliance with the regulations provided in Section 78.0266.

(a) Model homes, temporary real estate offices, and signs within subdivisions.
(b) Temporary use of mobilehome residence during construction.
(c) Continued use of an existing building during construction of a new building on the same building site.
(d) Real estate signs. *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0213.5. Accessory uses permitted.

Any of the following customary uses and structures:
(a) Garages and carports, in compliance with the regulations provided in Section 78.0267.1.
(b) Swimming pools, in compliance with the regulations provided in Section 78.0267.3.
(c) Fences and walls, in compliance with the regulations provided in Section 78.0267.4.
(d) Home occupations in compliance with the regulations provided in Section 78.0280.4.
(e) The keeping of equine animals for recreational purposes only, provided no equine shall be permitted on a building site containing less than 10,000 square feet of land area. Two adult equines are permitted on a building site containing between 10,000 and 15,000 square feet of land area. One additional adult equine may be kept for each additional 10,000 square feet of owned or leased contiguous land in the aggregate with a maximum of six such animals on any one building site. The offspring of such animals shall be considered adults when eight months old.
(f) The keeping of pets of a type readily classifiable as being customarily incidental and accessory to a permitted principal residential use when no commercial activity is involved. The keeping of wild, exotic, or nondomestic animals is prohibited.

(g) Guest houses (one per building site), in conformance with the setback regulations for the main building.

(h) Accessory uses and structures necessary and customarily incidental to a principal use permitted in this district in compliance with the regulations provided in Section 78.0267.

(i) Any other accessory use or structure permitted by and in compliance with the regulations provided in Section 78.0265. *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0213.6. Site development standards.

The establishment, operation, and maintenance of the uses permitted by Sections 78.0213.2, 78.0213.3, 78.0213.4, and 78.0213.5 shall be in compliance with the following standards, except as otherwise provided in Section 78.0260 or 78.0270:

(a) Building site area.

10,000 square feet minimum required unless a larger area is specified by the district symbol on the official zoning district map.

(b) Building site width.

No minimum requirement unless specified by the district symbol on the official zoning district map.

(c) Building height.

35 feet maximum unless otherwise specified by the district symbol on the official zoning district map.

(d) Building setbacks.

Front, side and rear building lines shall be established as required by Section 78.0262.

(e) Off-street parking.

Parking for motor vehicles shall be provided as required by Section 78.0290. *(Ord. No. 2237, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214. R1 "Single Family Residence" District regulations.

All references to this Section shall include Sections 78.0214.1 through 78.0214.6. *(Ord. No. 351, Sec. 10; amended by Ord. No. 616, Sec. 1; amended by Ord. No. 793, Sec. 1; amended by Ord. No. 1217, Sec. 6; amended by Ord. No. 2238, Sec. 1, eff. 7/11/68.)*

Sec. 78.0214.1. Purpose and intent.

The R1 District is established to provide for the development of medium density single family residential neighborhoods. Only those additional uses are permitted that are complementary to, and can exist in

harmony with, a residential neighborhood. *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214.2. Uses permitted.

Any of the following principal uses shall be permitted with the exception of those specific uses listed as prohibited in Section 78.0214.6:

(a) Single family dwellings, (one per building site).
(b) Parks and playgrounds, public and private (noncommercial).
(c) Riding and hiking trails.
(d) Horticulture, unlighted and unenclosed by buildings and structures (noncommercial). *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214.3. Uses permitted subject to a Use Permit as provided in Section 78.0270.

Any of the following principal uses:

(a) Churches, temples, other places of worship.
(b) Educational institutions.
(c) Communication equipment buildings.
(d) Community television receiving and distribution systems.
(e) Electric distribution substations.
(f) Natural gas booster stations.
(g) Private water pumping stations.
(h) Microwave radio and television relay transmitters.
(i) Sewage lift stations.
(j) Fire and police stations.
(k) Public libraries.
(l) Country clubs, golf courses, riding clubs, swimming clubs, tennis clubs, and yacht clubs.
(m) Noncommercial kennels. *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214.4. Temporary uses permitted in compliance with the regulations provided in Section 78.0266.

(a) Model homes, temporary real estate offices, and signs.
(b) Temporary use of mobilehome residence during construction.
(c) Continued use of an existing building during construction of a new building on the same building site.
(d) Real estate signs. *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214.5. Accessory uses permitted.

Any of the following customary uses and structures.

(a) Garages and carports, in compliance with the site development standards provided in Section 78.0267.1.

(b) Swimming pools, in compliance with the regulations provided in Section 78.0267.3.

(c) Fences and walls, in compliance with the site development standards provided in Section 78.0267.4.

(d) Home occupations, in compliance with the regulations provided in Section 78.0280.4.

(e) The keeping of equine animals for recreational purposes only, provided no equine shall be permitted on a building site containing less than 10,000 square feet of land area. Two adult equines are permitted on a building site containing between 10,000 and 15,000 square feet of land area. One additional adult equine may be kept for each additional 10,000 square feet of owned or leased contiguous land in the aggregate with a maximum of six such animals on any one building site. The offspring of such animals shall be considered adults when eight months old.

(f) The keeping of pets of a type readily classifiable as being customarily incidental and accessory to a permitted principal residential use when no commercial activity is involved. The keeping of wild, exotic, or nondomestic animals is prohibited.

(g) Accessory uses and structures necessary and customarily incidental to a principal use permitted in this district in compliance with the regulations provided in Section 78.0267.

(h) Any other accessory use or structure permitted by and in compliance with the regulations provided in Section 78.0265. *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0214.6. Site development standards.

The establishment, operation, and maintenance of the uses permitted by Sections 78.0214.2, 78.0214.3, 78.0214.4, and 78.0214.5 shall be in compliance with the regulations provided in Section 78.0260 and the following standards, except as otherwise provided in Section 78.0270.

(a) Building site area.

7200 square feet minimum required, unless a larger or smaller area is specified by the district symbol on the official zoning district map.

(b) Building site width.

No minimum requirement unless specified by the district symbol on the offical zoning district map.

(c) Building height.

35 feet maximum unless otherwise specified by the district symbol on the official zoning district map.

(d) **Building site coverage.**
No limitiation.

(e) **Building setbacks.**
Front, side and rear building lines shall be established as required by Section 78.0262.

(f) **Off-street parking.**
Parking for motor vehicles shall be provided as required by Section 78.0290. *(Ord. No. 2238, Sec. 2, eff. 7/11/68.)*

Sec. 78.0215. R2D "Two-Family Residence" District regulations.

All references to this Section shall include Sections 78.0215.1 through 78.0215.6. *(Ord. No. 351; added by Ord. No. 632, Sec. 2; amended by Ord. No. 1217, Sec. 6; amended by Ord. No. 2294, Sec. 1, eff. 2/20/69.)*

Sec. 78.0215.1. Purpose and Intent.

The R2D District is established to provide for the development of single family and duplex residential neighborhoods. Only those additional uses are permitted that are complementary to, and can exist in harmony with, a residential neighborhood. *(Ord. No. 2294, Sec. 2, eff. 2/20/69.)*

Sec. 78.0215.2. Uses permitted.

Any of the following principal uses:
(a) Single family dwellings (one per building site).
(b) Duplexes (one per building site).
(c) Parks and playgrounds, public and private (noncommercial).
(d) Riding and hiking trails.
(e) Horticulture, unlighted and unenclosed by buildings and structures (noncommercial). *(Ord. No. 2294, Sec. 2, eff. 2/20/69.)*

Sec. 78.0215.3. Uses permitted subject to a Use Permit as provided in Section 78.0270.

(a) Churches, temples, other places of worship.
(b) Educational institutions.
(c) Communication equipment buildings.
(d) Community television receiving and distribution systems.
(e) Electric distribution substations.
(f) Natural gas booster stations.
(g) Private water pumping stations.

Sec. 78.0220. RE "Residential Estates" District regulations.

