CALIFORNIA COASTAL COMMISSION

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

W11a

Request Filed: 11/13/2013 Staff: C. Posner - LB Staff Report: 12/19/2013 Hearing Date: January 8, 2014

STAFF REPORT: REVOCATION REQUEST

Case Number: 5-11-125-REV

Applicants: Darrach McCarthy & Lucia Singer

Agent: Fred Gaines, Gaines & Stacey, LLP

Project Location: 160 N. Ocean Way, Pacific Palisades, City of Los Angeles

Project Description: Request by Santa Monica Canyon Civic Association & BOCA

Neighborhood Association to revoke the coastal development permit issued for the construction of a 33-foot high, 4,614 square

foot single-family residence.

Staff Recommendation: Deny the Revocation Request

SUMMARY OF STAFF RECOMMENDATION

California Code of Regulations, Title 14, Division 5.5, Section 13105 sets forth the grounds for the revocation of a coastal development permit. Grounds for revocation of a permit are as follows:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person (s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.

Staff recommends that the Commission **deny** the request for revocation on the basis that no grounds exist for revocation under Section 13105 of the Commission's regulations. Even if some of the information concerning the height of the proposed single-family residence may have been inaccurate, erroneous or incomplete, it would not have caused the Commission to require additional or different conditions on the permit or deny the application. The record reflects that the Commission understood that it was approving a three-level, 33-foot high single-family residence; a relatively large house that had undergone significant changes since the Commission's first public hearing. There is no evidence that the Commission's finding was based on the applicants' (or anyone's) photographs of story poles and flag lines as alleged in the request for revocation. There also is no evidence that the applicants or their agent *intentionally* included inaccurate, erroneous or incomplete information. The alleged inaccuracies have not been shown to be intentional. **The motion to carry out the staff recommendation is on Page Two**.

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EXHIBITS

- Exhibit 1 Project Location Map Santa Monica Canyon & Pacific Palisades, CA
- Exhibit 2 Coastal Development Permit 5-11-125 (McCarthy & Singer)
- Exhibit 3 Letter requesting Permit Revocation, Frank Angel (11/13/2013).
- Exhibit 4 Letter from Applicants' Representative, Fred Gaines (11/14/2013).
- Exhibit 5 Commissioners' Ex Parte Correspondence.
- Exhibit 6 Photographs of Story Poles shown at the November 3, 2011 Hearing.

I. MOTION AND RESOLUTION

Motion: "I move that the Commission grant revocation of Coastal Development Permit 5-11-125."

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

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit 5-11-125 on the grounds that there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

II. REQUESTORS' CONTENTIONS

On November 13, 2013, the Commission's South Coast District office received a letter (Exhibit #3) from Santa Monica Canyon Civic Association and BOCA Neighborhood Association requesting that the Commission revoke Coastal Development Permit 5-11-125 (McCarthy & Singer), which was issued for the construction of a 33-foot high, 4,614 square foot single-family residence in Pacific Palisades.

The request for revocation contends that the grounds for revocation listed in Section 13105(a) 14 Cal. Code of Regulations exist because the applicants intentionally provided the Commission inaccurate, erroneous and false information concerning the height of the proposed single-family residence. The requestors contend that: if the Commission had been provided with accurate information regarding the actual height of the proposed project, the Commission would not have found the project to be visually compatible with the character of the surroundings area, and the Commission would have required additional or different conditions on the permit, or denied the application altogether.

The basis for the requestors' allegation is photographs of story poles and flag lines that were erected at the project site by the applicants on September 6, 2011. Two of the applicants' photographs of the story poles and flag lines (Exhibit #6), which purported to show the outline of the proposed single-family residence, were attached to the staff report and shown to the Commission at its November 3, 2011 hearing on the matter. The requestors contend that the story poles and flag lines erected by the applicants were five feet too short (28 feet instead of 33 feet) and did not accurately reflect the height of the proposed single-family residence (Exhibit #3, p.7). The requestors also contend that the applicants' agent (Fred Gaines) and one of the applicants (Darrach McCarthy) falsely testified at the Commission's November 3, 2011 and February 8, 2012 hearings in regards to the height of the proposed project in relation to the existing house on the project site (Exhibit #3, ps.5&7).

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

On February 8, 2012, the Commission approved Coastal Development Permit 5-11-125 for the demolition of a two-story single-family residence on the project site, and construction of a 33-foot high, 4,614 square foot single-family residence. Coastal Development Permit 5-11-125 was issued on August 16, 2012 (Exhibit #2). Demolition, grading and construction commenced shortly thereafter. Currently, the new three-level single-family residence is completely framed and nearing completion.

The permit application, which the applicants submitted to the Commission's South Coast District office on May 18, 2011, was scheduled for action at three different Commission meeting agendas before it was finally approved on February 8, 2012. The project was originally scheduled for the Commission's August 10-12, 2011 meeting in Watsonville, but it was postponed to allow for greater public participation after staff received written objections from the community. The objections pointed out that the proposed project had not been subject to any public hearing by the local government (City of Los Angeles). The City had signed-off on the proposed project (originally proposed to be 36 feet high) by issuing an Approval-in-Concept on April 26, 2011 (Case No. ZA-2011-1039). The City's issuance of the Approval-in-Concept granted the applicants permission to apply to the Commission for the

necessary coastal development permit rather than being required to obtain a local coastal development permit from the City of Los Angeles Planning Department.

The plans submitted to the Commission proposed the construction of a 33.5-foot high house with a 40.75-foot high elevator tower. The Commission received numerous letters submitted in opposition to the project. The opposition letters generally raised one or more of the following points:

- 1) The proposed project would result in development which is inconsistent with the character of the surrounding neighborhood.
- 2) The proposed residence is not in compliance with the Baseline Hillside Ordinance recently passed by the City on March 30, 2011.
- 3) The structure does not comply with required setbacks and floor area ratio limits.
- 4) The proposed residence will result in impacts to private and public views.
- 5) The proposed project will result in temporary impacts to parking during construction.
- 6) The proposed project may result in the potential instability of the hillside.
- 7) The height of the proposed project is inaccurate and does not include the elevator tower.

In response to concerns raised in public comment letters regarding views and community character, the applicants erected story poles and flag lines at the project site on September 6, 2011. On September 8, 2011, the applicants' agent submitted two photographs of the story poles and flag lines to Commission staff which purported to show the outline of the proposed single-family residence (Exhibit #6). Staff included one of the photographs in its staff reports (Exhibit #6, p.2).

The application had its first public hearing before the Commission at its November 3, 2011 meeting in Oceanside. After hearing testimony from the applicants' agent and the public, and viewing the applicant's and opponents' visual presentations, the Commission continued the hearing at the request of the applicants' agent. Comments made by some Commissioners at the November 3, 2011 hearing indicated that the proposed residence could not be found to be consistent with the character of the surrounding neighborhood. Specifically, Commissioners raised objections with the mass, scale, and architectural style of the proposed residence. Guidance given to the applicants and staff included a recommendation to alter the mass, scale, and architectural style of the proposed residence to fit more in line with the design and scale of surrounding residences in the Santa Monica Canyon area of the proposed project, and to look towards the City of Los Angeles' Baseline Hillside Ordinance as a factor in determining the appropriate scale and design to conform to community character for this area.

In response to comments made by Commissioners at the November 3, 2011 meeting, the applicants made significant revisions to the proposed project in order to more closely conform to the provisions of the Baseline Hillside Ordinance and make the project more compatible with community character. The proposed project was redesigned with a Spanish Colonial style, with a pitched roof instead of flat, and each floor was stepped back three feet to eliminate the prior box-like shape. In addition, the height of the proposed house was lowered to 33 feet instead of 33.5 feet, and a stairway enclosure on the roof was removed from the plan. The revised project, however, did not comply with all of the limits set forth in the City's Baseline Hillside Ordinance.

On February 8, 2012, the Commission held another public hearing during which several persons, and the entities requesting revocation of the permit, spoke in opposition to the proposed project. Their main points were: 1) development that is not consistent with the Baseline Hillside Ordinance is not consistent

with the character of the community, and 2) the proposed development is two feet higher than allowable, as the height should be measured from Lowest Average Grade, rather than height of slab.

The applicants showed the Commission diagrams of the proposed project and argued that, as substantially revised, it is consistent with the character of the surrounding area. The Commission closed the public hearing and voted to approve the application for a 33-foot high house. The elevator tower was approved to a maximum height of 38 feet, which is five feet higher than the 33-foot high elevation of the structure's parapet walls. The Commission did not impose a condition that would have required the structure to conform to the City's recently adopted Baseline Hillside Ordinance. The Commission did find that the proposed 33-foot high, 4,614 square foot single-family residence is consistent with the character of the surrounding area.

B. Analysis of Evidence

As stated on Page One of this report, the grounds for the revocation of a coastal development permit are specific. California Code of Regulations, Title 14, Division 5.5, Section 13105 sets forth the grounds for the revocation of a coastal development permit. Grounds for revocation of a permit are as follows:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person (s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.

In this case, the revocation request cites Section 13105(a) alleging that the applicants intentionally provided the Commission inaccurate, erroneous and false information concerning the height of the proposed single-family residence. If, in fact, the applicants did intentionally provide the Commission inaccurate, erroneous or false information, Section 13105(a) also requires that the Commission find that the provision of accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application. Therefore, there are three standards that a revocation request must meet in order for the Commission to revoke a permit: 1) the applicants included inaccurate, erroneous or incomplete information; 2) the applicants did it intentionally; and 3) the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

First, the photographic evidence provided by the requestors seems to support the allegation that the story poles and flag lines erected by the applicants did not accurately reflect the height of the proposed structure (Exhibit #3, ps.14-19). However, the photographs of the story poles and flag lines submitted with the revocation request were not shown to the Commission at the public hearings on the matter [the source photos on Exhibit #3 labeled as "SHOWN TO THE COMMISSION (2011)"]. Only two photographs of the story poles and flag lines were shown at the Commission's November 3, 2011 meeting, both were taken from a lower elevation at the project site's driveway and from Ocean Way (Exhibit #6). The project opponents did not show any photographs of the story poles and flag lines at the November 3, 2011 meeting. The two photographs of the story poles and flag lines shown at the Commission's November 3, 2011 meeting were not the subject of any Commissioner's comments on

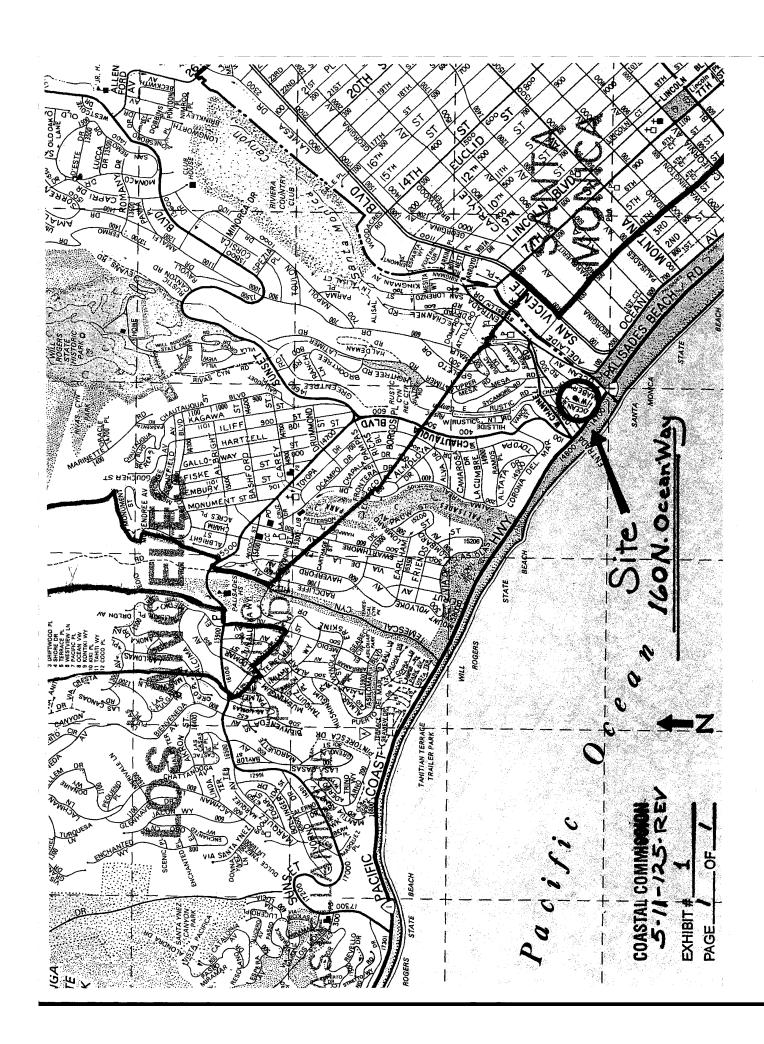
that day. In fact, on that day the Commission indicated that the proposed residence could not be found to be consistent with the character of the surrounding neighborhood because of the mass, scale, and architectural style of the proposed residence.

The Commission voted to continue the matter to a future meeting, and the applicants subsequently hired a new architect and accepted significant revisions to the proposed project, including a change to a Spanish Colonial style with a pitched roof instead of flat roof, and lowering the height of the proposed house to 33 feet instead of 33.5 feet. A stairway enclosure on the roof was removed from the plan, and the second and third levels were stepped-back to eliminate the box-like shape of the proposed house.

On February 8, 2012, the Commission re-opened the public hearing during which several persons, including the persons involved with this revocation request, spoke in opposition to the proposed project. No photographs of the story poles and flag lines were shown, and the story poles and flag lines were not a topic of any comments or discussion at this hearing. The main topic of discussion was whether the proposed project should be required to conform to the City's recently adopted Baseline Hillside Ordinance. The Commission closed the public hearing and voted to approve the application for the redesigned 33-foot high house. The Commission even voted to delete a staff recommended condition that would have required the applicant to take the proposed project back to the City for review and certification that it would conform to the Baseline Hillside Ordinance.

Therefore, even if some of the information concerning the height of the proposed single-family residence may have been inaccurate, erroneous or false, it would not have caused the Commission to require additional or different conditions on the permit or deny the application. While the photographs of the story poles and flag lines may have had some import at the first public hearing (November 3, 2011) when the Commission did not approve the proposed project, the photographs had no import whatsoever at the second hearing (February 8, 2012) when the Commission approved the revised project. The record reflects that the Commission understood that it was approving a three-level, 33-foot high single-family residence; a relatively large house that had undergone significant changes since the Commission's first public hearing (where the applicants' two photographs of the story poles and flag lines were shown). The Commission found that the applicants' 33-foot high, 4,614 square foot singlefamily residence is consistent with the character of the surrounding area. There is no evidence that the Commission's finding was based on the applicants' (or anyone's) photographs of the applicants' story poles and flag lines. There also is no evidence that the applicants or their agent *intentionally* included inaccurate, erroneous or incomplete information during the application process. The alleged inaccuracies have not been shown to be intentional. If the Commission's hearings on the matter had hinged on a debate or analysis of the story poles and flag lines, this conclusion may be different, but there was no debate or discussion involving the story poles at either of the two Commission meetings.

Ultimately, this revocation request is the continuation of a neighborhood dispute over the large size of the house and its impacts on views (not public views). The Commission held two public hearings on the matter and considered the opinions of the opponents and the applicants. The height, mass and scale of the proposed project was presented to the Commission in multiple ways, including 3-D visual diagrams that portrayed the proposed project's size in relation to surrounding development, and projected slides of the project plans. The Commission based its decision to approve the project on the totality of the evidence presented at the hearings and on the standard of the review, which is the Chapter 3 Policies of the Coastal Act. Therefore, the Commission denies the request for revocation on the basis that no grounds exist for revocation under Section 13105 of the Commission's regulations.



CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071 Page 1 of 3 August 16, 2012 Permit No. 5-11-125



COASTAL DEVELOPMENT PERMIT

On February 8, 2012, the California Coastal Commission granted to Darrach McCarthy & Lucia Singer Coastal Development Permit 5-11-125, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of the existing single family residence and construction of a new, 33' high, 4614 sq. ft. single family residence. More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 160 North Ocean Way, Pacific Palisades, Los Angeles County. APN(s) 4410-006-36.