All references to this Section shall include Sections 78.0220.1 through 78.0220.6. *(Ord. No. 2241, Sec. 1, eff. 8/1/68.)*

Sec. 78.0220.1. Purpose and intent.

The RE District is established to provide for the development of low density single family residential neighborhoods in which large building sites and generous open spaces are featured. Only those additional uses are permitted that are complementary to, and can exist in harmony with, a residential neighborhood. *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0220.2. Uses permitted.

Any of the following principal uses:

(a) Single family dwellings (one per building site).
(b) Parks and playgrounds, public and private (noncommercial)
(c) Riding and hiking trails.
(d) Horticulture, unlighted and unenclosed by buildings and structures (noncommercial). *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0220.3. Uses permitted subject to a Use Permit as provided in Section 78.0270.

Any of the following principal uses:

(a) Churches, temples, other places of worship.
(b) Communication equipment buildings.
(c) Community television receiving and distribution systems.
(d) Country clubs, golf courses, riding clubs, swimming clubs, tennis clubs, and yacht clubs.
(e) Educational institutions.
(f) Electric distribution substations.
(g) Fire and police stations.
(h) Microwave radio and television relay transmitters.
(i) Natural gas booster stations.
(j) Private water pumping stations.
(k) Public libraries.
(l) Sewage lift stations. *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0220.4. Temporary uses permitted in compliance with the regulations provided in Section 78.0266.

(a) Model homes, temporary real estate offices, and signs.

(b) Temporary use of mobilehome residence during construction.

(c) Continued use of an existing building during construction of a new building on the same building site.

(d) Real estate signs. *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0220.5. Accessory uses permitted.

Any of the following customary uses and structures:

(a) Garages and carports, in compliance with the site development standards provided in Section 78.0220.6(f).

(b) Fences and walls, in compliance with the site development standards provided in Section 78.0220.6(h).

(c) Swimming pools, in compliance with the regulations provided in Section 78.0267.3.

(d) Home occupations in compliance with the regulations provided in Section 78.0280.4.

(e) The keeping of equine animals for recreational purposes only, provided no equine shall be permitted on a building site containing less than 10,000 square feet of land area. Two adult equines are permitted on a building site containing between 10,000 and 15,000 square feet of land area. One additional adult equine may be kept for each additional 10,000 square feet of owned or leased contiguous land in the aggregate with a maximum of six such animals on any one building site. The offspring of such animals shall be considered adults when eight months old.

(f) The keeping of pets of a type readily classifiable as being customarily incidental and accessory to a permitted principal residential use when no commercial activity is involved. The keeping of wild, exotic, or nondomestic animals is prohibited.

(g) Additional accessory uses and structures necessary and customarily incidental to a principal use permitted in this district in compliance with the site development standards provided in Section 78.0220.6(g) and Section 78.0267.

(h) Any other accessory use or structure permitted by and in compliance with the regulations provided in Section 78.0265. *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0220.6. Site development standards.

The establishment, operation, and maintenance of the uses permitted by Sections 78.0220.2, 78.0220.3, 78.0220.4, and 78.0220.5 shall be in compliance with the regulations provided in Section 78.0260 and the following standards, except as otherwise provided in Section 78.0270.

(a) Building site area:

20,000 square feet minimum required unless a larger area is specified by the district symbol on the official zoning district map.

(b) Building site width:

No minimum requirement unless specified by the district symbol on the official zoning district map.

(c) Building height:

35 feet maximum unless other specified by the district symbol on the official zoning district map.

(d) Building site coverage:

No limitation.

(e) Building setbacks:

Main buildings shall not be closer to an ultimate street right of way line or property line than the minimum distances specified by the Building Lines Chart, Section 78.0262.1, and by the minimum distances specified below:

(1) Front setback distance - 40 feet from the ultimate street right of way.

(2) Side setback distance - 10 percent of the average width of the building site on each side up to a maximum depth of 20 feet.

(3) Rear setback distance - 25 feet from the rear property line.

(4) On panhandle building sites, notwithstanding the regulations of Section 78.0264.1, the minimum setback distance shall be 15 feet from any property line.

(f) Garage and carport placement:

The regulations of Section 78.0267.1 (a) are not applicable to the RE District. Garages and carports, both attached and detached, shall comply with the setback requirements for main buildings, except:

(1) When the setback line is closer than 20 feet from the ultimate street right of way line and when the garage or carport access faces the access street, the garage or carport shall not be closer than 20 feet from the ultimate right of way line of the access street.

(2) Garages and carports on steep topography may comply with the regulations of Section 78.0267.1(c).

(g) Detached accessory buildings other than garages and carports:

The regulations of Section 78.0267.2 are not applicable to the RE District. Detached accessory buildings and structures other than garages and carports may be constructed or placed on any portion of a building site except within the following areas:

(1) Within the ultimate right of way shown as existing on the Master Plan of Arterial Highways, or within the ultimate right of way of any local or private street.

(2) Within the setback area established by the designation of a building line on a Precise Plan of Highway Alignment or an official zoning district map.

(3) Within the front 60 feet of a building site.

(4) Within the required side setback for main buildings.

(h) Fences and walls - maximum height:

The regulations of Section 78.0267.4 are applicable to the RE District only as specified below. Fences and walls used as fences shall not be higher than the limitations for the areas specified, as follows:

(1) Within intersection areas - same as Section 78.0267.4(b) and (c).

(2) Within other setback areas - 6 feet maximum height.

(3) Within areas where main buildings may be placed - same as the building height limit.

(i) Off-street parking.

Two usable automobile parking spaces in a garage or carport shall be provided and maintained on any building site containing a single family dwelling in compliance with the regulations provided in Section 78.0290. All other permitted uses shall provide off-street parking in compliance with the regulations of Section 78.0290. *(Ord. No. 2241, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221. RS "Residential, Single Family" District regulations.

All references to this Section shall include Sections 78.0221.1 through 78.0221.6. *(Ord. No. 2242, Sec. 1, eff. 8/1/68.)*

Sec. 78.0221.1. Purpose and intent.

The RS District is established to provide for the development of medium density single family residential neighborhoods in which flexibility of development and optimum utilization of each building site

are featured. Only those additional uses are permitted that are complementary to, and can exist in harmony with, a residential neighborhood. *(Ord. No. 2242, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221.2. Uses permitted.

Any of the following principal uses:

(a) Single family dwellings (one per building site).
(b) Parks and playgrounds, public and private (non-commercial).
(c) Riding and hiking trails.
(d) Horticulture, unlighted and unenclosed by buildings and structures (noncommercial). *(Ord. No. 2242, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221.3. Uses permitted subject to a Use Permit as provided in Section 78.0270.

Any of the following principal uses:

(a) Churches, temples, other places of worship.
(b) Communication equipment buildings.
(c) Community television receiving and distribution systems.
(d) Country clubs, golf courses, riding clubs, swimming clubs, tennis clubs and yacht clubs.
(e) Educational institutions.
(f) Electric distribution substations.
(g) Fire and police stations.
(h) Microwave radio and television relay transmitters.
(i) Natural gas booster stations.
(j) Private water pumping stations.
(k) Public libraries.
(l) Sewage lift stations. *(Ord. No. 2242, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221.4. Temporary uses permitted in compliance with the regulations provided in Section 78.0266.

(a) Model homes, temporary real estate offices, and signs.
(b) Temporary use of mobilehome residence during construction.
(c) Continued use of an existing building during construction of a new building on the same building site.
(d) Real estate signs. *(Ord. No. 2242, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221.5. Accessory uses permitted.

Any of the following customary uses and structures:

(a) Garages and carports, in compliance with the site development standards provided in Section 78.0221.6 (h).

(b) Fences and walls, in compliance with the site development standards provided in Section 78.0221.6 (g).

(c) Swimming pools, in compliance with the regulations provided in Section 78.0267.3.

(d) Home occupations in compliance with the regulations provided in Section 78.0280.4.