Issued on behalf of the California Coastal Commission on August 16, 2012.

CHARLES LESTER Executive Director

By:
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

<u>IMPORTANT:</u> THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

Date	Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

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STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Interpretation.</u> Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. <u>Terms and Conditions Run with the Land.</u> These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Landscaping

All landscaping on the project site shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (http://www.CNPS.org/), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (http://www.cal-ipc.org/), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. Native species shall be used to the maximum extent feasible. All plants shall be low water use plants as identified by California Department of Water Resources (See: www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf).

2. <u>Conformance with Geotechnical Recommendations</u>

- A. All final design and construction plans, grading and drainage plans, shall be consistent with all recommendations contained in the Limited Geologic and Engineering Investigation, prepared by Subsurface Designs Inc, dated January 20, 2011
- B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is

COASTAL DEVELOPMENT PERMIT

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consistent with all of the recommendations specified in the above-referenced Limited Geologic and Engineering Investigation approved by the California Coastal Commission for the project site.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

Jda/rh/g/permits/2011

8/16/12

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CALIFORNIA APPLICATION FOR REVOCATION OF COASTAL DEVELOPMENT PERMIT NO. 5-11-125

COASTAL DEVELOPMENT PERMIT APPLICANT: Darrach McCarthy and Lucia Singer

PROJECT LOCATION: 160 North Ocean Way, Los Angeles County

PROJECT DESCRIPTION: Demolition of existing single-family residence and construction of a new, 33' high, 4614 sq. ft. single family residence

LOCAL APPROVAL: City of Los Angeles Approval in Concept No. ZA-2011-1039- AIC-MEL

ENTITIES APPLYING FOR REVOCATION: Santa Monica Canyon Civic Association and BOCA Neighborhood Association

Pursuant to California Code of Regulations, title 24, section 13104 et seq., Santa Monica Canyon Civic Association and BOCA Neighborhood Association (Associations) respectfully apply for revocation of coastal development permit (CDP) No. 5-11-125. This application concerns the project currently under construction, located at 160 Ocean Way in Santa Monica Canyon. The California Coastal Commission (Commission) held a hearing on the project on November 3, 2011 and February 8, 2012. The Commission approved the project on February 8, 2012, on the date of the continued hearing.

The grounds for revocation are that the project applicant intentionally provided the Commission inaccurate, erroneous and downright false information concerning *the* pivotal issue before the Commission in this case; and that accurate and complete information would have caused the Commission to require different or additional CDP conditions or deny the CDP application altogether. The pivotal issue was whether the project could be found "visually compatible with the character of surrounding areas," as required by Public Resources Code section 30251 (Policy 30251), part of the Chapter 3 policies of the California Coastal Act of 1976.1

ENTITIES REQUESTING REVOCATION

Santa Monica Canyon Civic Association (SMCCA) is a 501(c)(3) nonprofit corporation, established in 1946. SMCCA is a nonpartisan and nonsectarian organization, representing the interests of the residents (1,200 households) of and the visitors to historic Santa Monica Canyon, a major gateway

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¹ Pub. Resources Code, § 30000 et seq. All further unlabeled policy or section references are to the Public Resources Code.

to the shoreline that thousands of annual visitors walk, jog or bike through to reach adjacent Will Rogers State Beach.²

Over the past several decades, SMMCA has contributed to the advancement of important coastal protection objectives in the City of Los Angeles (City), among other things, working to protect local beaches from oil drilling, polluted urban runoff, and uses along the shoreline (e.g., a causeway across Santa Monica Bay, a massive condominium development) incompatible with state public recreation, marine environment and development policies as reflected in Chapter 3 of the Coastal Act. In 1972, many Santa Monica Canyon residents went door-to-door to support the passage of the Coastal Initiative (Proposition 20), which led to the enactment of the Coastal Act.

SMCCA has participated in the Commission's hearing on the project and has urged the Commission to require the project to comply with the letter and intent of Policy 30251. SMCCA's interest in the administrative proceedings in this case bears testimony to its long-standing commitment to coastal protection at the local level and history of objecting to new coastal development that is out of character with and disruptive of its coastal zone setting.

BOCA Neighborhood Association (BOCA) is a smaller non-profit organization representing approximately 250 households in the sub-area that forms the mouth of Santa Monica Canyon. (See Map of Project Setting, attached as Exhibit 1.) BOCA's purposes include participation in community-wide planning and zoning issues, as well as monitoring new coastal development for consistency with the planning and zoning laws applicable in this coastal neighborhood, including the Chapter 3 policies of the Coastal Act. Like SMCCA, BOCA participated in the Commission's hearing on the project, urging the Commission to require the project to comply with Policy 30251.

FACTUAL AND PROCEDURAL BACKGROUND

CDP application No. 5-11-125 was filed with the Commission's South Coast District in Long Beach on May 18, 2011. The Commission held a hearing on the project on November 3, 2011. The staff report for that hearing was prepared on October 18, 2011 (10/2011 staff report).³ As explained in greater detail below: the Commission continued the hearing, and a new staff report was prepared

² The general boundaries of Santa Monica Canyon are from the City of Santa Monica border west to Chautauqua Blvd., north to Sunset Blvd. and the Riviera Country Club, and south to the ocean and Will Rogers State Beach.

The hearing on the project was originally scheduled for the Commission's regular meeting in August 2011. The hearing did not proceed at the time. Due to its location in Watsonville in the County of Santa Cruz, it was postponed to the Commission's November 2011 meeting to allow for greater public participation.

(10/2011 staff report at 1.) The November 2011 hearing took place in Oceanside in the County of San Diego. However, the continued February 2012 hearing was held in Santa Cruz County.

on January 25, 2012 (1/2012 staff report). The continued hearing took place on <u>February 8, 2012</u>. After the close of that hearing, the Commission approved a revised project. The project now under construction fails not only to conform with the revised project; also, *it fails to comply with the project as originally described, presented to and rejected by the Commission at the November 2011 hearing*. On November 3, 2011, the Commission continued the hearing to avoid denial of the project as then proposed, and allow the applicant to submit a scaled-down redesign.

As originally proposed, the project included demolition of an existing 1630 sq. ft. *two-story* single family residence, to be replaced with a new 4600 sq. ft. single family residence squeezed onto a small 8840 sq. ft. lot, with slopes between 26 and 33 degrees. (10/2011 staff report at 4.) The building plan was for a *three-story* structure, *plus a fourth story, open entertainment deck* defining the project's height at 33'-6" (including 3'-6" parapet walls). This deck would be accessible both via an indoor elevator and an exterior stair case extending to a height of 39'-9". The building as proposed (and as later revised) thus has four usable levels, unlike any other freestanding single-family home in the surrounding area. The staff report noted that the elevator shaft would rise 7'-3" above the finished roof height, thus extending to a height of 40'-9" from ground level. (*Id.*)

Comment letters took issue with the project's tall shoebox design, maximization of lot area and height in a neighborhood defined by predominantly smaller one- and two-story homes with generous green space. The project's towering, fortress-like appearance was amplified by the lot's elevated location compared to the Ocean Way Street level. The comment letters showed its inconsistency with Policy 30251. This policy provides in pertinent part:

"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas."

(Emphasis added.) The comment letters also pointed to the project's substantial noncompliance with the City's Baseline Hillside Ordinance (BHO), which had been enacted earlier that year to protect hillside and coastal communities from the very type of community-disruptive development and site planning used in this case.⁴ Note that the BHO took effect on May 9, 2011 (10/2011 staff report at 5), which was nine days *before* staff's accepting the project application for filing. As such, the project failed to comply with the BHO's provisions *before* it was accepted for filing for the only discretionary permit review it underwent. The project application was indeed submitted without

⁴ Under the BHO, maximum permissible height for residences with a flat roof is 28'. (Baseline Hillside Ordinance, A Comprehensive Guide to the New Hillside Regulations, at p. 14, available at http://planning.lacity.org/Code_Studies/BaselineHillsideOrd/BHComprehensiveGuide1stEdition.pdf.)

prior City-approved CDP.⁵ This is puzzling since the project clearly meets the Coastal Act's definition of "development" (§ 30106), and under a Commission-approved regulatory program which the City operates pursuant to section 30600, subdivision (b), the City has local CDP authority over development regardless of not having a certified local coastal program (LCP).⁶

The 10/2011 staff report recommended approval of the project subject to two special conditions. They concerned landscaping and conformance with geotechnical recommendations. Importantly, prior to preparation of the 10/2011 staff report, the applicant agreed to erect story poles. These went up in early September 2011, in response to Commission staff's request. This is significant. It reveals that despite the absence of any LCP requirement for story poles, staff did find the Policy 30251 issue raised here important enough to invite the applicant to put up the poles to enable it and the Commission to visually assess compatibility with the character of the surrounding areas, by visualizing project bulk, scale and height (the future condition) in relation to its existing, physical setting in Santa Monica Canyon.⁷

Pictures of the story poles were attached to the 10/2011 staff report as Exhibit 4. While staff's appraisal of this evidence led it to recommend project consistency with Policy 30251, the Commission, having had the benefit of the presentations at the November 3, 2011 hearing, declined to follow staff's recommendation.

At the November 2011 hearing, the public comments, again, focused on the project's excessive height and volumetric mass in relation to the existing single-family homes in the surrounding developed areas of Santa Monica Canyon, underscoring its inconsistency, as a single-family residence, with the Chapter 3 mandate that it be visually compatible with the character of

http://losgatos.granicus.com/MetaViewer.php?meta_id=112163&view=&showpdf=1.) Based on our inquiry with staff, we are informed that the applicant's agents failed to file a certified story pole plan indicating story pole elevations, as well as natural and finished grades, for staff's prior approval.

⁵ As the 10/2011 and 1/2012 staff reports disclose, there has been a local approval *in concept* (referenced as "No. ZA-2011-1039-AIC-MEL"). This apparent project approval was not attached to the 10/2011 and 1/2012 staff reports. Nor did the staff reports review it. The applicant's representative, attorney Fred Gaines, admitted before the Commission that "there was no discretionary approval at the local level." (11/3/2011 Hearing video [minute 14].)

⁶ We are investigating the potential illegality of the applicant's failure to secure a City-issued CDP.

⁷ It is generally accepted in the government planning community that story poles and flaglines, along with depictions thereof, provide unique height and mass perspective, allowing planners, the public, and decision makers to visualize how a building fills and fits its site, and how it sits in space, relative to terrain and surrounding areas or development. (See, e.g.,

surrounding areas. Staff and Mr. Gaines used story pole/flagline slides to illustrate and explain their positions that the project is visually compatible with the character of the surrounding areas.

Mr. Gaines directed the Commission's attention to the story pole flaglines in slides depicting the flaglines above the roofline of the then still existing 1959 house ("this is the existing house and you can see the story poles that were created at the [proposed] roof's highest point"). Mr. Gaines' first story pole slide was being projected for quite a while and he used it to claim rather emphatically that the difference in height between the highest point of the then existing house at its roofline (pitched roof top: 20'-6") and the project's roof would be 7 feet. A bullet point in his previous slide describing the project stated: "• 7' taller than existing house." (Hearing video, minutes 13 & 14.) This falsely implied that the proposed residence would be 27'-6" high, when as built it was proposed to be *six feet* higher (33'-6") -- and later *five-and-half feet* higher (33'). Mr. Gaines repeated this misrepresentation on rebuttal. (Hearing video, minute 41.)

None of the nine Commissioners who spoke expressed support for approving the project, and every Commissioner who commented on the project found that it failed to pass the test of visual compatibility with the character of the Santa Monica Canyon neighborhood.¹⁰ Commission Chair

Commissioner Dayna Bochco (after moving for a no vote, seconded by Commissioner Mark Stone):

"You're really cramming a very large structure into a very small space.... And since it is such a special neighborhood not only in the coastal zone but in its history, I think it is not visually compatible with the neighborhood and we should not approve it."

Commissioner Mark Stone:

"I think just from the mass and scale and the lack of community character of this, this is really not something that I can approve."

Commissioner Jana Zimmer:

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⁸ Before the November 3, 2011 hearing, another attorney for the applicant, Mr. Sherman Stacey, while lobbying Commissioner Bochco (the maker of the motion to deny the CDP), also used pictures of the subject lot that showed the story poles. (Written disclosure of ex parte communication dated 10-26-2011.)

⁹ Per the applicant-commissioned survey on file with the Commission, the elevation of the roof ridge of the then existing (now demolished) house was 83.8 (feet above sea level). This data can be readily compared to the data on the applicant's architectural drawings and engineering survey to confirm that Mr. Gaines affirmatively and severely misrepresented the height increase to amount to only 7 feet. The project's (current) 33-foot height corresponds to an elevation of 96.3. The difference in height between 96.3 and 83.8 equals 12.5 (aka 12'-6"). This is almost double the difference in height claimed by Mr. Gaines.

¹⁰ The following comments are illustrative:

Mary Shallenberger summed it up pretty well: "I am hearing a pretty uniform message coming from the dais." Again, that message ensued presentations by staff, the applicant's representative, attorney Fred Gaines, and the representative of the community, Mr. Doug Suisman. All presentations depicted the project in three-dimensional space and in comparison to existing topographic and architectural conditions of the surrounding area.

Following the continuance, the applicant hired an architect who then submitted plans for a Spanish Colonial style residence. The plans showed tiered stepped-back second and third stories. The height of the fourth-story roof deck was lowered by just 6", from 33'-6" to 33' (including, again, 3'-6" high parapet walls). The elevator shaft now rose 5' above the finished roof height (7'-3' before), thus extending to a height of 38' from the finished floor elevation of the garage (40'-9" before). But as staff correctly noted, the revised project did not totally comply with the BHO. The project still exceeded the BHO height limit of 28' and the applicant offered no slope analysis to calculate the BHO-required FAR (floor area ratio). (1/2012 staff report at 2, 7.) Staff therefore recommended approval of the CDP subject to a new special condition that prior to issuance of the CDP, the applicant submit for the Executive Director's review and approval, revised, City-approved plans "in compliance with all applicable requirements" of the BHO. (Special Condition No. 1; *id.* at 4.)

At the continued hearing on February 8, 2012, the applicant, Darrach McCarthy, represented himself. He emphasized the revisions discussed in the 1/2012 staff report. He further claimed that

Taking issue with "the boxy style and the elevator shaft on the roof, the roof living area" as well as project square footage deviating from BHO requirements.

Commissioner Esther Sanchez:

Expressing agreement with Commissioner Bochco and stating: "I believe that this project is not compatible with the surrounding community.... This is a policy of the Coastal Act that is very important to me, the character of the neighborhood. I do believe that it is not in keeping with the character of the surrounding community and I'd like to see something that is much more similar to the surrounding community in terms of height, bulk, scale and architecture."

Commissioner Steve Blank:

"If we're looking for community character, the community just passed the community character set of rules.... [The project is] just cheek-to-jowl and I think that is what the [BHO] was trying to avoid because this ends up block-busting a neighborhood. Because once this goes, the rest goes. And we all have seen that.... That's not what a community character means."

Commissioner Brian Brennan:

Expressing "110%" agreement with Commissioner Blank.

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the house has a pitched roof and therefore should be deemed to comply with the BHO, which sets the maximum height for pitched roofs at 33 feet. (2/8/2012 hearing video, minutes 14, 15, 17 and 19-20 [stating that the height "is reduced from a flat roof to a pitched roof which is fully BHO compliant"].) This was false. Under the BHO, the sloped roofs were too flat to qualify for the 33' height, and would have had to be lowered to 28'. The applicant requested approval of the CDP without special condition No. 1. He did not disclose that the height as depicted by the story poles/flaglines shown to the Commissioners in November 2011 was five feet lower than the actual height of his project. (See discussion at p. 9, post, attached Exhibits 2 & 3.) Nor did he tell the Commissioners that project height increase compared to the now demolished house was 12'-6", almost twice the increase he knew his attorney had led the Commissioners to believe it would be.¹¹

In the end, the Commissioners approved the CDP without special condition No. 1, thus finding that the revised design met all requirements of Policy 30251.

THE LEGAL TEST FOR CDP REVOCATION

By California Code of Regulations, title 24, section 13105, subdivision (a) (Regulation 13105 (a)), the following "shall be" grounds for revocation of a CDP:

"Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application[.]"

The Commission traditionally applies the following three-prong test in reviewing revocation requests under Regulation 13105 (a):

- (1) Did the applicant include inaccurate, erroneous or incomplete information in connection with the CDP application?
- (2) Was the inclusion of the inaccurate, erroneous or incomplete information intentional?
- (3) Would accurate and complete information have caused the commission to require additional or different CDP conditions or deny the CDP?

¹¹ On rebuttal, minutes before the Commissioners began their deliberations, the applicant also misleadingly downplayed the difference between the maximum permissible height of a flat roof under the BHO (28') and his revised project, falsely claiming that the revised project was only "18 inches" taller than the 28-foot maximum BHO height. (2/8/2012 hearing video, minutes 29-30.) But the height of the project is 33', not 29'-6" as implied by the applicant. Here, he conveniently omitted reference to the 3'-6" high parapet walls.

Here, the third question must be assessed in light of the Chapter 3 policies the project implicates. ¹² Evidently, the more prominently any particular Chapter 3 policy figures in the Commission's deliberations and action, the stronger the case for revocation where the inaccurate information relates to the Commission's application of that policy. In this case, the record unquestionably shows that the pivotal issue before the Commission was: how will the proposed building mass and height sit in space, *relative to* the surrounding single-family residential coastal zone setting and hillside terrain — "the character of surrounding areas"? (Policy 30251.) Policy 30251 was not just prominent, but absolutely pivotal to the Commission's ultimate decision to approve the project.

The record here likewise shows that the evidence that demonstrated to the Commission the project's position in space, including, especially, its unique towering height effect, was the three-dimensional building silhouette, as depicted by the story poles and flaglines that were put up by the applicant. The story poles and flaglines put up by the applicant were heavily relied upon by the applicant and most relevant to the Commissioners' application of Policy 30251. They were shown to the Commissioners by both staff and the applicant in a number of different slides.

THE REVOCATION TEST APPLIED: A COMPELLING CASE FOR REVOCATION

I. SHOWING OF INACCURATE, ERRONEOUS OR INCOMPLETE INFORMATION

Following completion of the framing of the three stories and fourth-story deck parapet wall, Mr. Doug Suisman, FAIA, prepared a story pole/flagline analysis (attached as <u>Exhibit 2</u>), which compares the currently built height with the story pole (verticals)/flagline (horizontals) heights, based on a 3-D digital correlation of the project, as now framed, with the story poles and flaglines, as erected in September 2011. (Suisman Declaration dated November 11, 2011, attached as <u>Exhibit 3</u>.)¹³ This expert analysis, based on state-of-the-art methodology, as well as review of

On October 11, 2013, we also shared our observations and analysis with the applicant and Ms. Debbie Dyner Harris, District Director, City Councilmember Mike Bonin, at Councilmember Bonin's office. At the time, we attempted to resolve this matter amicably, in the hope that the revocation process would be unnecessary.

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¹² Those policies determine the permissibility of the CDP in this case. (See §§ 30200, subd. (a), 30604, subd. (a); 1/2012 staff report at 11.)

¹³ We provided staff a copy of Mr. Suisman's analysis in mid-October. (See email from Frank P. Angel to Andrew Willis, Al Padilla and John Del Arroz, dated 10/13/2013.) We asked that Commission staff perform or commission a separate, independent survey should the applicant argue fault with our analysis. Mr. Suisman also explained the story pole/flagline analysis and shared his observations in a meeting with Mr. Andrew Willis at the Commission's South Coast District on October 23, 2013, also attended by the undersigned. While staff has not disputed the accuracy or reliability of the analysis, we reserve the right to produce additional corroborating survey data and analysis.

survey data on file with the Commission's South Coast District which, among other things, discloses the height of the demolished house at its roof ridge (highest) level, show that the story poles and flaglines that were shown to the Commissioners depicted a building silhouette of a height of at best 28 feet. Hence, the applicant misrepresented building height by showing a story-poled building silhouette 28 feet high instead of one 33 feet high. In other words, the applicant made the project look substantially lower than its true height. A five-foot height discrepancy is a 17.85 % discrepancy. The information provided to the Commissioners was clearly inaccurate and erroneous.

II. SHOWING OF INTENTIONAL INCLUSION OF THE INACCURATE AND ERRONEOUS INFORMATION

Revocation of a CDP may be shown by an applicant's agent's affirmative, false claims or representations made before the Commission — especially where the agent is an expert in land use or is familiar with Commission CDP proceedings. (*Vadnais v. Cambria Community Services Dist.* (Dec. 4, 2001, B143347) [2001 Cal. App. Unpub. LEXIS 1036, *14] [nonpub. opn.].) Gaines & Stacey, LLP, the applicant's legal counsel, have extensive expertise in representing permit applicants before the Commission. (See < http://www.gaineslaw.com/index2.php ["Attorneys of the firm have handled more matters before the California Coastal Commission than any other private counsel in California history"]; see also http://www.gaineslaw.com/index2.php.)

Also, revocation need not be premised on a showing of bad faith by the applicant or his agent in presenting inaccurate, erroneous or incomplete information. (*Id.*)¹⁴ While bad faith thus need not be shown, the applicant's conduct surely comes close to straddling the bad faith line. Indisputably, he had ample opportunity to rectify the misrepresentation, certainly when detailed plans and the engineering survey were submitted for staff's review following the Commission's approval decision. He failed to do so. Instead, after touting the height reduction of half-a-foot before the Commission in February 2012, once he got the vote he wanted, he (unsuccessfully) lobbied staff for a height increase from 33' to 33'-9", under the guise of "substantial conformance" (as shown by email correspondence on file with the Commission). This conduct is the more offensive as he knew that in November 2011 the Commission had rejected a *lower* height (33'-6") than the project height he now wanted to sneak through, and so he knew that using staff for an end run around the Commission's decision could not possibly be "substantial conformance."

¹⁴ In the tort law context, liability can be found not only when the party misrepresenting facts intends to induce reliance, but also when conduct is reasonably expected to be influenced by the misrepresentation. (See *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, at p. 93; see *id.* at p. 95 [suppression of a fact by one who is bound to disclose the fact, or who gives information of other facts which are likely to mislead for want of communication of the concealed fact, is a form of deceit].)

III. SHOWING OF CAUSALITY: ACCURATE AND CORRECT INFORMATION WOULD HAVE CAUSED THE COMMISSION TO REDUCE THE HEIGHT OF THE PROJECT OR DENY THE COASTAL DEVELOPMENT PERMIT ALTOGETHER

The conclusion that the erroneous, substantially understated story pole/flagline depictions were pivotal to the Commission's ultimate decision to approve the project is compelling, considering the whole of the Commission's action on the project. In November 2011, the Commission overwhelmingly rejected the original project design as being visually incompatible with the character of historic Santa Monica Canyon's single-family residential neighborhood, even though the building silhouette and height in that design had been substantially understated compared to what is being built now. As we have seen, design and height were misrepresented as not exceeding (i.e., fitting within) the building silhouette and height as delineated by the story poles and flaglines shown to the Commission. Still, as the Commission's February 8, 2012 approval action demonstrates, the Commission only accepted a scaled-down project six inches lower than that depicted by the story poles and flaglines. Yet now the applicant is carrying out a design at least 4'-6" (5' minus 6") higher than the original rejected design he depicted. How, under these circumstances, can anyone doubt that had the applicant returned to the Commission on February 8, 2012 with story poles and flaglines five feet higher than what he showed the Commission on November 3, 2011, i.e., accurately and correctly representing the design he is building, the Commission would have denied the project, as it was ready to do on November 3?

A strong causal nexus between the story pole/flagline evidence presented to the Commissioners and their ultimate decision on the CDP is undeniable by any objective, "reasonable person" standard as well. Like computer-generated 3-D photo or fly-around simulations of the future condition capturing the surrounding coastal zone setting (not used here), story pole/flagline evidence represents, and its use is specifically intended to represent, how a building fits the site and surrounding neighborhood. The record of the Commission's proceedings on CDP No. 5-11-125 confirms this conclusion. It shows that the 3-D story pole/flagline evidence figured prominently and was considered to be highly relevant to assessing visual compatibility with the character of the surrounding areas under Policy 30251. Assuming the project, as built, complies with the numerical height and square footage data indicated on the architectural drawings, those metrics (and the architectural drawings disclosing those metrics) describe the project in a vacuum. They preclude visual comparison with surrounding baseline conditions, unlike slides that depict story poles and flaglines in the spatial context of the surrounding areas. Viewed in the full context of prevailing patterns of building height, massing, lot coverage and yard setbacks, the story poles and flaglines thus enabled the Commissioners to see whether -- and test claims that -- a project is visually compatible with the character of the surrounding areas, and hence make a meaningful discretionary determination under Policy 30251.

Finally, a 5-foot difference in height as built (33') and height as depicted by the story poles and flaglines (28') is a substantial difference, especially considering the whole of the Commission's deliberations and action in this case. It reflects a 17.85% increase in height, and spread over the

building's 85-foot width, translates into a substantial increase in volumetric mass compared to the surrounding residences. The site's flag lot shape and smaller home site compared to many of the single-family lots in the canyon amplify this increase. Given the Commissioners' clearly expressed concerns about excessive height and building mass out-of-scale with the surrounding homes, any inference that the five-foot height difference between the project being built and the project that was presented to the Commissioners would not have affected the outcome is unreasonable.

CONCLUSION

The record of the Commission's action shows that the story pole/flagline information was highly relevant to Policy 30251. Because that information was inaccurate and erroneous, and because finding project consistency with Policy 30251 was pivotal to the Commission's ultimate decision to approve the project, the CDP must be revoked.

One final, important comment is in order. Associations and the hundreds of households that support them have no intent to deprive the applicant of his right to reasonable residential use of his property, or force a full tear down of the partially completed structure. Nor do Associations intend to reargue the case on merits. Associations, however, submit that the applicant cannot call it a day just because his project meets City building code regulations, irrespective of the Commission's CDP action. A contrary conclusion would trivialize the Commission's CDP review function under state law -- the Coastal Act. Neither the applicant nor the City's Department of Building and Safety have a right to force such an outcome. As the California Supreme Court made clear in a recent opinion construing regulation of development in the coastal zone: "'[A] fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.' [Citation.]" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, at p. 794.)

Based on this application, the sources referenced therein, the attached exhibits, and all other relevant information in the record of the Commission's proceedings or which we may submit during the pendency of this revocation request, Associations urge the Commission to revoke CDP No. 5-11-125. Associations therefore respectfully request that the Executive Director initiate revocation proceedings, and notify the permittee of the automatic suspension of the operation of the CDP pending the Commission's decision on Associations' application. (Cal. Code Regs., tit. 24, § 13107 [permittee must should promptly be notified that "any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to

COASTAL COMMISSION

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the penalties set forth in Public Resources Code, Sections 30820 through 30823"].)

Respectfully submitted,

ANGEL LAW

Frank P. Angel

Approved by.

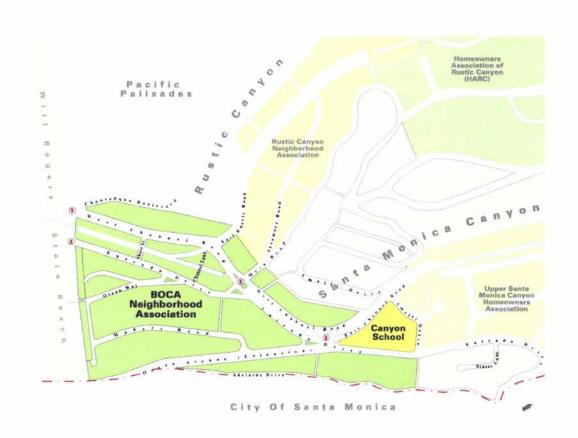
George Wolfberg, Member of the Board of Directors and President Emeritus Santa Monica Canyon Civic Association

Frank Langen, President BOCA Neighborhood Association

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EXHIBIT 1 - PROJECT SETTING MAP



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SHOWN TO THE COMMISSION (2011)

ACTUAL CONSTRUCTION (2013)



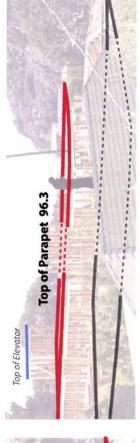






Exhibit 2 - Page 1

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PAGE_



SHOWN TO THE COMMISSION (2011)

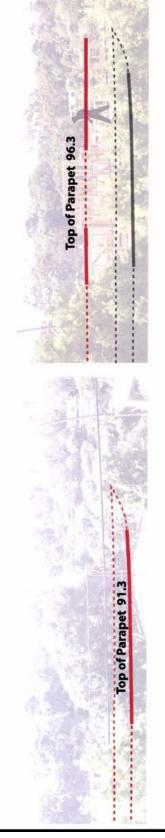
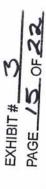




Exhibit 2 - Page 2



ACTUAL CONSTRUCTION (2013)

SHOWN TO THE COMMISSION (2011)

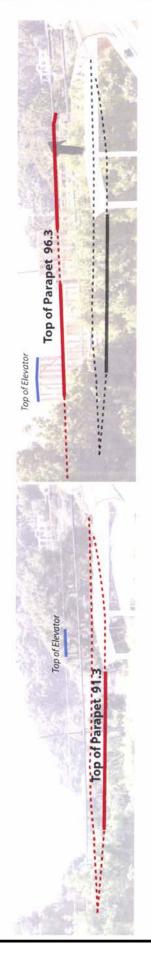




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EXHIBIT # 3

ACTUAL CONSTRUCTION (2013)

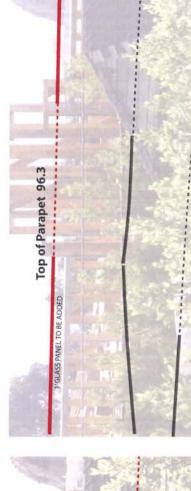




Exhibit 2 - Page 5



SHOWN TO THE COMMISSION (2011)

Top of Parapet 91.3





SHOWN TO THE COMMISSION (2011)









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EXHIBIT 3 – DECLARATION OF DOUG SUISMAN, FAIAS

DECLARATION OF DOUG SUISMAN

- 1. I am an architect and urban designer, and a member in good standing and Fellow of the American Institute of Architects. As the founder and principal of Suisman Urban Design, I have extensive expertise in urban planning and development. (See, e.g., http://suisman.com/portfolio/buildings-structures/.) I specialize in the design of comprehensive urban plans developed to create livable communities, connect people, revitalize urban cores, and encourage smart growth and reductions in carbon pollution. I am the author of "Los Angeles Boulevard," a 1989 study of the history and design of Los Angeles' boulevards and attempt to rethink their near-exclusive use and perception as vehicular traffic arteries. This monograph has been described by one critic as "a valuable discussion of the urban patterns of this modern suburban city," and offering "original insights and research for serious landscape study."