(e) The keeping of equine animals for recreational purposes only, provided no equine shall be permitted on a building site containing less than 10,000 square feet of land area. Two adult equines are permitted on a building site containing between 10,000 and 15,000 square feet of land area. One additional adult equine may be kept for each additional 10,000 square feet of owned or leased contiguous land in the aggregate with a maximum of six such animals on any one building site. The offspring of such animals shall be considered adults when eight months old.

(f) The keeping of pets of a type readily classifiable as being customarily incidental and accessory to a permitted principal residential use when no commercial activity is involved. The keeping of wild, exotic, or nondomestic animals is prohibited.

(g) Accessory uses and structures necessary and customarily incidental to a principal use permitted in this district in compliance with the regulations provided in Section 78.0267.

(h) Any other accessory use or structure permitted by and in compliance with the regulations provided in Section 78.0265. *(Ord. No. 2242, Sec. 2, eff. 8/1/68.)*

Sec. 78.0221.6. Site development standards.

The establishment, operation, and maintenance of the uses permitted by Section 78.0221.2, 78.0221.3, 78.0221.4 and 78.0221.5 shall be in compliance with the regulations provided in Section 78.0260 and the following standards, except as otherwise provided in Section 78.0270.

(a) Building site area:

7000 square feet minimum required unless a larger or smaller area is specified by the district symbol on the official zoning district map.

(b) Building site width:

No minimum requirement unless specified by the district symbol on the official zoning district map.

(c) Building height:

35 feet maximum unless otherwise specified by the district symbol on the official zoning district map.

(d) Building site coverage:

35 percent maximum including all buildings on the site.

(e) Building setbacks:

Main buildings shall not be closer to an ultimate street right-of-way line or property line than the minimum distances specified by the Building Lines Chart, Section 78.0262.1 and by the minimum distances specified below:

(1) From any property line abutting a street — 10 feet minimum;

(2) When no side property lines abut a street —

(a) 10 feet minimum from one side only, or

(b) 10 feet aggregate total for both sides, provided that the setback selected shall be the minimum to be maintained from the front to the rear property lines.

(3) Intersection limitations specified by Section 78.0267.4 (b) and (c) shall apply to all buildings and structures.

(f) Garage and Carport placement.

(1) Attached garages and carports shall conform to the building setback requirements for main buildings except that when the setback is less than 20 feet and the vehicular access faces the access street, the setback for garages and carports shall be a minimum of 20 feet from the ultimate street right of way line of the access street.

(2) Detached garages and carports shall conform to the regulations of Section 78.0267.1 (a) except that when vehicular access faces the access street garages and carports shall not be closer than 20 feet from the ultimate street right of way line of the access street.

(3) Attached and detached garages and carports on steep topography may comply with the regulations on Section 78.0267.1(c).

(g) Fences and walls, maximum height:

The regulations of Section 78.0267.4 are applicable to the RS District only as specified below. Fences and walls used as fences shall not be higher than the limitations for the areas specified as follows:

(1) Within intersection areas — same as Section 78.0267.4 (b) and (c).

(2) Within other setback areas — 7½ feet maximum height.

(3) Within areas where main buildings may be placed— same as the building height limit.

(b) The maximum height shall be three and one-half feet within five feet of the point of intersection of:

(1) An ultimate street right of way line and an interior property line;

(2) An ultimate street right of way line and the edge of a driveway or vehicular accessway;

(3) An ultimate street right of way line and an alley right of way line; and

(4) The edge of a driveway or vehicular accessway and an alley right of way line.

(c) The maximum height shall be three and one-half feet within the triangular area formed by drawing a straight line between two points located on, and 15 feet distant from, the point of intersection of two ultimate street or highway right of way lines extended.

(d) The maximum height shall be six feet in all other cases except within the area where a main building may be constructed, in which case the building height regulations apply. *(Ord. No. 2197, Sec. 3, eff. 1/26/68. Former Sec. 78.0267.4, enacted by Ord. No. 2142, Sec. 4, eff. 4/20/67, was repealed by Sec. 1 of Ord. No. 2197; added by Ord. No. 2197, Sec. 3, eff. 1/26/68.)*

Sec. 78.0267.5. Miscellaneous accessory structures.

Accessory structures other than swimming pools and fences and walls, and not classified as buildings may be placed or constructed on any portion of a building site except within the following areas:

(a) Within the ultimate right of way, as defined, shown as existing on the Master Plan of Arterial Highways, or within the ultimate right of way, as defined, of any local or private streets;

(b) Within the setback area established by the designation of a building line on a Precise Plan of Highway Alignment or an official zoning district map;

(c) Within those areas where fences and walls are limited to a maximum height of 3½ feet, as specified in the District regulations or in Section 78.0267.4, subsections (b) and (c). *(Ord. No. 2197, Sec. 3, eff. 1/26/68. Former Sec. 78.0267.5, enacted by Ord. No. 2142, Sec. 4, eff. 4/20/67, was repealed by Sec. 1 of Ord. No. 2197; added by Ord. No. 2197, Sec. 3, eff. 1/26/68.)*

Sec. 78.0267.6. Miscellaneous accessory uses.

Permitted accessory uses not involving a building or structure may be placed or located on any portion of a building site. However, if

any such permitted accessory use is placed or located within the ultimate street right of way, it shall be removed by the owner, and at no expense to the public agency involved, prior to the widening of the street. *(Ord. No. 2197, Sec. 3, eff. 1/26/68.)*

Sec. 78.0270. Variances, Use Permits and Conditional Permits.

All references to this Section shall include Sections 78.0271 through 78.0277.

(a) Any property owner, his authorized agent, or a public agency may apply for a Variance, Use Permit, or Conditional Permit in compliance with the regulations specified within this Section and in Section 78.0261.2.

(b) The Planning Commission, the Zoning Administrator, and the Board of Supervisors upon appeal, may approve, conditionally approve or disapprove Use Permit, Conditional Permit, and Variance applications. The Zoning Administrator and the Board of Supervisors upon appeal, may approve, conditionally approve or disapprove Adjustment applications.

(c) Variances from the terms and regulations of this Article shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the terms and regulations of this Article deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel or property.

When the Planning Commission, the Zoning Administrator, or the Board of Supervisors makes a determination on any of the applications listed by subsection (b) above, they may impose any conditions of approval that are found to be necessary or advisable in order to ensure that the permit thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71; amended by Ord. No. 2492, Sec. 1, eff. 6/11/71.)*

Sec. 78.0271. Use Permits and Conditional Permits.

The Use Permit and Conditional Permit procedure is intended for those types of land uses that require special consideration in certain locations.

(a) An application for a Use Permit or Conditional Permit may be approved when there is a determination that the proposed land use will not create unusual noise, traffic, or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the District; and when there is a determination that the integrity and character of the District, the utility and value of adjacent property, and the general welfare of the neighborhood will be maintained if the permit is granted.

(b) All Use Permit and Conditional Permit applications required by the following regulations shall be heard, and a determination shall be made by the Planning Commission:

(1) PC "Planned Community" District;

(2) PD "Planned Development" District;

(3) SG "Sand and Gravel Extraction" District;

(4) Wherever required for mining, quarrying, and the commercial extraction of rock, sand, gravel, earth, clay, and similar material;

(5) Wherever required for cemeteries including mortuaries as an accessory use, mausoleums, and crematories;

(6) Wherever required for reclamation of mines, quarries, and pits resulting from the commercial extraction of rock, sand, gravel, earth, clay, and similar materials;

(7) Wherever required for mobilehome parks;

(8) Whenever required for the use of a commercial coach for a period exceeding 12 months.

(9) BRD "Beach Recreation and Development District".

(c) All other Use Permit and Conditional Permit applications shall be heard, and a determination shall be made by the Zoning Administrator. Notwithstanding subsection (b) above, all Commercial Coach Use Permit applications, for a period of 12 months or less, shall be heard and a determination shall be made by the Zoning Administrator.