 (Arthur Krim, Urban Geography.) A new, updated 25th anniversary edition is being published this year.
- 2. I have prepared the preceding story pole (verticals)/flagline (horizontals) analysis. (Exhibit 2 to the Associations' application for revocation of CDP No. 5-11-25.) On September 11, 2011, between 2:06 p.m. and 3:18 p.m., I took the source photos from a variety of uphill positions, using a Canon EOS 7D camera. This was shortly after the story poles and flaglines had been erected. I selected the views with respect to a range of lateral vantage points to determine visual compatibility with the surrounding area. The higher elevations chosen allow the flaglines to be readily seen from those vantage points. These higher elevations come within close range (0'-10') of eye level with the flaglines; this reduces any perspectival distortion (foreshortening) to a level of insignificance, as compared to photos taken from far below the horizontal plane delineated by the flaglines, for example from the driveway of 160 Ocean Way or from Ocean Way itself.
- 3. The construction photos were taken at my request by a professional photographer, Don Flood, at the same time of year, approximately the same time of day, and from the same locations as those I used on September 11, 2011. They were taken on September 18, 2013, between 4:27 p.m. and 6:16 p.m., in my presence. Mr. Flood used a Canon EOS 5D. He carefully matched fixed points of reference, which included landmarks such as utility poles, tree trunks, existing roof ridges, exterior staircases and railings, fixed outdoor sculptures, houses on the opposite side of the canyon and canyon silhouette. Vegetation was ignored as a general rule, as upper tree canopies and top silhouettes of hedges have sometimes changed in the two intervening years.
- 4. I have selected six pairs of digital photos to show the horizontal range of perspective points and provide different levels of detail (panoramic to telephoto). Upon my receipt of the digital files from Mr. Flood, I transferred them to Photoshop and cropped them to assure comparable information within the viewing frame. I then transferred the six pairs of the digital photos to Adobe Illustrator to allow explanatory text and lines to be added. In four of the

six comparisons, the silhouette of the flagline is harder to discern. In these cases, I made copies of the original photo, then dimmed them (increased brightness, reduced contrast), then cropped them to highlight the horizontal slice of the image containing the flaglines, so that red silhouette lines could be drawn over the flaglines for better visibility and comparison. Set forth next is a description of the specific location from where each of the six pairs of 2011 and corresponding 2013 photos was taken:

- 5. Exhibit 2, p. 1. Location: 201 Mabery Road (Suisman Residence), west corner of 2nd floor deck.
- 6.. <u>Exhibit 2, p. 2</u>. Location: 165 Mabery Road (Davidson Residence), northwest side of house, bedroom #1, second floor window.
- 7. Exhibit 2, p. 3. Location: 165 Mabery Road (Davidson Residence), northwest side of house, bedroom #2, second floor window.
- 8. Exhibit 2, p. 4. Location: 165 Mabery Road (Davidson Residence), northwest side of house, bedroom #2, second floor window
- 9. Exhibit 2, p. 5. Location: 201 Mabery Road (Suisman Residence), west corner of roof.
- 10. Exhibit 2, p. 6. Location: 159 (Kleinman Residence), northwest side of house, second floor window.
- 11. I have carefully reviewed these before-and-after photos, as well as the topographic surveys and architectural plans submitted by the applicant to the Coastal Commission. Based on this combined analysis and my professional expertise, it is my professional opinion that the height of the principal flagline along the front of the proposed house, representing the top of the proposed parapet wall, stood at an elevation of approximately 91.3'. This is five feet (5') lower than the top of the parapet wall as constructed, a height whose elevation has been certified by an engineering survey at 96.3'.
- 12. This 91.3-foot elevation height of the flagline is also approximately seven-and-half feet (7.5') higher than the roof ridge of the demolished house, which stood at an elevation 83.8'. This relationship of the flagline height to the height of the demolished house accords closely with the applicant's agent's testimony before the Coastal Commission that the new house would be seven (7') taller than the then existing house. The house as constructed is twelve-and-a-half feet (12.5') taller than the then existing (now demolished) house.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this declaration in Los Angeles, California, on November 11, 2013.

Doug Suisman, FAIA

COASTAL COMMISSION 5-11-125-REV

EXHIBIT # 3 PAGE 22 OF 22 FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG*
REBECCA A. THOMPSON
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* a professional corporation

November 14, 2013

RECEIVED
South Coast Region

NOV 1 8 2013

ORIGINAL VIA U.S. MAIL

CALIFORNIA COASTAL COMMISSION

VIA E-MAIL john.ainsworth@coastal.ca.gov

Jack Ainsworth
Senior Deputy Director
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re:

Darrach McCarthy and Lucia Singer 160 North Ocean Way, Pacific Palisades CDP No.: 5-11-125

Opposition to Request for Revocation

Dear Deputy Director Ainsworth:

This law office represents Darrach McCarthy and Lucia Singer, owners of the above-addressed property. We understand that opponents of our clients' project have submitted a request that the Coastal Development Permit referenced above be revoked. As set forth below, there is no legal or factual basis to support revocation of our clients' permit, and our clients' hereby request that your staff immediately recommend that the Commission deny the Request for Revocation.

The opponents of our clients' permit application, which was approved by the Commission on February 8, 2012, have brought this late Revocation Request in an effort to reargue the issues already fully considered at two public hearings on the project, and fully addressed by the Commission. Their request entirely fails to meet the requirements for revocation as stated in Title 14 of the California Code of Regulations, § 13105.

Section 13105 provides that:

"Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission

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finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application."

Here, after a lengthy attempt to reargue the case, the opponents ultimately claim that our clients intentionally misrepresented the height of the project when they voluntarily had story poles erected on their property prior to the Commission's approval of the Coastal Development Permit. However, as detailed below, there is absolutely no evidence that our clients intentionally mislead the Commission in any way. The following time line establishes that our clients have been completely forthcoming and cooperative with regard to matters relating to the project, and specifically, the story poles:

- 1. On July 25, 2011, Mr. Doug Suisman raised the issue of story poles for the first time. He asked our clients' consultant if poles could be erected to determine the impacts on Mr. Suisman's private views from his living room and deck. Mr. Suisman also provided his own graphic depiction of the project and the private view blockage he believed would occur. Attached as Exhibit "A" is a true and correct copy of e-mail correspondence dated July 25, 2011 through July 27, 2011 between Mr. Suisman, our clients, and Andy Zeff, our client's project designer.
- 2. On or about August 5, 2011, you suggested that erecting the poles would help staff in their determining "the visual and community character complaints raised by the opposition." Attached as Exhibit "B" is a true and correct copy of e-mail correspondence between this office and John Del Arroz advising us of your suggestion dated August 5, 2011.
- 3. On September 2, 2011, our clients retained, and subsequently paid, a licenced, independent, story pole professional, Coastal Builders, to erect story poles. Our clients directed that story poles be placed in accordance with plans that were previously provided to Coastal Builders directly from the project's designer, which plans were the same as those being considered by the Commission in connection with the pending Coastal Development Permit application. Attached as Exhibit "C" is a true and correct copy of the signed Story Pole Proposal dated September 2, 2011. Attached as Exhibit "D" is a true and correct copy of e-mail correspondence dated August 16, 2011 from the project designer to the story pole professional, attaching the project plans. The story poles were then erected by Coastal Builders.

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- 4. On September 6, 2011, Mr. Suisman sent an e-mail to our clients stating that he "had a chance to photograph the story poles and look more closely at the impact of the current design, which concern[ed him] greatly." He then outlined his concerns, which chiefly alleged monetary loss of value due to loss of his own private views. Mr. Suisman attached his own graphic depiction of the loss of view based upon the height of the story poles. Attached as Exhibit "E" is a true and correct copy of Mr. Suisman's e-mail correspondence dated September 6, 2011.
- 5. On September 8, 2011, Mr. Suisman sent another e-mail, asking if the poles could stay up until at least the following Monday, and our clients replied that they would agree to that request. In fact the story poles remained up for approximately another week. Attached as Exhibit "F" is a true and correct copy of the September 8, 2011 e-mail correspondence.
- 6. Mr. Suisman sent additional e-mail correspondence to our clients on the same date, inquiring about the poles heights and representations. Our clients replied on September 9, 2011, answering all of his questions. Attached as Exhibit "G" is a true and correct copy of the e-mail correspondence between Mr. Suisman and our clients dated September 8 and 9, 2011.
- 7. On October 5, 2011, John Del Arroz left me a telephone message advising me that he had been to the site, photographed the story poles and had determined there were no public visual impacts. He also indicated that he intended to reissue the staff report recommending approval of the project.
- 8. On October 23, 2011, Mr. Suisman contacted my clients again to ask for permission to go on the property so he could inspect the site. Our clients responded the same day and agreed to Mr. Suisman's request. Attached as Exhibit "H" is a true and correct copy of the e-mail correspondence between Mr. Suisman and our clients dated October 23, 2011.
- 9. All the information about the story poles, including photos, renderings etc., was then used by both the staff and the opposition in their respective presentations to the Commissioners in private and at the November 3, 2011 Commission hearing on the Coastal Development Permit application. At the continued Commission hearing on February 8, 2012 both the applicant and the opposition provided additional extensive presentations regarding the project, including regarding the project height, and the Commission approved a reduced size and height version of the project.
- 10. The issue of story poles was not raised again until our clients met with Debbie Dyner Harris of Los Angeles City Councilman Mike Bonin's office and the opposition and their attorney on October 11, 2013. Later that day our clients received an e-mail from Frank Langen with various pictures of the story poles superimposed upon the current project, a true and correct copy of which is attached as Exhibit "I." Moye Thompson handed the same set of slides to Andrew Willis when he met with our clients on the property on October 14, 2013.

EXHIBIT # 4
PAGE 3 OF 41

G&S\1854-001

Jack Ainsworth November 14, 2013 Page 4

As this evidence clearly establishes, there was no intentional inaccuracy, and no information that the opponents or Commission did not have at the time of the Commission action. This is simply the same opponents asking for another bite at the apple. There is no evidence whatsoever that our clients or our clients' experts, working closely with the Commission staff, intentionally misled the Commission as is required by § 13105 (a) as a prerequisite to a grant of revocation. In fact, the evidence shows quite the opposite: that our clients were cooperative in accurately providing any and all information asked of them by either the Commission or the project opponents, including the story poles which they had no legal obligation whatsoever to provide.

Even the project opponents' arguments relating to the Baseline Hillside Ordinance ("BHO") were fully considered by the Commission at the public hearing on this matter. The BHO is a City ordinance that is unrelated to the Commission's actions with regard to this project. The BHO vesting date of our clients' development plans was based upon the date those plans were filed with the City, and subsequent changes required by the Commission, in response to concerns of project opponents, do not change the fact that our clients' plans vested prior to the effective date of the BHO.

Please note that there is no argument that the house as constructed is precisely the measured height as stated on the approved plans and permits. It should also be noted that the exhibits attached to the revocation request that purportedly compare the erected story poles to the actual construction of the project do not appear to show the height of the story poles or the actual construction from the same perspective of the photograph that Mr. Suisman e-mailed to our clients on September 6, 2011. (Exhibit "E".) As compared to the depiction of project height contained in that e-mail, the project under construction is well within the height of the story poles.

Most importantly, Mr. Suisman's own September 6, 2011 exhibit (Exhibit "E"), prepared after the story poles were in place, prove that he did in fact have full information at that time to allow him to claim that he would suffer significant view blockage as a result of the project. In fact, Mr. Suisman's September 2011 depiction greatly exaggerated the true impact of the project. (See Exhibit "J" - a photographic comparison of Mr. Suisman's own 2011 vs. 2013 photographic exhibits.) The project opponents clearly had sufficient information and the opportunity to fully participate in the original 2011-2012 permit proceedings. Pursuant to 14 Cal. Code Regs. §13106 the Executive Director may determine this revocation request to be frivolous and without merit, and refuse to initiate revocation proceedings.

Finally, the story poles did accurately represent the height of the proposed house. Attached hereto as Exhibit "K" is a photographic comparison of the story pole photos taken on September 6, 2011 and used as exhibits to the previous Commission hearings, and photos of the site taken earlier this week on November 11, 2013. This photographic comparison, taken to show the Coastal Act relevant view from the public street (not the private views from the opponents' private properties), shows clearly that the story poles accurately represented the height and location of the house.

EXHIBIT# 4
PAGE 4 OF 41

Jack Ainsworth November 14, 2013 Page 5

There is simply no competent evidence that our clients intentionally provided any inaccurate information to the Commission relating to the project's height. And, the request for revocation certainly provides no evidence that would result in the Commission making a different decision in this case.

In support of the opponents' claims that revocation is warranted in this case, the revocation request cites to the <u>unpublished</u> case <u>Vadnais v. Cambria Community Services Dist</u> (Dec. 4, 2001, B143347) [2001 Cal. App. Unpub. LEXIS 1036]. As an initial matter, as an unpublished case, <u>Vadnais</u> is noncitable and cannot serve as precedent in this case. <u>See</u> California Rules of Court, Rule 8.115. Moreover, it is factually distinguishable from the case at hand. In <u>Vladnais</u>, the court upheld the Commission's revocation of a coastal development permit where the applicant's representative repeatedly assured the Commission that the local water district had issued an intent to serve letter, and the Commission issued a permit based in part upon those assurances. However, no such letter was ever issued. The court found that the representative's multiple representations that the will serve letter had been issued showed that the representation was intentional, and therefore held that the Commission's decision to revoke the permit was supported by substantial evidence.

Here, the revocation request fails to identify any misrepresentation on the part of our clients, let alone establish that such misrepresentation was intentional.

Title 14 of the California Code of Regulations, § 13107 provides:

"Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823."

As described above, no grounds exist for revocation of our clients' Coastal Development Permit. As such, it would be an abuse of the Commission's discretion to suspend the Coastal Development Permit pending a hearing on the request for revocation. The Commission should be made aware that our clients have already completed substantial construction on the house based upon the issuance of valid permits, and that any action to suspend construction or revoke the permit would result in significant damage and hardship to our clients.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 5 OF 41

Jack Ainsworth November 14, 2013 Page 6

The opponents don't want our clients' house built, don't want their private views blocked, and have used every administrative procedure available to delay and add expense to this project. The Commission's approval of the permit was thoroughly supported by expert and staff analysis. The Commission must not let the revocation process be abused simply because the opponents were not satisfied with the previous result.

We strongly urge your staff to recommend that the Commission deny the requested revocation, and that you take no action to suspend the Coastal Development Permit pending a hearing on this matter. Thank you for your consideration. As always, please do not he sitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY

FRED GAINES

Enclosures

cc: John Del Arroz - California Coastal Commission (Via E-mail jdelarroz@coastal.ca.gov)

COASTAL COMMISSION

EXHIBIT # 4

PAGE 6 OF 41

Alicia Bartley

From:

Andy Zeff <dzignbyaz@gmail.com>

Sent:

Wednesday, July 27, 2011 8:17 AM

To:

Darrach Mc Carthy; Lucia Singer

Subject:

Fwd: Re: story poles at 160 Ocean Way

Attachments:

Screen shot 2011-07-26 at 6.19.03 PM.jpg; Screen shot 2011-07-26 at 6.19.13 PM.jpg

----- Forwarded message -----

From: "Doug Suisman" < Suisman@suisman.com>

Date: Jul 27, 2011 8:14 AM

Subject: Re: story poles at 160 Ocean Way To: "Andy Zeff" < dzignbyaz@gmail.com>

Cc: "Lucia Singer & Darrach McCarthy" < lucia@bermansingerpr.com>

That may well be too late. We are very busy as well, but based on the Coastal Commission report, we are now gravely concerned about the impact of your project. See below.