(d) The application for a Use Permit or a Conditional Permit shall be filed with the Planning Director on a form prescribed by the Planning Commission and shall be accompanied by the following:

(1) Name and address of the property owner;

(2) Name and address of the applicant;

(3) If the applicant is not the owner, a statement signed by the owner naming the applicant as his agent for the purposes of filing the Use Permit or Conditional Permit application;

(4) Legal description of the property and total area in acres;

(5) An accurate plot plan of the property to scale, showing all existing and all proposed structures and underground facilities, the name and dimensions of all abutting streets, the dimensions of all existing and proposed setbacks and building separations; the locations

and directions of flow of all watercourses and flood control channels, the width and locations of all existing or proposed easements or rights of way, whether public or private for roads, drainage, sewers or flood control purposes;

(6) Location of the subject property in relation to existing streets;

(7) A statement or a plan describing the operations of the proposed use in detail;

(8) Such other information or plans as the Planning Director, the Planning Commission or the Zoning Administrator may require in order to more fully describe the proposed use;

(9) Payment of the fee as specified by Section 78.0276.

An application for a Use Permit or a Conditional Permit shall not be accepted by the Planning Director until all of the preceding requirements have been met. *(Ord. No. 2142, Sec. 4; amended by Ord. No. 2195, Sec. 1; amended by Ord. No. 2285, Sec. 1; amended by Ord. No. 2335, Sec. 4; amended by Ord. No. 2349, Sec. 3; amended by Ord. No. 2358, Sec. 1, eff. 12/24/69; amended by Ord. No. 2397, Sec. 1, eff. 7/16/70; amended by Ord. No. 2422, Sec. 2, eff. 10/30/70; amended by Ord. No. 2492, Sec. 1, eff. 6/11/71.)*

Sec. 78.0272. Repealed.

(Ord. No. 2142, Sec. 4; amended by Ord. No. 2195, Sec. 1; amended by Ord. No. 2349, Sec. 4, eff. 11/13/69; repealed by Ord. No. 2457, Sec. 1, eff. 3/12/71.)

Sec. 78.0273. Procedure — Use Permits and Conditional Permits.

(a) Applications for Use Permits and Conditional Permits shall be filed with the Planning Director. The Planning Commission shall prescribe the form, contents, and manner of preparing and submitting all applications.

(b) For purposes of this Section, "Permit" includes Use Permit and Conditional Permit.

(c) There shall be a public hearing before the Planning Commission or Zoning Administrator on each application. The public hearing shall be set for a regular meeting of the Commission or Zoning Administrator on a date not more than 30 days subsequent to the filing of the application.

(d) Not less than five days prior to the public hearing, the Planning Director shall cause notices to the public to be displayed

upon the premises to which the application pertains. Each notice shall, in letters of not less than one inch in height, be headed "Public Notice." Each notice shall, in legible characters, state the application number, the applicant's name, the time and place the application will be heard, the location of the premises affected, and the use proposed. A minimum of three notices, spaced not more than 300 feet apart, shall be conspicuously posted on the premises to which the application pertains in a location where they can be easily read by a person on a street. If it is impossible to post the notices in a location on the premises where they can be read from a street, three additional notices shall be posted on the nearest street furnishing access to the premises. If it is extremely impractical to post notices on the premises, three notices shall be posted on the nearest street furnishing access to the premises.

(e) The Planning Director shall, not less than seven days prior to the hearing, mail, postage prepaid, notice of the time and place of the hearing, the application number, the applicant's name, the location of the premises affected, and the use proposed, to all persons whose names and addresses appear on the last equalized assessment roll of the County as persons owning property in Orange County within a distance of 300 feet from the exterior boundaries of the premises to which the application pertains, and also to the applicant.

(f) If the Planning Commission by a majority vote of the members present or the Zoning Administrator makes a determination on an application at a public hearing, the Director of Building and Safety shall be notified of the determination. In lieu of a determination at a public hearing, the Planning Commission or the Zoning Administrator may continue the public hearing to a definite date or take the application under submission for a reasonable length of time. When an application is taken out of submission, if additional testimony is to be received, public notices shall again be posted and mailed, and a new public hearing shall be set in compliance with subsections (d) and (e) above.

(g) The determination of the Planning Commission or Zoning Administrator shall include such express findings of fact or such observations, if any, as the Zoning Administrator or any member or members of the Planning Commission may desire to have included.

(h) The determination of the Planning Commission or Zoning Administrator shall be announced at a regular meeting. Notice of the determination shall be publicly posted in the regular meeting place, or at or near the door thereof, for a period of one week following the making thereof. Notice of the determination shall be mailed promptly to the applicant, and to every other person who has expressed an

interest therein provided such other person has deposited with the Planning Director a self-addressed, stamped envelope for the purpose, and provided further that notice shall be deemed made to any person, including the applicant, who is present at the regular meeting at which the determination is announced, but failure to mail any notice shall not affect the validity of the determination.

(i) The determination of the Planning Commission or Zoning Administrator shall become final, and the Director of Building and Safety may issue the Permit after an appeal period of 14 calendar days from the date of such determination, unless an appeal is filed within that period in compliance with the regulations of Section 78.0275.

(j) If the Permit is conditionally approved, it shall be issued only after the conditions have been fulfilled, or only after the applicant has provided what the Director of Building and Safety deems to be reasonable and adequate guarantees that the conditions will be fulfilled. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71.)*

Sec. 78.0274. Variances and Adjustments.

(a) Applications for Variances and Adjustments solely to the following regulations shall be filed with the Zoning Administrator:

(1) Building site area;
(2) Building site width;
(3) Building height;
(4) Building site coverage;
(5) Building setbacks;
(6) Site development standards;
(7) Garage location and access;
(8) Location of detached accessory uses and structures;
(9) Sec. 78.0260.1. Required highway dedication and improvements;
(10) More than the permitted number of dwelling units in a multiple residential district;
(11) Off-street parking regulations.

(b) All other Variance applications shall be heard and a determination shall be made by the Planning Commission. The Zoning Administrator shall prescribe the form, contents, and manner of preparing and submitting all applications.

(c) For purposes of this Section, "Permit" shall include Variances and Adjustments listed by subsection (a) above.

(d) An Adjustment is any Variance to the terms or requirements of this article which, if granted, would allow the following:

(1) A decrease of not more than ten per cent of the required building site area or width.

(2) A decrease of not more than 20 per cent of the required width of a side yard or the yard between buildings.

(3) A decrease of not more than 40 per cent of the required rear yard.

(4) A decrease of not more than 40 per cent of the distance required between the front property line and the building line.

(5) An increase in the permitted height of a fence or wall used as a fence, the total height not to exceed six feet.

(6) An increase of not more than ten per cent of the permitted projection of steps, stairways, landings, eaves, overhangs, masonry chimneys, and fireplaces into any required front, rear, side, or yard between buildings.

(e) Hearings and meetings.

(1) Adjustment applications shall be considered at public meetings conducted by the Zoning Administrator.

(2) Variance applications listed by subsection (a) above, other than Adjustments, shall be considered at public hearings conducted by the Zoning Administrator or Planning Commission.

(3) Consideration of the application at a public meeting or public hearing shall be set for a date not more than 30 days subsequent to the date the application is accepted for filing.

(f) An application for a Variance or Adjustment may be approved only when the Zoning Administrator or Planning Commission determines there is adequate evidence that the application constitutes a case where the special circumstances prescribed in Section 78.0270 subsection (c) are applicable. If there is a determination that there is not adequate evidence, the Zoning Administrator or Planning Commission shall disapprove the application.

(g) The Planning Director shall, not less than seven days prior to the public hearing on a Variance application, mail, postage prepaid, notice of the time and place of hearing, the Variance application number, the applicant's name, the location of the premises affected, and the nature of the Variance request, to the applicant and also to all persons whose names and addresses appear on the last equalized assessment roll of the County as persons owning property in Orange County within a distance of 300 feet from the exterior boundaries of the premises to which the application pertains.