Suisman Urban Design Doug Suisman FAIA

Principal

201 Mabery Road Santa Monica, CA 90402 USA tel (310) 230-9997 www.suisman.com

EXHIBIT "A

COASTAL COMMISSION

EXHIBIT #

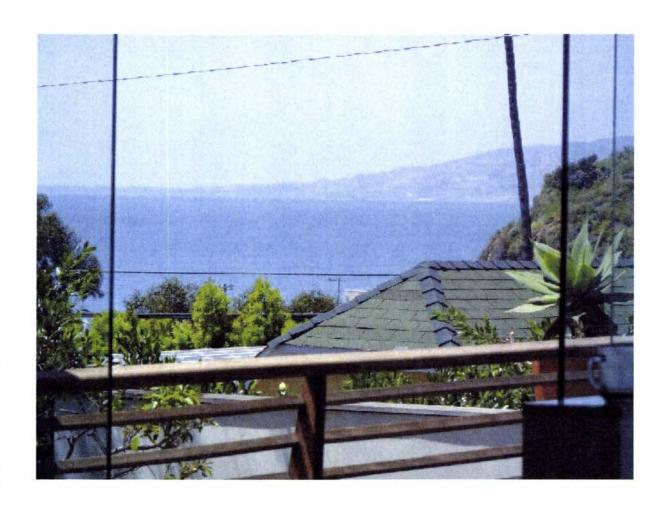
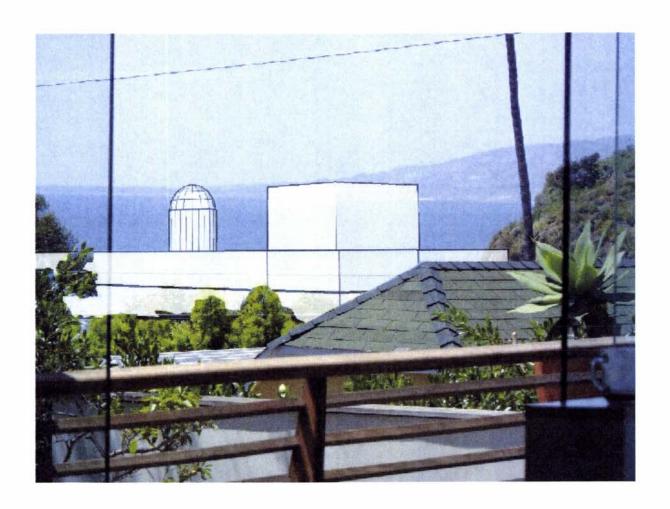


EXHIBIT # 4 PAGE 8 OF 41



Doug,

Darrach and Lucia are, of course, to be involved in any process regarding their project. They are very busy at the moment, but will be able to get back on this later in the week. Please bear with this and they will be in touch as soon as possible.

Thanks, Andy

On Jul 26, 2011, at 6:56 PM, Andy Zeff wrote:

On 7/25/11, Doug Suisman < Suisman@suisman.com > wrote:

Andy.

I received a notice of the Coastal Commission hearing in August. It reminded

EXHIBIT # 4 PAGE 9 OF 41 me that you had promised in April to put up story poles so we could see

potential impacts on our ocean views, and reaffirmed that promise when you

came to my office on May 5. Since several months have passed, should I

assume you have decided not to do so?

Doug

Suisman Urban Design Doug Suisman FAIA Principal

201 Mabery Road Santa Monica, CA 90402 USA tel (310) 230-9997 www.suisman.com

COASTAL COMMISSION

EXHIBIT # 4

PAGE 10 OF 41

EXHIBIT "B"

Alicia Bartley

From: Sent: Fred Gaines <fgaines@gaineslaw.com> Saturday, August 06, 2011 3:51 PM

To:

Lucia S. Singer; Darrach Mc Carthy; Andy Zeff

Subject:

FW: McCarthy-160 N. Ocean Way

Fred Gaines Gaines & Stacey, LLP 16633 Ventura Boulevard, Suite 1220 Encino, CA 91436-1872

Telephone: (818) 933-0200 Ext. 201

Fax: (818) 933-0222

Email: fgaines@gaineslaw.com

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From: John Del Arroz [mailto:jdelarroz@coastal.ca.gov]

Sent: Friday, August 05, 2011 3:15 PM

To: Fred Gaines

Subject: RE: McCarthy-160 N. Ocean Way

Fred.

Our deputy director, Jack Ainsworth had a suggestion which may help to address the visual and community character complaints raised by the opposition. He suggested that story poles for the site be erected, and photos taken of the site from the beach, and any other significant public vantage points, to include in the staff report or staff presentation. It would save me some time for the applicant to submit these photos, so that I only have to take a site visit to see the poles if questions come up.

John Del Arroz

Coastal Program Analyst California Coastal Commission 200 Oceangate 10th Floor Long Beach, CA 90802 (562) 590-5071

From: Fred Gaines [mailto:fqaines@gaineslaw.com]

Sent: Friday, August 05, 2011 10:45 AM

To: John Del Arroz

COASTAL COMMISSION

EXHIBIT# 4

Cc: Teresa Henry

Subject: McCarthy-160 N. Ocean Way

Hello John - Thank you for returning my call. I just wanted to confirm that the matter had been postponed from the August agenda. I see on the Commission website that the matter is now listed as postponed. As a result, we will not be attending the August meeting.

I understand that you will be revisiting and photgraphing the site to confirm the finding that the project will not impact any significant public view. If there is any additional information or assistance that we can provide, please let me know. For your information, my client will be using the delay to meet with the concerned neighbors in an effort to correct any misinformation about the project and hopefully to address their concerns. We would greatly appreciate being notified if you recieve any new information or documents, or if you intend to change the Staff Report before the October hearing.

Thank you again for your assistance with this matter.

Fred Gaines Gaines & Stacey, LLP 16633 Ventura Boulevard, Suite 1220 Encino, CA 91436-1872 Telephone: (818) 933-0200 Ext. 201

Fax: (818) 933-0222

Email: fgaines@gaineslaw.com

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is PRIVILEGED, CONFIDENTIAL and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or return e-mail, and return the original to us without making a copy. Thank you.

COASTAL COMMISSION

EXHIBIT # 4

EXHIBIT

STORY POLE INSTALLATION PROPOSAL

BUILDERS TO **Andy Zeff** DATE September 1, 2011 21355 PACIFIC COAST HWY, 101 **PROJECT** Private Residence MALIBU, CALIFORNIA 90265 T: (310) 985 0633 PHONE (310) 429-5336 **ADDRESS** 160 Ocean Way F: (310) 862 4887 Santa Monica, CA INFO@COASTALBUILDERSLA.COM LICENCE #897916 CLASS A & B **EMAIL** dzignbyaz@gmail.com RE Story Pole Installation Proposal

WE HEREBY SUBMIT A PROPOSAL FOR THE FOLLOWING SCOPE OF WORK

Provide and install story poles for proposed sign in accordance with provided by Javier Perez sent via email on 8-16-11. This proposal shall include, but is not limited to, the following items:

- + Installation of (10) story poles with orange tape per plan provided by Javier Perez sent via email on 8-16-11.
- + Removal of story poles, Owner to request removal of story poles in writing to Coastal Builders.
- + Maintenance for 14 days (excludes vandalism).
- + Story poles may require attachment to exterior and roof of existing structures, trees, posts, etc.
- + Site to be free of brush and foliage in areas where story poles are to be installed.
- Installation to take place Tuesday September 6, completion toby Wednesday September 7th if additional time is required.

Total Amount Due

* Waiver of Risk: Due to the temporary nature of story poles Coastal Builders does not accept liability for personal or property damage that may be caused by story poles.

* All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Should foliage or power lines prevent installation of any story pole(s) a survey stake will be provided in place of a full story pole. No reduction in price will be given for poles not installed due to power line interference (within 10' of story pole) or due to foliage interference. It is the Owner's responsibility to have site clear of foliage by installation date.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to proceed with the work as specified above. Payment will be made as outlined below.

Owner's Name: Owner's Signature:

Date of Acceptance:

COASTAL COMMISSION

Send Payments To: Coastal Builders

Po Box 66026

Los Angeles, CA 90066

Payments Due As Follows:

Full Payment Due On Day of Installation

CONFIDENTIALITY NOTE:

The information contained in this transmittal is intended solely for the use of the individual or entity to whom it is addressed and may contain information that is omivinged and confidential. If the reader of the message is not the intended recipient, you are fore by notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

EXHIBIT "D"

Alicia Bartley

From: Sent:

To: Subject:

Attachments:

Macker <darrach@hotmail.com>

Wednesday, October 23, 2013 12:49 PM

Wayne Dollarhide

FW: PDF Files for 160 N. Ocean Way

OO Singer McCorthy COVER SUSTEM

00. Singer-McCarthy COVER SHEET.pdf; Untitled attachment 00088.htm; 08. Singer-McCarthy SITE PLAN.pdf; Untitled attachment 00091.htm; 10. Singer-McCarthy FIRST FLOOR PLAN.pdf; Untitled attachment 00094.htm; 11. Singer-McCarthy SEC FLOOR PLAN.pdf; Untitled attachment 00097.htm; 12. Singer-McCarthy THIRD FLOOR PLAN.pdf; Untitled attachment 00100.htm; 13. Singer-McCarthy ROOF PLAN.pdf; Untitled attachment 00103.htm; 14. Singer-McCarthy ELEV 1.pdf; Untitled attachment 00109.htm; 15. Singer-McCarthy ELEV 2.pdf; Untitled attachment 00112.htm; 15. Singer-McCarthy Sect

2(R).pdf; Untitled attachment 00115.htm

From: javier perez [mailto:jdpdesigns@me.com]
Sent: Wednesday, October 23, 2013 12:32

To: darrach@hotmail.com

Subject: Fwd: PDF Files for 160 N. Ocean Way

Begin forwarded message:

From: javier perez < jdpdesigns@me.com>
Subject: PDF Files for 160 N. Ocean Way
Date: August 16, 2011 3:04:46 PM PDT

To: info@californiastorypoles.com

Hi,

Per Andy Zeff, enclosed please find PDF Files for the property at 160 N. Ocean Way.

Enclosed are: cover sheet, site plan, floor plans, elevations and sections for your use.

Please call myself or Andy Zeff if you should have any questions or need additional information. Thank you.