(h) When the Zoning Administrator or Planning Commission makes a determination on an application at a public hearing or public meeting, the Director of Building and Safety shall be notified. In lieu of a determination at a public hearing or public meeting, the Zoning Administrator or Planning Commission may continue the public hearing or public meeting to a definite date or take the application under submission for a reasonable period of time. When an application is taken out of submission, if additional testimony is to be received, public notices shall again be mailed, and a new public hearing shall be set in compliance with subsection (g) above.

(i) The determination of the Zoning Administrator or Planning Commission shall be announced at a public hearing or public meeting.

(j) The determination of the Zoning Administrator or Planning Commission shall become effective immediately, and the Director of Building and Safety may issue the Permit. The determination shall become final after an appeal period of 10 calendar days from the date of such determination, unless an appeal is filed within that period in compliance with the regulations of Section 78.0275.

(k) If the Permit is conditionally approved, it shall be issued only after the conditions have been fulfilled, or only after the applicant has provided what the Director of Building and Safety deems to be reasonable and adequate guarantees that the conditions will be fulfilled. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71.)*

Sec. 78.0275. Appeals to the Board of Supervisors.

(a) The determination on Use Permits and Conditional Permits shall become final after a period of 14 calendar days from the date of such determination, unless an appeal therefrom is filed within such period. Any appeal not filed within the 14 day period shall not be considered. The filing of an appeal stays proceedings in the matter until the determination of the appeal. The determination on Variances and Adjustments shall become effective immediately, and unless appealed within 10 days, the action becomes final.

(b) Any person may appeal the determination on a Use Permit or Conditional Permit application. Only the applicant may appeal the determination on a Variance or Adjustment application. An appeal shall be written and filed, in duplicate, with the Planning Director. Any member of the Board of Supervisors may also order an appeal from a determination of the Planning Commission or the Zoning Administrator.

Such an order shall be deemed the filing of an appeal except that subsection (c) immediately below shall not apply, and the Planning Director shall prepare the duplicate copy of the appeal order.

(c) The appeal shall set forth specifically wherein the determination of the Planning Commission or the Zoning Administrator fails to conform to the requirements of this Article, or other applicable law, or wherein the conditions imposed are improper.

(d) The Planning Director shall forward the duplicate copy of the appeal to the Clerk of the Board of Supervisors and shall report the filing of the appeal to the Planning Commission or the Zoning Administrator at its next regular meeting. The Planning Commission or the Zoning Administrator may make a report to the Board of Supervisors, for its consideration in determining the appeal, of any observations or facts regarding such determination, which would answer the statements set forth in the appeal. The Planning Director shall transmit to the Clerk of the Board of Supervisors such report, together with such records in the matter as possessed by the Planning Commission or the Zoning Administrator.

(e) The Board of Supervisors shall consider the appeal at a regular meeting within 30 calendar days following the receipt by the Clerk of the Board of Supervisors of the duplicate copy of the appeal, or within such time as the Board shall continue the matter.

(f) Notice of the time and place the Board of Supervisors will consider the appeal shall be mailed by the Clerk of the Board of Supervisors to the applicant, to the person who filed the appeal (if other than the applicant) and to the persons to whom notices were sent pursuant to subsection (e) of Section 78.0273 and subsection (g) of Section 78.0274.

(g) If the Board of Supervisors determines that the application constitutes a case where:

(1) The conditions prescribed in Section 78.0271 subsection (a) apply, in the case of an appeal regarding an application for a Use Permit or Conditional Permit; or

(2) The special circumstances prescribed in Section 78.0270 subsection (c) apply, in the case of an appeal regarding an application for a Variance or Adjustment; or

(3) The conditions prescribed in Section 78.0271 subsection (a) or the special circumstances prescribed in Section 78.0270 subsection (c) do not apply;

It shall accordingly affirm, reverse, or modify, in whole or part, any determination of the Planning Commission or the Zoning

Administrator from which an appeal has been taken under this Section. The resolution shall include such express findings of fact or such observations, if any, as any member or members of the Board of Supervisors may desire to have included. If the Board fails to pass such a resolution within 30 calendar days following the receipt by the Clerk of the Board of Supervisors of the duplicate copy of the appeal, or within such time as the Board continued the matter, such failure shall be deemed an affirmation of the determination of the Planning Commission or the Zoning Administrator.

(h) The determination of the Planning Commission or the Zoning Administrator as affirmed, reversed, or modified, from which the appeal was taken, shall become final upon the passage of the resolution by the Board of Supervisors. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71.)*

Sec. 78.0276. Fees.

(a) The County of Orange shall charge and collect a fee of $30 for the filing of each application for a Use Permit or Conditional Permit and $15 for the filing of each application for a Variance or Adjustment. However, an application for any agricultural or animal husbandry activity or project conducted primarily for educational purposes or school credits shall be subject to the requirements for the issuance of a Use Permit, and for each application the County of Orange shall charge and collect a fee of $1.

(b) The County of Orange shall charge and collect a fee of $10 for each appeal on Variance and Adjustment applications and $15 for each appeal on Use Permit and Conditional Permit applications.

(c) The Planning Commission is authorized to refund filing fees paid for applications for Use Permits, Conditional Permits, Variances and Adjustments, and requests for reclassification of property in those cases wherein there has been no staff study made, no hearing noticed and held, or any other expenditures of time by County personnel or of County funds. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71.)*

Sec. 78.0277. Establishment of Use and Amendments.

For purposes of this Section, "Permit" includes Use Permit, Conditional Permit, Variance and Adjustment.

The "Main Building" or "Buildings" are those housing the main or principal use of the premises as designated in the approved Permit.

(a) When the use of a building or premises, authorized by a determination of the Planning Commission, the Zoning Administrator, or by the Board of Supervisors, is not established within one year from the date it becomes final, the Permit shall be null and void, except that electric distribution and transmission substations, gas metering and regulating stations, and other similar public utility facilities and uses shall be established within one year or within the time specified in the approved Permit, if any.

When the actual construction of any main building or buildings which are described or shown in any approved Permit is not commenced, or the conditions complied with, within one year from the date the approved Permit becomes final, or within the time specified, if any, the Permit shall be null and void.

If any accessory structure or structures described or shown in an approved Permit are not commenced prior to or immediately following completion of construction of the main building or buildings, or within one year from the date the Permit becomes final if no main building is involved, or within the time specified in the Permit, such accessory structure or structures shall be deemed not authorized by the Permit.

When the use of a building or premises established under the provisions of this Section has been discontinued for a period of one year, it shall be unlawful to again use such building or premises for such discontinued use unless a subsequent Permit is issued.

(b) Any approved Permit may be amended once and without fee. The procedure shall be the same as specified in Sections 78.0273, 78.0274, and 78.0275. An amendment to a permit under this subsection is an amendment which (1) is filed within one year from the date the original Permit becomes final, (2) does not change the use designated in the original Permit, (3) does not increase, reduce, or alter the size or shape of the premsies to which the original permit pertained, and (4) does not extend the time in which the actual establishment of the Permit or the commencement of construction under the Permit shall take place.

(c) If a Use Permit or Conditional Permit application has been denied, no further application covering the same premises for the same or similar use may be filed or considered within the period of one year from the date the determination thereof becomes final. *(Ord. No. 2142, Sec. 4, eff. 4/20/67; amended by Ord. No. 2195, Sec. 1, eff. 1/25/68; amended by Ord. No. 2457, Sec. 2, eff. 3/12/71.)*

(d) The placing, erecting, constructing or maintaining of advertising displays exclusively pertaining to the business of the person placing the advertising display on his place of business or within 100 feet thereof and on the same side of the street or highway on which such business is located. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

Sec. 78.0292. Certificates of use and occupancy.

(a) No vacant land in any district established under the provisions of this Article shall hereafter be occupied or used, except for agricultural uses other than livestock farming, poultry or small animal raising or dairying, and no building hereafter erected, structurally altered or moved in any such district shall be occupied or used until a certificate of use and occupancy shall have been issued therefor by the aforesaid Director of Building and Safety.