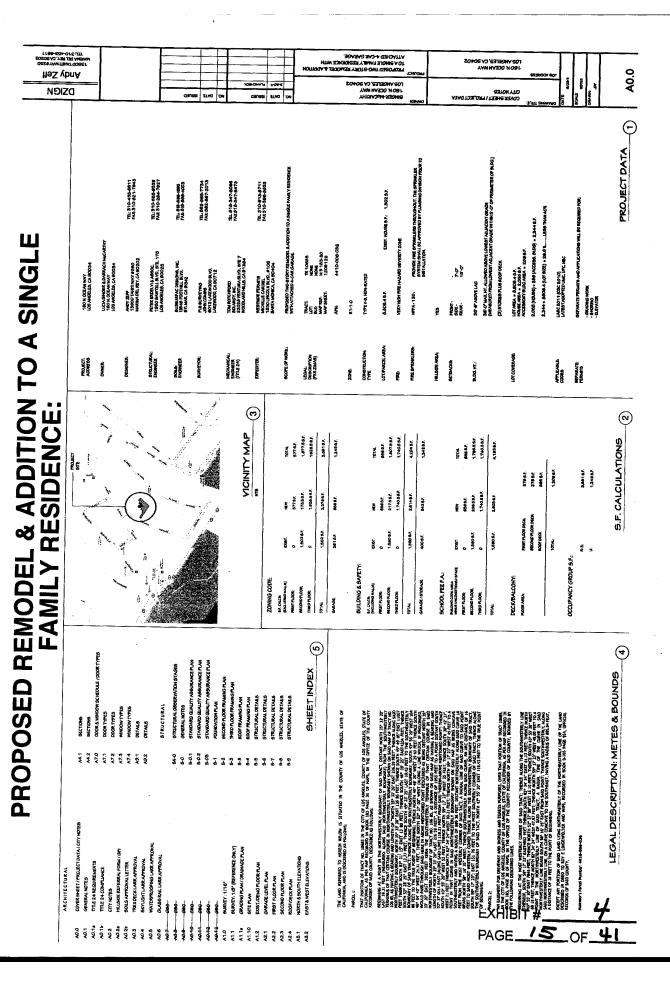
Regards,

Javier D. Perez | jdp Designs

1830 Lincoln Blvd., Suite 105 Santa Monica Ca. 90404 tel: 310-913-4880 fax: 310-396-8833 email: jdpdesigns@me.com

COASTAL COMMISSION

EXHIBIT# 4



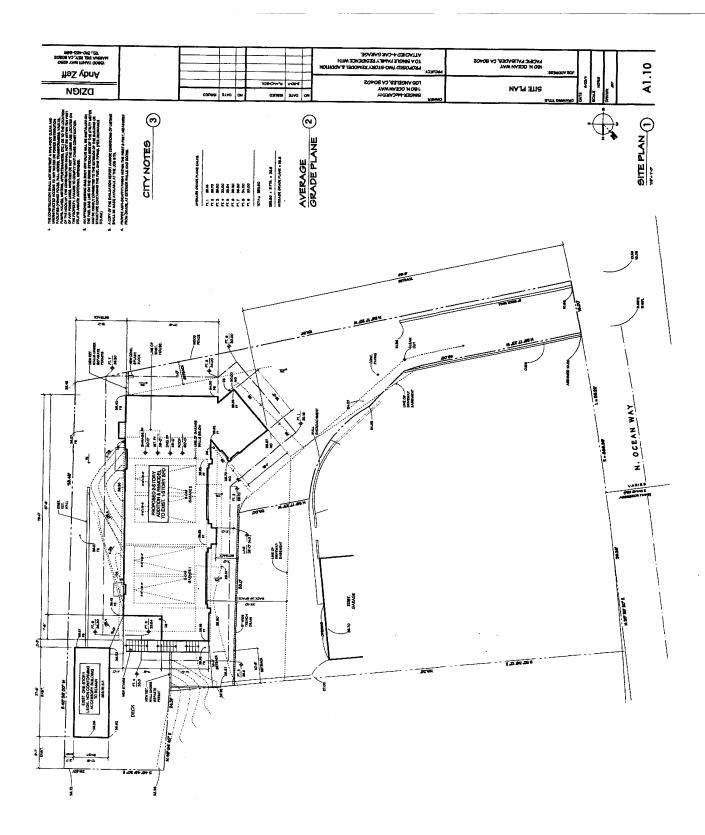
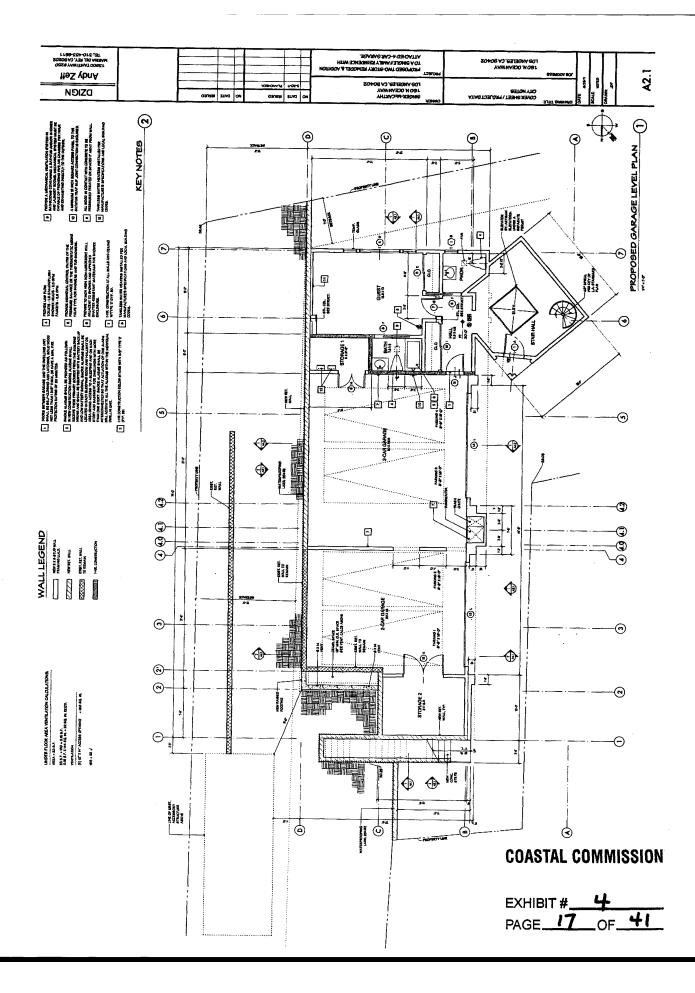
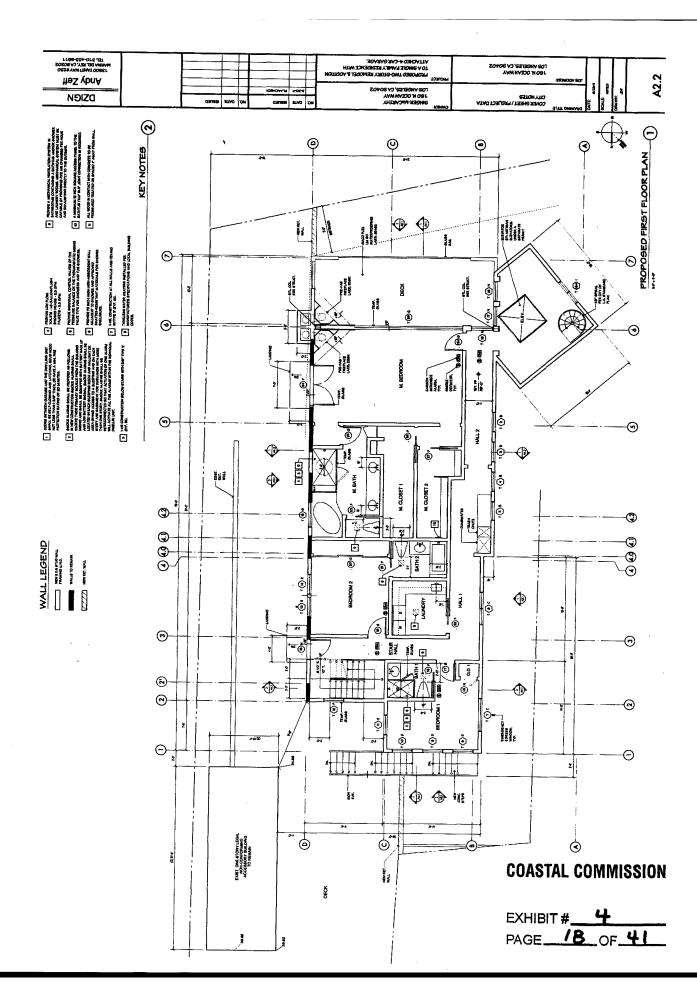
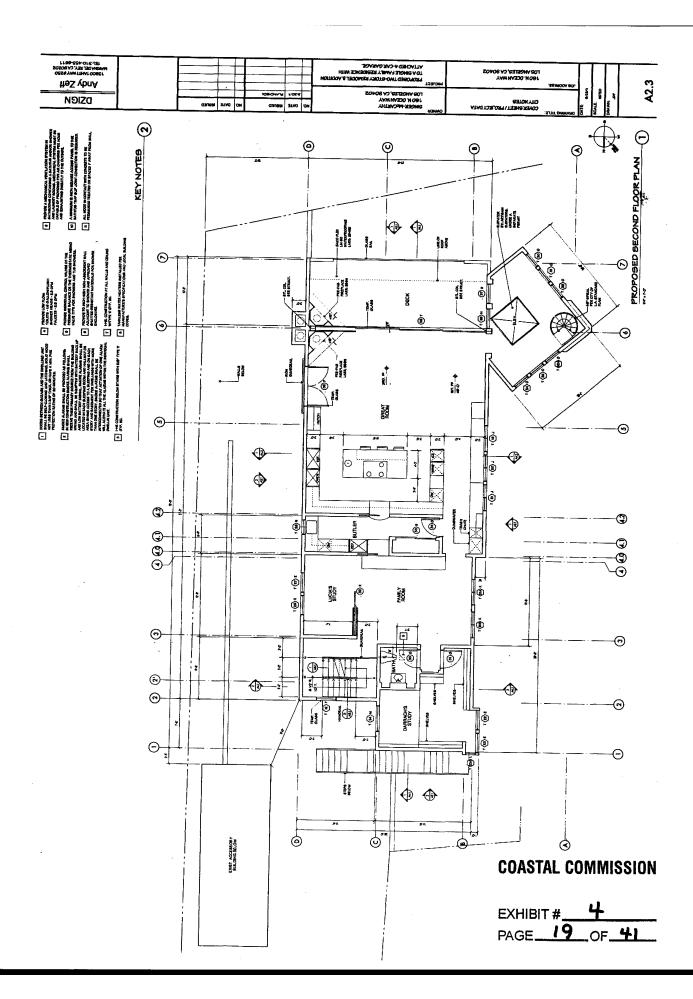
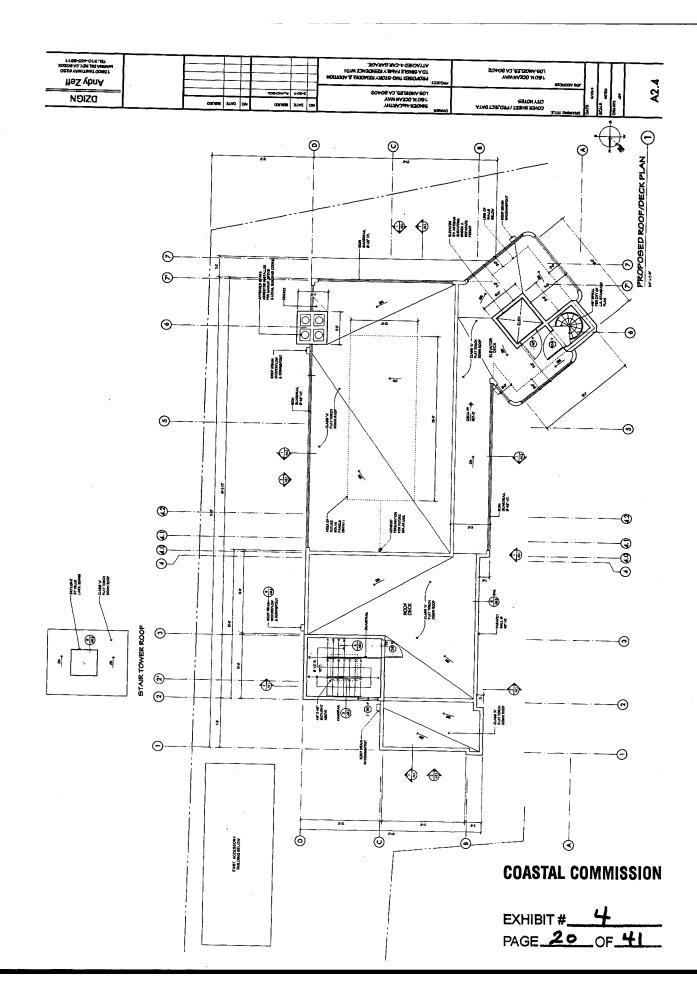


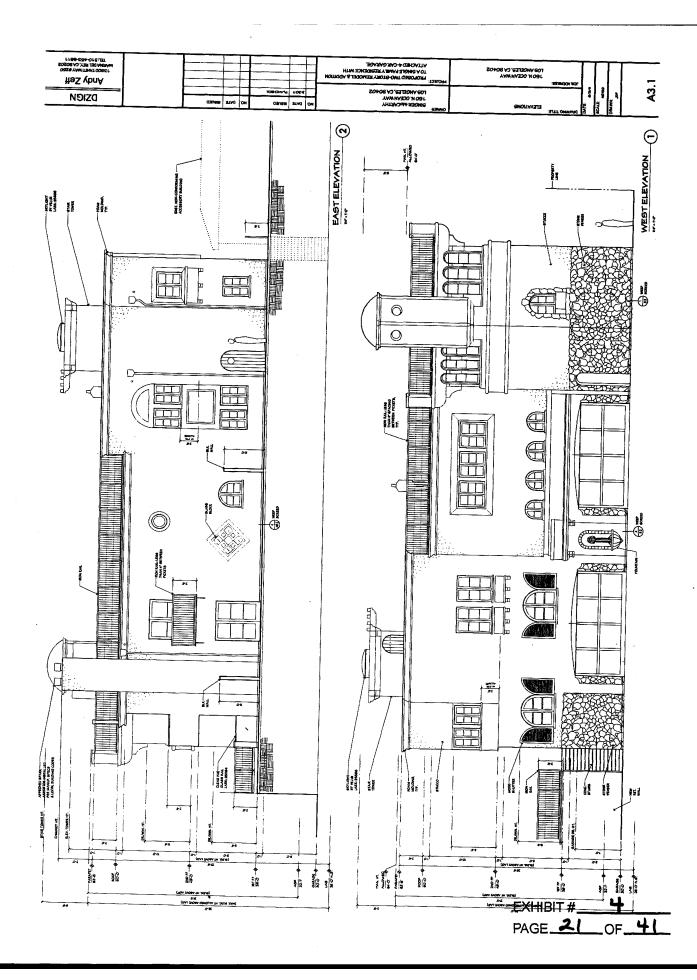
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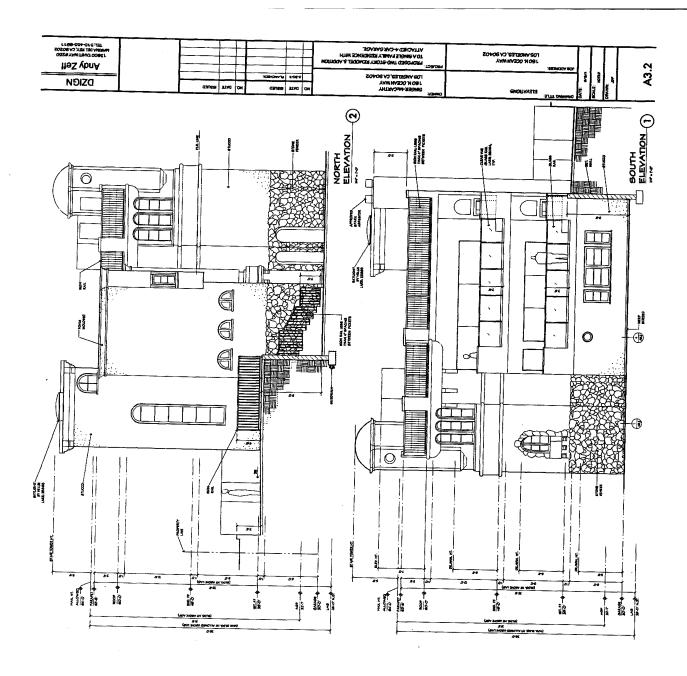




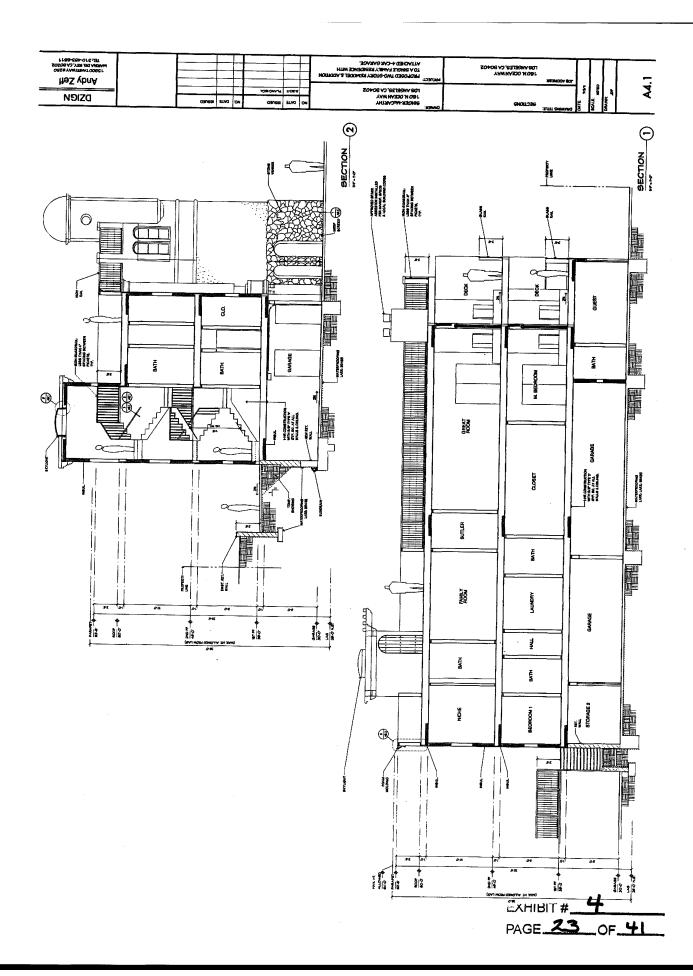








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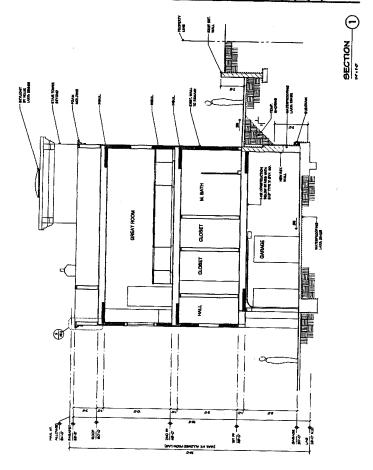


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EXHIBIT "E"

Alicia Bartley

From: Sent: Doug Suisman <suisman@suisman.com> Tuesday, September 06, 2011 4:51 PM

To:

Darrach Mc Carthy

Subject:

impact shown by story poles

Hi Darrach,

Thanks for being in touch and available. I promised to contact you if specific concerns emerged. Since we spoke at midday, I've had a chance to photograph the story poles and look more closely at the impact of the current design, which concerns me greatly and which you can see below.

As you know, this before-and-after pair shows the specific view from our dining room (which is the same general view from our living room and deck). On the left view, you can see the yellow tape and orange flags, as well as a glimpse of the top of the brown pole in the foliage in the upper right. In the right view, you can see the result. I'm quite sure this was not the intention, but the effect is clear: the complete loss of the view, including canyon, greenery, whitewater and beach (visible from certain angles), ocean, and coastline. (I've only shown a solid wall with solid railing at the top and no windows, but the impact on the view is the same). This is far worse than I had feared, and much worse than Andy Zeff had led me to believe when he visited here. A knowledgeable Canyon broker has told me that such a loss of view would represent a minimum loss of \$100,000 on our property, with the potential loss ranging from \$200,000-\$400,000.

I feel sure that there are reasonable design modifications to height and bulk that could avoid such a catastrophic financial loss. I think the primary element causing the blocking is the study on the 3rd floor. I'm not suggesting that you forego that room, but that there is certainly an alternate design which provides the study without the house projecting as high or as far to the north.

Let's keep talking to make sure we get to a design solution. I have contacted my closest friend, James Mary O'Connor, who is an extremely talented architect, has designed many homes, and is a very quick study. (see his bio below). I think you would enjoy him. I've asked him as a favor to come over tonight to take a look at the plans and the story poles, and see what suggestions he can make (I'm waiting his confirmation). If you have the time and interest, it would be great if you could stop by for a beer (maybe at the end of a bike ride or run on the beach).

Best, Doug

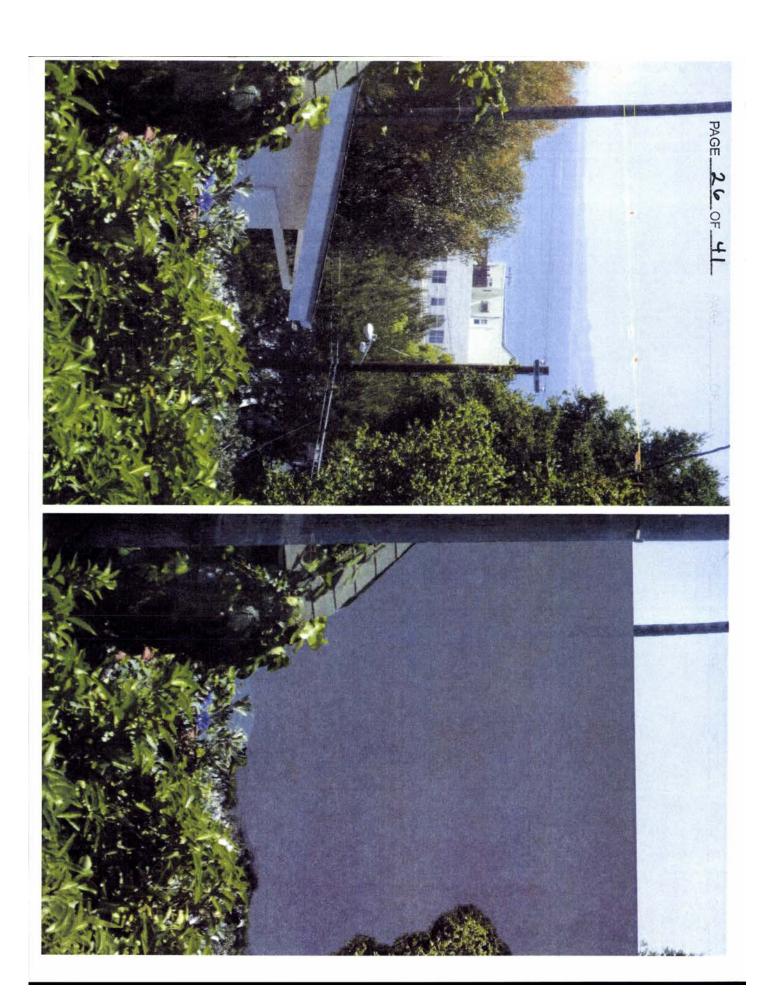
Suisman Urban Design **Doug Suisman FAIA** Principal

201 Mabery Road Santa Monica, CA 90402 USA tel (310) 230-9997 www.suisman.com

COASTAL COMMISSION

EXHIBIT # 4

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James mary o'connor, aia principal

Born and raised in Dublin, Ireland, James Mary O'Connor came to Charles Moore's Master Studios at UCLA in 1982 as a Fulbright Scholar. James received his Bachelor of Science in Architecture from Trinity College in Dublin, his Diploma in Architecture from the Dublin Institute Technology, and his Master of Architecture from UCLA.

As Principal-in-Charge, James has provided spirited design and project management for residential, academic and mixed-use urban projects, including: Kobe Nishiokamoto Housing Japan, the Horace Mann Elementary School and Fairmont Towers Hotel Addition, both in Sa Jose, California. International work has become a focus, with large-scale housing and plann projects such as the Potatisåkern and Tango projects in Malmö, Sweden, the mixed-use development Project Yoda in Manila, and Tianjin-Xinhe New Town in Tianjin, People's Repu China. His interest in uncommon building types is reflected in the Sunlaw Power Plant Proto Los Angeles, and the Santa Monica Civic Center Parking Structure. With irrepressible energ James has also led Moore Ruble Yudell teams in national and international design competiti such as the Beijing Wanhao Century Center, and the winning design for the Clarice Smith Performing Arts Center in College Park, Maryland. Over the past 15 years, James has taught design studio, lectured, and has been invited as guest critic at UCLA, USC, SCI-Arc, Univers Calgary, Alberta, University of Hawaii, Manoa, Tianjin University School of Architecture, Chinand Tongji University School of Architecture, Shanghai, China.

COASTAL COMMISSION

EXHIBIT # 4
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EXHIBIT "F"

Alicia Bartley

From:

Darrach Mc Carthy <darrach@victuscapitalwealth.com>

Sent:

Thursday, September 08, 2011 2:46 PM

To:

Doug Suisman; Lucia Singer

Cc:

Moye Thompson

Subject:

RE: 2 quick things

Monday is fine, red roofs are fine too — we had already mentioned this to Andy.

From: Doug Suisman [mailto:suisman@suisman.com]

Sent: Thursday, September 08, 2011 7:07 AM

To: Darrach McCarthy; Lucia Singer

Cc: Moye Thompson **Subject:** 2 quick things

Hi Darrach and Lucia,

Just quickly -

- 1. can you confirm that the poles will stay up till at least Monday? This would be greatly appreciated.
- 2. From a design perspective, I was encouraged, Darrach, when you told me Lucia likes clay tile roofs. Moye and I share her enthusiasm, and I think others do as well. The sloping of the roofline in this way would help a lot to reduce overall height and bulk, and the tile itself provides an appealing foreground or ground plane for views from above as is the case with a number of nearby houses and structures. I just wanted to mention this since I believe you're meeting with Andy Zeff today; it's also something I would emphasize with Alex Ward or Lewin Wertheimer, if we go ahead with their services.

Cheers, Doug

Suisman Urban Design Doug Suisman FAIA Principal

201 Mabery Road Santa Monica, CA 90402 USA tel (310) 230-9997 www.suisman.com

COASTAL COMMISSION

EXHIBIT # 4
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EXHIBIT "G"

Alicia Bartley

From: Sent: lucia singer <luciasinger@hotmail.com> Friday, September 09, 2011 5:56 PM

To:

'Doug Suisman'; Darrach Mc Carthy

Cc:

'Moye Thompson'

Subject:

RE: impact shown by story poles

Hi Doug,

Just to clarify a bit about the poles you asked below. Essentially yes, what you have written is correct.

The back pole (closest to your property or northeast area of house) represents the height of the peak of the stairwell housing on the roof.

The pole in the northwest corner of the property represents the tower. The top most rope would be the top of bell tower of the elevator housing. The rope below that would be the top of the handrail or parapet wall. The rope below that would be the floor of the roof deck.

We had a design meeting with Andy yesterday before Darrach left and are happy to report we've found some design changes that appeal to us but also help mitigate your concern of bulk/height, including red tile roofing. I'll let Darrach fill in the rest of the details once he lands down 'Under but we are feeling positive.

Happy weekend.

Lucia

From: Doug Suisman [mailto:suisman@suisman.com]
Sent: Thursday, September 08, 2011 3:19 PM
To: Darrach Mc Carthy; luciasinger@hotmail.com

Cc: Moye Thompson

Subject: Re: impact shown by story poles

Delighted with the C-. Always assumed I would fail economics.

Absolutely, do some scouting and let us know what you'd like to do. I'm working on persuading the group to share the cost - it will be easier to accomplish if it's someone they know (or at least that I can vouch for).

Digital rendering - not for \$5k (my C- makes me confidant in saying that). Renderings are almost always an extra. But let's find the right person and then we can figure that out. We have a rough digital model of the area in my office; perhaps we can use that.

Thanks for the response on the poles, and the red tile. Excellent.

A couple of questions have come up on the story poles. I've been telling people that I believe the yellow tape represents the handrail height (35'-6" above LAG), not the floor height (32' above LAG). Can you confirm? That is correct.

EXHIBIT# 4

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I've also indicated to others that the two bulkheads marked near each end of the house do not show the full extent of the bulkheads, but do indicate their maximum height (5' above the railing). Can you also confirm? correct

Thanks, and Darrach, have a safe flight and good trip. Doug

Suisman Urban Design Doug Suisman FAIA Principal

201 Mabery Road Santa Monica, CA 90402 USA tel (310) 230-9997 www.suisman.com

On Sep 8, 2011, at 2:44 PM, Darrach Mc Carthy wrote:

Ok,

I give myself an F-grade in architecture and Doug a C-grade in economics. Hopefully we can improve both ©.

Have only scanned the e-mail but what I read seems all reasonable. Next step seems to be to get a reviewing architect — let Chia do some scouting of her own and then we can decide on one we all like.

We will get this architect to do digital rendering too, yes?

COASTAL COMMISSION

EXHIBIT # 4

PAGE 30 OF 41

EXHIBIT "H"

Alicia Bartley

From:

Darrach Mc Carthy <darrach@victuscapitalwealth.com>

Sent:

Sunday, October 23, 2011 9:08 PM

To:

'Doug Suisman'

Subject:

RE: 160

Doug,

Yes you can go on the property if you need to.

Regarding the floor plans, the only plans we have are the complete ones you already have that were submitted to city. I did speak with Andy immediately after our meeting and relayed what we discussed and asked him to go to work on it, but it'll take him a few days too.

The new elevation (which I assume is the drawing I had with me yesterday), is all there is, again, I was hoping for more but got bogged down by Lani and her survey, etc. etc.

But basic tenant is this: if you can get a drawing with measurements that are good for you, Chia and I like the changes, and Andy assures me that he can work out a floor plan around them, then we can get an agreement drafted that you will support the project and we will build the modified house. Like you I hope we can reach this agreement before coastal.

Cheers, Darrach

From: Doug Suisman [mailto:suisman@suisman.com]

Sent: Sunday, October 23, 2011 1:03 PM

To: Darrach McCarthy

Subject: 160

Hi Darrach,

Thanks for coming over yesterday. It was an encouraging meeting. I think there's a good chance we might be able to come to an agreement that everyone can live with, ahead of Coastal. I'm willing to jump in to try and come up with a proposal for a building envelope, with dimensions, that would form the basis of an agreement in principle. A few things would help me:

- 1. May I go on to the property (today or tomorrow) to confirm the location of the palm tree? It's a helpful landmark. I think it's shown on the survey, but it's not called out as such. While there, I'd also like to check the location where the most northerly story pole was located there's probably a tell-tale indication on the ground, and to take a look at the location of the back stair.
- 2. If you could ask Andy to messenger to me floor plans (definitely Roof and 2nd Floor, preferable also 1st Floor and Ground floor), and a cross-section, which correspond to the new elevation drawing you showed, that would give me an accurate 3-D picture. It's not absolutely critical I can continue by making some assumptions based on the elevation (I I would need a copy of it), but it would be better not to proceed based on assumptions. I will have someone in my office working on this Monday, Tuesday and Wednesday at least. Given the short timeframe, having drawings tomorrow in any case no later than Tuesday would be the best.

Thanks,

Doug

COASTAL COMMISSION

Suisman Urban Design Doug Suisman FAIA Principal

EXHIBIT # 4

EXHIBIT "I"

Alicia Bartley

From: Sent:

Frank Langen <frank@inthecanyon.com>

Friday, October 11, 2013 5:38 PM

To:

Darrach Mc Carthy

Cc: Subject: debbie.dynerharris@lacity.org; George Wolfberg

Follow up to community meeting this morning!

Attachments:

story pole analysis good.pdf

Dear Darrach,

Thank you for meeting with the community today. I can't tell you how much I personally appreciated you coming.

The group asked me to provide clarification on two points:

- 1. Attached you'll find an analysis, prepared just a few days ago, comparing the story pole heights with the built heights. This discrepancy is referenced in our bullet point that reads: "comply with the silhouette represented by the story poles and shown to the Commissioners." This silhouette, of course, was rejected as too high by the Commissioners, so the bullet should really read "comply with the concerns about the excessive height of the silhouette represented by the story poles...etc.". The Commission should be able to validate this analysis or provide their own.
- 2. While we did include not sloped roofs in the bullet points, we want to clarify that the February 2012 design must be complied with, including any deviations in sloped roofs it is difficult to tell from street level or from neighboring windows, but it appears that some of the roofs which were shown in the drawings as sloped (as a mitigation for the large massing) have been tilted up to flat areas during construction. If so, these should be corrected.

If you find this to be unclear please don't hesitate to reach out.

Best,

Frank Langen 310.963.3891

www.homeasart.com blog.deasypenner.com www.inthecanyon.com

COASTAL COMMISSION

EXHIBIT # 4

This story pole silhouette was rejected by Commissioners as **too high** to be compatible with community

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is **higher** than the silhouette of the **rejected design**



Deck



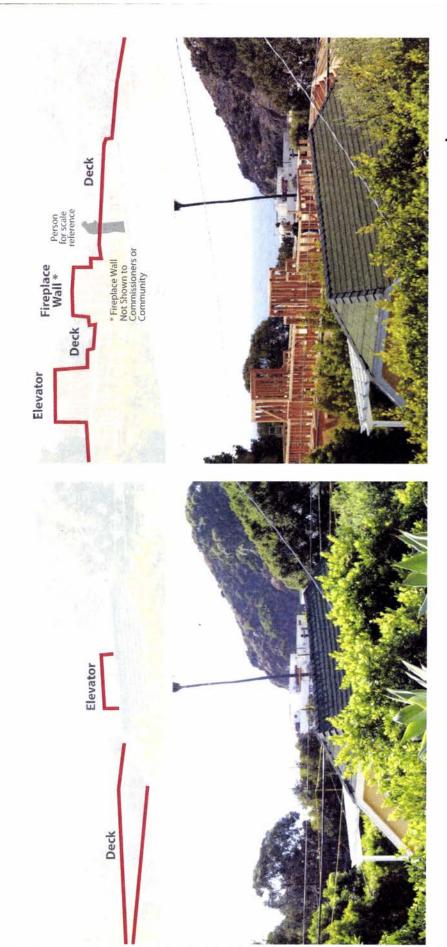
Previous 2story house



This story pole silhouette was rejected by Commissioners as *too high* to be compatible with community

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is **higher** than the silhouette of the **rejected design**





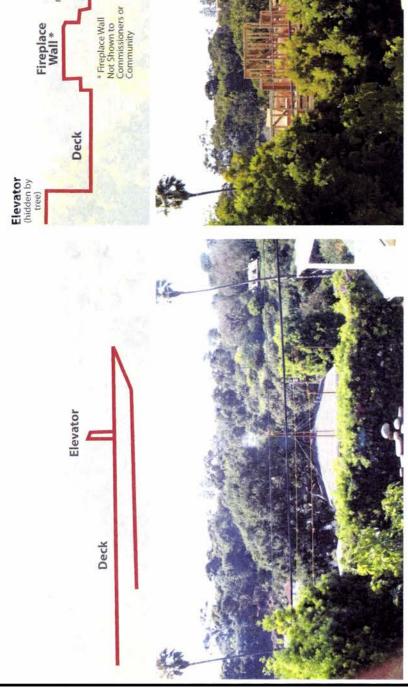
This story pole silhouette was rejected by Commissioners as too high to be compatible with community

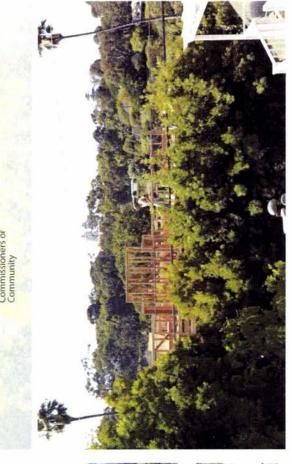
ACTUAL CONSTRUCTION (2013)

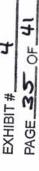
This silhouette of actual construction is higher than the silhouette of the rejected design

Deck

Person for scale reference







PAGE 36 OF 4 EXHIBIT #_

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is higher than the silhouette of the rejected design

This story pole silhouette was rejected by Commissioners

STORY POLES (2011)

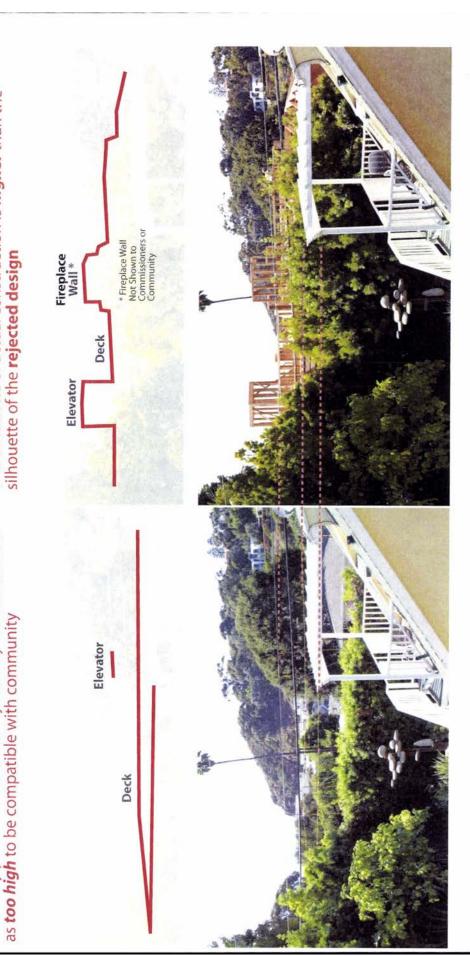


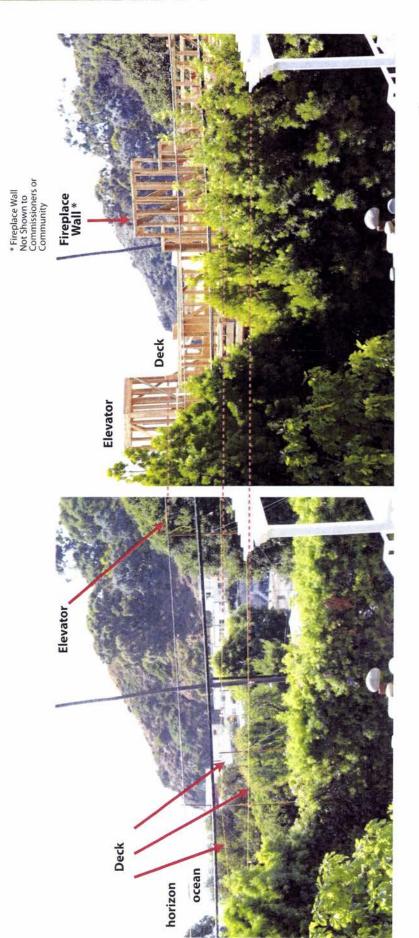
EXHIBIT # + PAGE 37 OF 4

STORY POLES (2011)