(b) Application for a certificate of use and occupancy for a new building or for an existing building which has been altered or moved shall be made at the same time as the application for a building permit. Said certificate shall be issued within three days after a written request for the same shall have been made to the said Director of Building and Safety after the erection, alteration or moving of such building or part thereof shall have been conpleted in conformity with the provisions of this Article. Pending the issuance of such a certificate, a temporary certificate of use and occupancy may be issued by the said Director of Building and Safety for a period of not exceeding six months during the completion of alterations or during partial occupancy or use of a building pending its completion. Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the County relating to the use or occupancy of the premises or any other matter covered by this Article and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

(c) Written application for a certificate of use and occupancy for the use of vacant land or for a change in the character of the use of land, as herein provided, shall be made before any such land shall be so occupied or used, except for agricultural purposes other than livestock farming, poultry or small animal raising, or dairying. Such a certificate of use and occupancy shall be issued within three days after the application therefor has been made, provided such use is in conformity with the provisions of this Article.

(d) Every certificate of use and occupancy shall state that the building or proposed use of building or land complies with all the provisions of law and of this Article. A record of all certificates of use and

occupancy shall be kept on file in the office of the Director of Building and Safety and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land affected. No fee shall be charged for a certificate of use and occupancy.

(e) No permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

Sec. 78.0293. Completion of building.

Nothing herein contained shall require any change in the plans, construction or designated use of a building for which a building permit has heretofore been issued and upon which actual construction has begun.

Actual construction is hereby defined to be the actual placing of construction materials in their permanent position fastened in a permanent manner, except that where a basement is being excavated such excavating shall be deemed to be actual construction or where demolishing or removal of an existing building or structure has been begun preparatory to rebuilding, such demolition, or removal shall be deemed to be actual construction, providing in all cases that actual construction work be diligently carried on until the completion of the building or structure involved. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

Sec. 78.0294. Enforcement, legal procedure, penalties.

(a) It shall be the duty of the Director of Building and Safety of Orange County to enforce the provisions of this Article pertaining to the use of land, the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure.

(b) It shall be the duty of the Health Department of Orange County to enforce the provisions of this Article pertaining to the maintenance and use of property structures and buildings so far as matters of health are concerned.

(c) It shall be the duty of the Sheriff of Orange County and of all officers of said County otherwise charged with the enforcement of the law to enforce this Article and all the provisions of the same.

(d) Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating any provisions of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the County Jail of said Orange County for a term not exceeding six (6) months or by both such fine and imprisonment. Such person, firm, or corporation shall be deemed guilty of a separate offense

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for each and every day during any portion of which any violation of this Article is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

(e) Any building or structure set up, erected, built, moved or maintained and/or use of property contrary to the provisions of this Article and/or any conditions attached to the granting of any Use Permit, Conditional Permit or Variance pursuant thereto shall be and the same is hereby declared to be unlawful and a public nuisance and the duly constituted authorities of Orange County shall, upon order of the Board of Supervisors, immediately commence action or actions, proceeding or proceedings for the abatement, removal and enjoinment thereof in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building, structure or use and restrain and enjoin any person, firm or corporation from setting up, erecting, building, moving or maintaining any such building or structure or using any property contrary to the provisions of this Article.

(f) Failure to abide by and faithfully comply with any and all conditions that may be attached to the granting of any Use Permit, Conditional Permit or Variance pursuant to the provisions of this Article shall constitute grounds for the revocation of said Use Permit, Conditional Permit or said Variance by the Board of Supervisors. All remedies provided for herein shall be cumulative and not exclusive. *(Ord. No. 2142, Sec. 4, eff. 4/20/67.)*

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Health and Safety Code

1961

State of California

Compiled by
A. C. MORRISON
Legislative Counsel

Printing Division
Documents Section
Sacramento 14
Price $6, plus tax

Exhibit #9
1 of 4
1961 Health and Safety Code Application No. 5-07-412-VRC

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promote the safe packing, loading, storage, and transportation of explosives.

(Amended by Stats. 1957, Ch. 1224.)

State Fire Marshal's rules and regulations

12004.5. The State Fire Marshal shall adopt, in accordance with the provisions of Chapter 4 (commencing at Section 11370), Part 1, Division 3, Title 2 of the Government Code, and enforce reasonable rules and regulations for the purposes of Chapters 2 (commencing at Section 12100), 5 (commencing at Section 12350), and 6 (commencing at Section 12400) of this part. Such rules and regulations shall supersede any regulations of the Public Utilities Commission with respect to activities regulated by these chapters.

(Added by Stats. 1957, Ch. 1224.)

Action by chief

12005. The chief having the responsibility for the prevention and suppression of fire where an act occurs giving rise to a forfeiture specified in this division may, for his own benefit, sue for the forfeiture.

(Amended by Stats. 1957, Ch. 1224.)

Exceptions

12006. This part does not apply to fireworks regulated under Part 2 (commencing at Section 12500) of this division.

(Added by Stats. 1950 (3d Ex. Sess.), Ch. 41; repealed by Stats. 1951, Ch. 878; added by Stats. 1957, Ch. 1224.)

Chapter 2. Sale or Other Disposition of Explosives

(Heading amended by Stats. 1957, Ch. 1224)

Exceptions

12100. This chapter does not apply to any of the following:

(a) Any person engaged in the transportation of explosives regulated under Division 11D (commencing at Section 729.01) of the Vehicle Code, except that no shipment of explosives originating without the State, when such explosives would otherwise be governed by the provisions of this part, shall be delivered to any person who does not present a permit as specified in Section 12101.

(b) Any sale, gift, delivery, or other disposition of a quantity of explosives in excess of 1,000 pounds.

(c) Any sale, gift, delivery, or other disposition of smokeless powder when such smokeless powder is intended for hand loading of small arms ammunition for private personal use and not for resale, and when the quantity of such smokeless powder does not exceed 20 pounds, and when the keeping on hand of such smokeless powder is acceptable to the authorities having local jurisdiction and is in compliance with local regulations, if any, applicable thereto.

(Amended by Stats. 1957, Ch. 1224, and by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Permit to receive explosives

12101. Unless otherwise provided in this chapter, no person shall receive or possess any explosives as defined herein and within the scope of this part, without first securing a permit to receive explosives issued to such person by the chief having the responsibility for the prevention and suppression of fire in the area in which the explosives are to be used, and it is unlawful for any person to sell, give away or deliver explosives to any person who does not present such a permit.

(Original 12101 renumbered 12110 by Stats. 1957, Ch. 1224. Present 12101 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Minors

12101.5. No explosives shall be sold, given or delivered to any person under 21 years of age, whether such person is acting for himself or for another person, nor shall any such person be eligible to obtain any permit to receive explosives governed by the provisions of this chapter.

(Added by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Application statement: Form

12102. Application for a permit to receive explosives shall be made by filing a statement with the chief having the responsibility for the prevention or suppression of fire in the area in which the explosives are to be used, upon a form prescribed by the State Fire Marshal, showing:

(a) The name and address of the applicant.

(b) The place where and the purpose for which the explosives are intended to be used.

(Original 12102 amended and renumbered 12111 by Stats. 1957, Ch. 1224. Present 12102 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Signature, witnesses, etc.

12103. The statement shall be signed by the applicant, or by his agent, and shall be notarized or witnessed. If witnessed, it shall be witnessed by two persons known to the chief to be residents of the county where, as shown by the statement, the explosives are intended to be used. The witnesses shall certify that the applicant is personally known to them, and to the best of their knowledge and belief the explosives are required by the applicant for the purposes set forth in the statement.

Multiple appearers

If more than one employee or agent may be designated by the applicant to receive explosives for the applicant, or if more than one vehicle may be used by the applicant or his agent to transport any explosives received, the physical description and other required information pertaining to the agents and the vehicles, as specified on the application, shall be given on the application for all such persons and vehicles.

(Original 12103 amended and renumbered 12112 by Stats. 1957, Ch. 1224. Present 12103 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Issuance

12104. Before issuing a permit, the chief shall:

(a) Review the statement.

(b) Ascertain that the applicant or his agent, as appropriate, has sufficient knowledge and ability to safely handle and use explosives.

(c) Inspect the vehicle in which the applicant proposes to transport the explosives and ascertain that it is reasonably safe for that purpose, except that no inspection shall be required of any vehicle for which a permit has been issued for

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the transportation of explosives governed by the provisions of Division 11D (commencing at Section 729.01) of the Vehicle Code.

(Repealed and added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Denial

12105. The chief shall, in the exercise of reasonable discretion, deny a permit to any person if it is his opinion that the handling or use of explosives by such person would be hazardous to property or dangerous to any person and to any person if he proposes to transport the explosives in a vehicle which is not reasonably safe for that purpose.

(Repealed and added by Stats. 1957, Ch. 1224.)

Descriptions on permit

12105.5. In the event that more than one employee or agent may be designated by the permittee to receive explosives, or in the event that more than one vehicle may be used by the permittee or his agent to transport any explosives received, the physical description and other required information for such persons and vehicles shall be shown on the permit.

(Added by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Form

12106. The form of the permits shall be prescribed by the State Fire Marshal. Permits shall be numbered and shall contain information regarding local and state requirements with respect to the transportation of explosives.

(Repealed and added by Stats. 1957, Ch. 1224.)

Types

12107. Permits shall be of two types. Type A, which shall be issued to persons engaged in an established construction, agricultural, timber, mining, or other commercial operation, to persons desiring to receive more than 20 pounds of smokeless powder for hand loading of small arms ammunition for private personal use and not for resale, and to persons desiring to receive any amount of other types of gunpowder for sporting purposes, shall be valid until suspended or revoked. A Type B permit shall expire 24 hours from the time of issuance.

(Original 12107 renumbered 12116 by Stats. 1957, Ch. 1224. Present 12107 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Nontransferable

12107.5. No permit issued under the provisions of this chapter shall be transferable.

(Added by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Suspension and revocation

12108. A Type A permit may be suspended and, after reasonable notice and hearing, revoked by any chief having the responsibility for the prevention and suppression of fire in an area through which explosives are transported or in which explosives are used, if the person to whom the permit was issued transports or uses or proposes to transport or use the explosives in a manner which is unlawful or which creates an unreasonable hazard to life and property.

Notice

If the suspension or revocation is effected by the chief of a jurisdiction other than that jurisdiction in which the permit was issued, the chief taking action to suspend or revoke a permit shall notify the chief who issued the permit of the action taken.

(Original 12108 renumbered 12117 by Stats. 1957, Ch. 1224. Present 12108 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Record of sales, etc.

12109. Except as otherwise provided in Section 12109.5, every persons who sells, gives away, delivers, or otherwise disposes of explosives to any person shall make a quadruplicate record of each such sale or transaction. A copy shall be immediately sent to the chief who issued the permit to receive explosives. Two copies shall be delivered to the person receiving the explosives, one to be retained by him and the other to be sent to the chief who issued the permit to receive explosives upon the disposition of the explosives. The original shall be retained by the person disposing of the explosives and shall be kept on file for a period of not less than three years. The form of the record of sale or transaction shall be prescribed by the State Fire Marshal.

(Original 12109 renumbered 12118 by Stats. 1957, Ch. 1224. Present 12109 added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Same; Copy to area chief

12109.5. When the permit to receive explosives indicates that the intended area of use of the explosives is other than that area in which the permittee or his agent receives the explosives, the person selling or otherwise disposing of the explosives shall, in addition to complying with the provisions of Section 12109, immediately send a copy of the record of sale to the chief in the area where the explosives are received by the permittee or his agent.

(Added by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Journal or record book

12110. Every person who sells, gives away, delivers, or otherwise disposes of explosives shall keep an accurate journal or record book in which shall be noted at the time it is made, each sale, delivery, gift, or other disposition of an explosive made by him, whether in the course of business or otherwise. Such journal or record book shall be kept on file for a period of not less than three years.

If the record of sale required by Section 12109, contains the information specified in Section 12111, such record of sale shall be considered as meeting the requirements of this section for a journal or record book.

(Formerly 12101. Renumbered 12110 by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Same: Notations

12111. Each notation in the journal or record book shall show, in a legible handwriting:

(a) The name and quantity of the explosive sold, delivered, given away, or otherwise disposed of.

(b) The name, residence, and business of the purchaser or transferee.

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(c) The name of the individual to whom the explosive is delivered, his address, and a description of him sufficient for identification purposes.

(d) The number of the permit to receive explosives displayed by the person to whom the explosives were delivered.

(Formerly 12102. Amended and renumbered 12111 by Stats. 1957, Ch. 1224.)

Suspension, etc., of requirements

12111.5. The State Fire Marshal may, upon application of any interested party and with the concurrence of the chief or chiefs in the area or areas affected, and if he determines that such action may be taken without jeopardizing public safety, suspend, or waive compliance with, the whole or any part of the requirements of Sections 12101, 12109, 12109.5, 12110, and 12111 insofar as they apply to the sale, gift, delivery, or other disposition of explosives in sparsely populated, unincorporated areas or in any area where there may be practical difficulties or unnecessary or unreasonable hardship in carrying out the provisions of the foregoing sections. No person shall be charged with any crime for any transaction in violation of Sections 12101, 12109, 12109.5, 12110 or 12111 when such a suspension or waiver by the State Fire Marshal is in effect in the area in which the transaction occurs.

(Added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Inspection of journal or record book

12112. The journal or record book shall be kept by the person required to keep it in his principal office or place of business. It shall be at all times, on proper demand, subject to the inspection and examination of any chief or other duly authorized law enforcement official.

(Formerly 12103. Amended and renumbered 12112 by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Signs

12113. Vehicles transporting explosives governed by the provisions of this part, shall have displayed thereon or attached thereto such signs as are required by Section 599 of the Vehicle Code.

(Added by Stats. 1957, Ch. 1224; repealed and added by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Transportation

12114. (a) It is unlawful for any person to transport explosives in any vehicle upon a public highway, or to park any vehicle loaded with explosives upon a public highway, unless such vehicle is marked or placarded as required in Section 12113 of this chapter.

(b) It is unlawful for any person to operate or to park any vehicle upon a public highway to which there are attached or displayed signs of the type prescribed in Section 599 of the Vehicle Code, unless the vehicle is loaded with explosives.

(Added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

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Use: Type B permit

12115. A person who receives explosives under a Type B permit shall normally use the explosives during the daylight hours of the day of purchase. If it is stated by the applicant or if it is reasonably certain or apparent that the explosives cannot or will not be used within the daylight hours of the day of purchase, and if the proposed place and manner of storage is acceptable to the chief issuing the permit, the period of time for such use may be extended, but in no case shall such extension be for a period greater than 72 hours from the time of the issuance of the permit. If an extension of time for the use of the explosives is granted, the chief issuing the permit shall so indicate on the permit.

Extension of time

(Added by Stats. 1957, Ch. 1224; amended by Stats. 1959, Ch. 1740. In effect July 10, 1959.)

Criminal penalty

12116. Every person who violates any provision of this chapter is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000), or by imprisonment for not less than six months, or by both.

(Formerly 12107. Amended by Stats. 1957, Ch. 139; renumbered 12116 by Stats. 1957, Ch. 1224.)

Civil penalty

12117. In addition to the criminal punishment, a person who violates any provision of this chapter shall forfeit the sum of two hundred fifty dollars ($250) for each violation. The forfeiture may be sued for by any person in a court of competent jurisdiction.

(Formerly 12108. Renumbered 12117 by Stats. 1957, Ch. 1224.)

Forfeiture action, etc.

12118. A person who has instituted an action for a forfeiture pursuant to this chapter shall not dismiss it without the consent of the court in which it is pending. A judgment for such person shall not be settled, satisfied, or discharged except by an order of, and after deposit of the full amount of the judgment in, the court. All money deposited in the court shall be paid to the person who instituted the action.