This story pole silhouette was rejected by Commissioners as *too high* to be compatible with community

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is **higher** than the silhouette of the **rejected design**



This story pole silhouette was rejected by Commissioners as **too high** to be compatible with community

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is **higher** than the silhouette of the **rejected design**

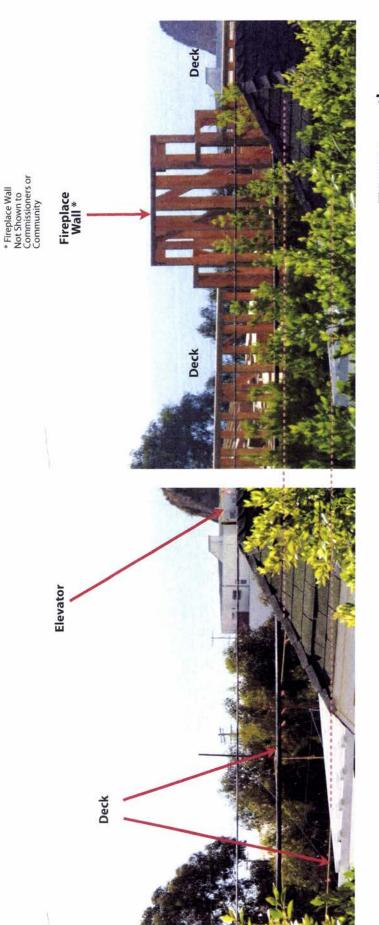
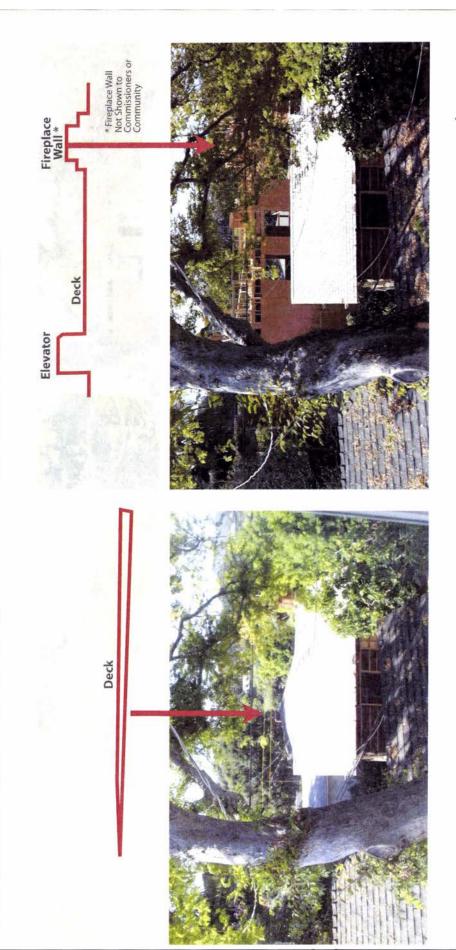


EXHIBIT # #

EXHIBIT # 4

ACTUAL CONSTRUCTION (2013)

This silhouette of actual construction is **higher** than the silhouette of the **rejected design**



STORY POLES (2011)

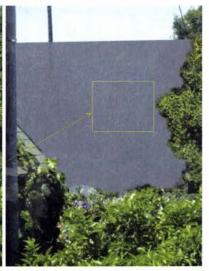
This story pole silhouette was rejected by Commissioners as **too high** to be compatible with community

Comparing Suisman E-mail of September 2011 versus Revocation Request of November 2013

EXHIBIT "J"

- The two pictures below are not the same but they are very similar. It is quite clearly obvious that the story poles, as presented by the opponent himself in his 2011 e-mail, show a
 completely blocked view that is in fact much worse than what was actually built. At this stage there is no mention of any community character issues by the opponent, nor does he ever
 question the heights/vercity of the story poles. In <u>Bitch the states poles use the opponent</u>, that the impact on his private view. <u>AS SHOWN BY THE STORY POLES</u> "fist for worse than I had
 feared, and much worse than Andy Zeff had led me to believe when he visited here."
- 2. Opponent then proceeds to delineate his personal financial loss by this obstruction of his private view. He states that the pictures in the e-mail represent "the specific view from our dining room (which is the some general view from our living room and deck)." As he himself mentions, "the effect is clear, the complete loss of the view, including cargon, greenery, whiteveter and beach (visible from certain angles), ocean, and coastline." An analysis <u>based solely upon the very story poles</u> ("on the left view, you can see the yellow tope and orange flags, as well as a glimpse of the top of the brown pole in the folloge in the upper right. That now, in November 2013, he cannot write makeading.
- But the current view, as presently built today, is <u>immeasurably better</u> than that depicted by the story poles of 2011. As you can see, by his waw photos below, he dearly has "dayyon", "greenery", "oceon" and "coastline" views. And those views are enhanced even more by the fact that the freplace depicted below, no longer exists. This is a testament to the changes that applicant consciously made with the opponents concerns in mind and was unanimously applicated for doing so by all commissioners at the February 8, 2012 hearing. As a point of reference he will be able to see a portion of the white structure in the background. On the e-mail picture he sent, he is, by his own evidence, unable to see any of that structure it is obliterated.
- 4. And yet opponent, (by his own admission a licensed and published architect 1, now, in November 2013 claims he and others were deliberately misled as to the heights/m the story poles. This is more than a little d-ingenuous to now claim, two full years later, that the story poles did not represent the project fairly, and that the opponent, inspectionally, published and decepted, licensed partness, to volve be hoodwinked so castly.





Doug Suisman

Hi Darrach,
Thanks for being in touch and available. I promised to contact you if specific concerns emerged. Since we spoke at midday, five bind a chance to photograph the story poles and look more closely at the impact of the current design, which concerns me greatly and which you can see below.

As you know, this before-and-after aps shows the specific view from our liming room (which is the same general view from our liming room and deck). On the left view, you can see the yellow tape and orange flags, as well as a gilmpine of the top of the brown pole in the follage in the upper right. In the right view, you can see the result. I'm quite sure this was not the intention, but the effect is clear: the complete loss of the view, including carryon, greenery, whitevaler and beach, visible from certain angles), ocean, and coastline. (I've only shown a solid wall with solid railing at the top and no windows, but the impact on the view is the same). This is far worse than I had feared, and much worse than Andy 24ft hall deen to believe when he viside dere. A knowledgeable Campon broker has told me that such a loss of view would represent a minimum loss of \$100,000 on our property, with the potential loss ranging from \$200,000-\$400,000.

I feel sure that there are reasonable despin modifications to height and bulk that could avoid such a catastrophic influence of the country of the co

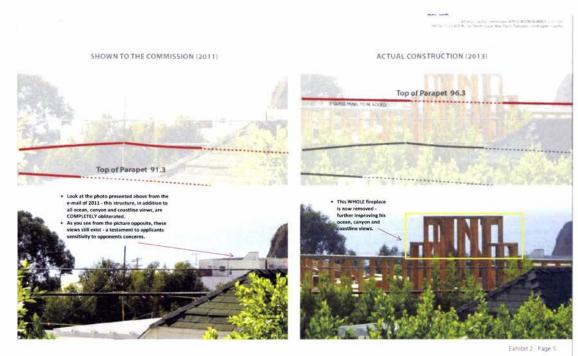


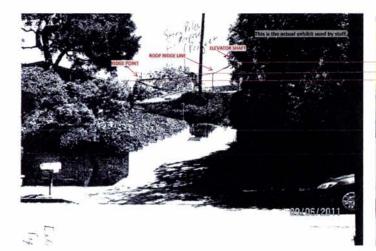
EXHIBIT "K"

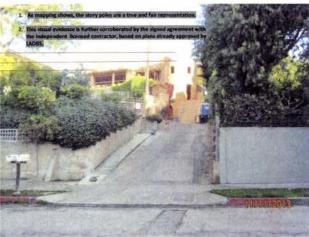
Story Pole From Street Level and Doug's Email Acknowledging Impact of Story Poles

- The opponents claim that the story poles INTENTIONALLY did not accurately represent the mass of the project.
 Keep in mind that the story poles were for the OLD PROJECT a project rejected by the commission, in part BECAUSE OF, and not despite of, the actual story pole evidence.
 The opponents claim the story poles represent a height of "at best" 28 feet.
 As can be seen from the following original photos, depicting the story poles from various viewpoints, it is quite clear that the story poles were fair and accurate.
 As the opponents of the project o
- points were fair and accurate.

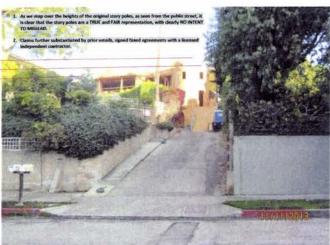
 S. In addition, we have a faxed legal document, to an independent licensed and bonded story pole contractor, to erect the story poles, based on plans (already approved by LADBS) emailed to him by an independent professional draftsman on August 16, 2011.

 6. We also have a copy of that original e-mail. An e-mail that was sent directly to three different contractors to bid on.









COASTAL COMMISSION

EXHIBIT # 4 PAGE 41 OF 41

REQUEST FOR EX-PARTE MEETING

RECEIVED

South Coast Region

9 2013 DFC

CALIFORNIA COASTAL COMMISSION

Dear Commissioner Garcia:

Dear Commissioner Cox:

Dear Commissioner Groom: Dear Commissioner Bochco:

Dear Commissioner McClure:

Dear Commissioner Zimmer:

Dear Commissioner Mitchell:

Dear Commissioner Shallenberger:

Dear Commissioner Brennan:

Dear Commissioner Kinsey:

We are writing with regard to what we hope will be the last chapter in the case of 160 Ocean Way.

We thank you, your fellow Commissioners, and Coastal staff for having acted decisively in October to require the applicant to correct critical violations.

However, we believe there is a still more substantial violation that must be addressed: an intolerable difference between the development height that was depicted to the Commissioners (28') and the height that has

Coastal staff has indicated to us that they need the Commissioners to weigh in on this issue, and that the only means for the community to obtain such a hearing was to apply for a revocation of the permit. We have recently done so, but reluctantly. We seek only a remedy to the 5' discrepancy. We believe there is a reasonable solution. We seek a moment of your time to discuss.

Our community recognizes the significant amount of time this case has required from both Coastal staff and Commissioners. As strong and early advocates for the Coastal Act and coastal protection, residents of Santa Monica Canyon have long supported the work of the Commission, and view with the greatest respect and gratitude the time that Commissioners devote to protecting California's coastline. You have major issues to contend with, far beyond a single residential development in one coastal community.

But we believe there are principles and precedents here that make this case of greater importance than the particulars, namely, that applicants for a Coastal Development Permit may not come before the Coastal Commission and attempt to deceive Commissioners, staff, and affected communities with project representations and descriptions that are contradictory and false.

Coastal staff has now confirmed that a hearing will indeed be held in January. We are very grateful for this chance to present our findings.

In anticipation of the hearing, we would like to request an ex-parte meeting with you. We know that your schedule will be very crowded because of the upcoming holidays, so we are submitting this request now. Please let us know a date or dates that might be convenient for you. We will do everything possible to make our community representatives available at that time.

Thank you in advance, and again, thank you for your sustained interest in this case.

Marilyn Wexler

Montyn Wexler

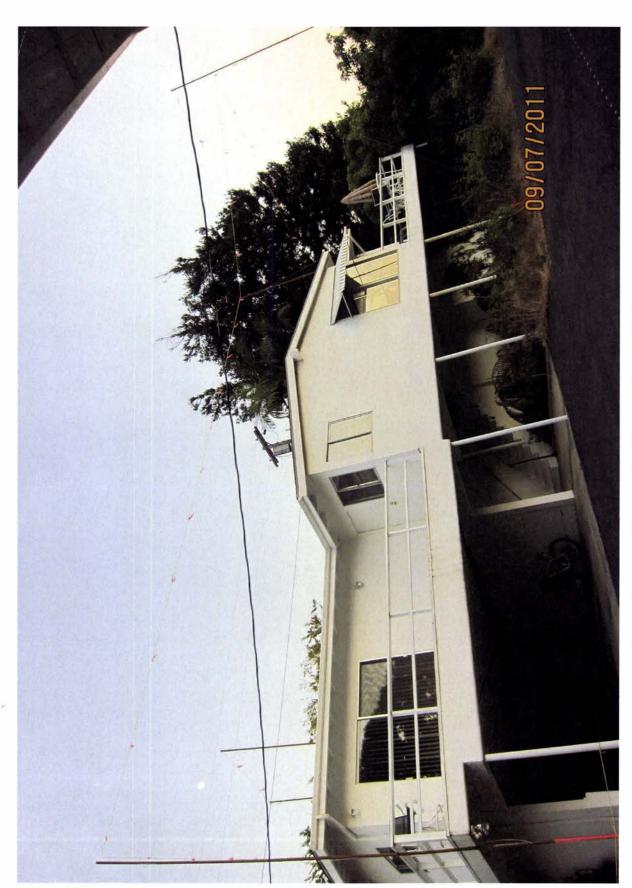
President, Santa Monica Canyon Civic Association (SMCCA)

Doug Suisman

President, BOCA Neighborhood Association (BOCA)

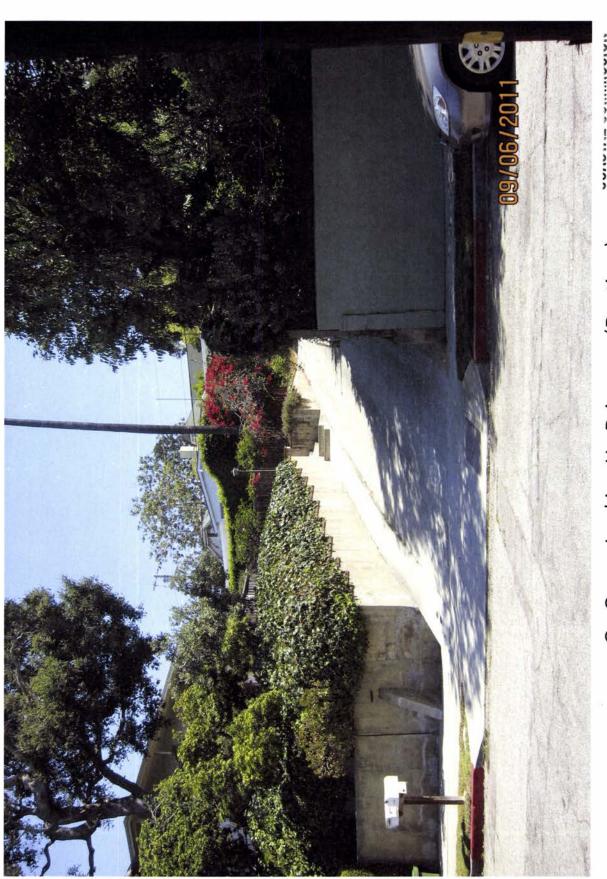
COASTAL COMMISSION 5-11-125-REV

EXHIBIT #___



Looking at House to Show Story Poles

EXHIBIT #_



On Ocean Looking Up Driveway (Daytime)

EXHIBIT #_