(Formerly 12109. Renumbered 12118 by Stats. 1957, Ch. 1224.)

Chapter 3. Storage

Article 1. General Provisions

Containers

12150. Except only at an explosive manufacturing plant, no person shall possess, keep, or store any explosive which is not completely inclosed and incased in a tight metal, wooden, or fiber container.

No person having any explosives in his possession or control shall under any circumstances permit or allow any grains or particles of explosives to be or remain on the outside of, or about, the containers in which the explosives are kept.

STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Ryan Todaro

SUBJECT: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates)

DATE: April 16, 2007

Documents reviewed:

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

J. Gustafson (Investigator, City of Laguna Beach). June 16, 1994. Response to complaint that Esslinger property was bulldozed on June 4 and June 5, 1994. Includes this summary of the site visit: "Site visit revealed recent grading or brush removal."

U.S. Fish and Wildlife Service. October 7, 1996. Determination of Endangered or Threatened Status for Four Southern Maritime Chaparral Plant Taxa from Coastal Southern California and Northwestern Baja California, Mexico. Final rule. Federal Register Volume 61, Number 195, pages 52370-52384. [Listing of Bigleaf Crownbeard, *Verbesina dissita*, as Threatened]

Shelley, D.A. (John M. Tettemer & Associates). June 30, 1999. Letter to M. Vaughn (CCC) concerning proposed development on Esslinger property, now known as Driftwood Estates.

LSA Associates. August 17, 2000. Biological Resources Assessment, Driftwood Estates – Laguna Beach Project. A report prepared for Highpointe Communities, Inc.

Michael Brandman Associates. November 2001. Draft Environmental Impact Report, Laguna Beach Driftwood Estates (Tentative Tract No. 16035). State Clearinghouse No. 2001011112. Prepared for City of Laguna Beach.

Tippets, W.E. (CDFG). December 20, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Driftwood Estates Project (Tentative Tract Number 16035), Laguna Beach, California (SCH 200101112 (sic)).

Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California

Almanza, E. and D. Bramlet. June 2003. Technical Review, Biological Resources Assessment, Driftwood Estates. A critical assessment of proposed alterations to the City of Laguna Beach's habitat ranking system written by E. Almanza based on a Dave Bramlet's site survey and technical information, with a note from Karlin Marsh dated February 21, 2003.

The subject property includes an irregular, more-or-less flat graded area bounded to the south and west by residential development (single-family homes and a trailer park), to the north by native habitat and a trailer park, and to the east by native habitat. This disturbed area was graded out of a natural, generally ocean-facing hillside on the south side of Hobo Canyon in an area known locally as the "Hobo Aliso Ridge." The relatively undisturbed adjacent native habitat is mainly comprised of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between maritime chaparral and coastal sage scrub. These habitats, especially maritime chaparral, support populations of bigleaf crownbeard[1], which is listed as "threatened" under both federal and state law and is endemic to this part of Orange County.

Prior to the grading of this site, its habitat was almost certainly southern maritime chaparral because the landscape position, topography, physical environment, and climatic regime was essentially the same as that of the adjacent maritime chaparral. If left undisturbed, it is reasonable to expect that the site would eventually again support a maritime chaparral community since such a successional sequence has been observed at other disturbed sites. This is also suggested by recent changes in the vegetation. The vegetation was periodically removed by bulldozing prior to 1999.[2] Ground-level photographs taken in 1999 show a barren site, nearly devoid of vegetation, bounded by a line of sandbags. Ground cover was extremely sparse, suggesting that the area had

[1] In the United States, natural populations of bigleaf crownbeard are only found on coastal hillsides and canyons in Laguna Beach. Although generally restricted to southern maritime chaparral, bigleaf crownbeard also occurs to a lesser extent in coastal sage scrub and mixed chaparral. There has been an 82 to 93 percent loss of maritime chaparral habitat in southern California due to urbanization and agriculture. The majority of remaining populations are on private land and threatened with residential development.

[2] The site was scraped at least in 1994 (Gustafson 1994) and in 1997 or 1998 (P. Alia, personal communication to J. Dixon, April 14, 2007). According to local residents, the vegetation was removed on other occasions prior to 1999 (P. Alia, personal communication to J. Dixon, April 14, 2007). A 1979 aerial photograph shows most of the site vegetated. An aerial from the City that is labeled "1997/1978 Aerial Photos" shows discrete, rectilinear unvegetated areas that suggest grading had recently taken place.

recently been scraped, closely mowed,[3] or both. Apparently, the vegetation removal has ceased because by 2001 the graded portion of the site supported developing Venturan-Diegan transitional coastal sage scrub, sage scrub-grassland ecotone/sere[4], coastal sage-chaparral ecotone/sere, and southern maritime chaparral, in addition to weedy vegetation (Michael Brandman Assoc. 2001). Bigleaf crownbeard was documented on the graded portion of the site in both 2000 and 2003 (LSA 2000, Almanza & Bramlet 2003).

When southern maritime chaparral is disturbed, the early colonizers are generally exotic grasses and other weeds followed by coastal sage scrub species. With time, the coastal sage scrub is expected to be replaced by maritime chaparral, which is considered the climax community. Based on observations of recovery on nearby sites, the process could take 30 years or longer (Fred Roberts, personal communication to J. Dixon, April 13, 2007). Therefore, had this site been left undisturbed beginning in 1972 it mostly likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral. However, as pointed out by the Department of Fish and Game (Tippets 2001), "...past and ongoing clearance of vegetation on much of the previously-graded portion of the site has prevented the establishment of mature coastal sage scrub and southern maritime chaparral."

Both the Department and the U.S. Fish and Wildlife Service (Evans 2001) consider the various types of coastal sage scrub and the maritime chaparral that occur on the property to be "sensitive" or "special status" plant communities. Southern maritime chaparral is listed as a rare plant community by the Department of Fish and Game's Natural Diversity Data Base and it performs the important ecosystem function of providing habitat to rare and threatened species such as bigleaf crownbeard. Although there are thousands of acres of coastal sage scrub still in existence in California, over 85 percent of the original acreage has been lost. The loss in the coastal zone is probably much higher and is especially significant because coastal sage scrub provides critical habitat for the coastal California gnatcatcher, a "threatened" species under the Endangered Species Act. In its review of the Driftwood Estates proposal at the subject site, the Department of Fish and Game (Tippets 2001) found that, "The quality of the coastal sage scrub on the site varies, but it is generally not high quality. However, this vegetation community is widely regarded as threatened, and any loss is generally considered directly and cumulatively significant. In addition, rufous-crowned sparrow, a species of special concern strongly associated with coastal sage scrub, was observed on the site." California gnatcatchers have also been observed at the site.[5] In this setting, both the southern maritime chaparral and the coastal sage scrub are rare habitat types, they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities.

[3] Shelley (1999) reports "cut grasses."
[4] An "ecotone" is a transitional zone between two communities that typically contains elements of each. A "sere" is a successional sequence of community types. The meaning here is apparently "seral stage."
[5] California Department of Fish and Game Natural Diversity Database: Laguna Beach Quad (No. 3311757/071D), California gnatcatcher (*Polioptila californica*) observation 836.

Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act.

It is clear that the habitat that was destroyed when the area was graded would have met the definition of ESHA and that the surrounding, ungraded area is currently ESHA. The current status of the graded area is a more difficult determination, because until recently it was repeatedly disturbed by scraping, vegetation clearance, and by the placement of sandbags, which take up space and prevent the establishment of any plant community. However, the fact that the area was rapidly colonized by coastal sage scrub and by maritime chaparral vegetation, including bigleaf crownbeard, in areas where disturbance ceased demonstrates that the necessary physical and environmental characteristics for these rare vegetation types are present. The evidence suggests that it is only because of ground disturbance, repeated cutting of vegetation, and sandbag placement that coastal sage scrub and maritime chaparral are not now well-established. Therefore, I recommend that the entire graded portion of the site be considered degraded ESHA.