

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-14-0688

**Applicant:** Kenneth and Kim Catanzarite

**Agent:** Darryl E. Moore

**Location:** 352 and 354 Hazel Drive, City of Newport Beach, County of Orange.  
(APN 052-182-45 and 052-182-46)

**Project Description:** Removal of non-native and invasive plant species from the rear slope of the property and replanting with native, non-invasive, drought-tolerant plants; and request for after-the-fact authorization of 1) the installation of stairs on the slope for maintenance of the landscaping; and 2) subdivision of an existing lot into two lots.

**Staff Recommendation:** Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

The applicants, pursuant to the terms of a settlement agreement, have submitted an application for a coastal development permit (CDP) to: 1) request after-the-fact approval of a City-approved lot split and the installation of stairs on the canyon slope; 2) remove non-native and invasive plant species from the canyon slope of Buck Gully on the rear portion of the subject lot; 3) replant the slope on the rear portion of the lot with native, non-invasive, drought-tolerant species; 4) implement a 5-year maintenance plan to be established under the supervision of a botanical professional in order to ensure the planted area develops without non-native species invading; 5) paint or stain the existing stairs, which have been affixed to the slope, so as to blend in with the adjacent soil and vegetation color; and 6) record an amendment to a deed restriction imposed under a prior CDP to exclude the

existing stairway from the restriction, and put future owners on notice regarding the terms and conditions of the permit.

The subject site is located on the southeast side of Hazel Drive in Corona Del Mar, City of Newport Beach, County of Orange. The subject site is located in a residential area – between the first public road and the sea – just west of Pacific Coast Highway; and approximately 1,200 feet inland of Little Corona Beach. The existing residence is located at the top of a southwest facing coastal canyon slope overlooking Buck Gully, which is considered an environmental study area (ESA) in the City of Newport Beach certified Coastal Land Use Plan (CLUP).

The primary issue areas identified with the proposed development include potential adverse impacts to biological resources, visual resources, public access and recreation, and prejudicing the City's ability to prepare a Local Coastal Program (LCP).

To ensure that any potential adverse impacts are addressed, Commission staff is recommending **Special Conditions 1 through 4**, which would incorporate into this permit requirements to: 1) prevent future construction or landform alteration below the 71.16 feet above Mean Sea Level contour line; 2) conform with the submitted landscaping plan; 3) submit plans for painting or staining the maintenance stairs; and 4) record an amendment to the previously recorded deed restriction to bring it into conformity with the terms and conditions of this permit. As conditioned, the proposed development conforms with the resource protection and coastal access policies of the Coastal Act.

Commission staff recommends **approval** of coastal development permit application 5-14-0688, as conditioned.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1—Project Vicinity Map

Exhibit 2—Aerial Photograph

Exhibit 3—Site Plan

Exhibit 4—Project Site Photographs

Exhibit 5—Settlement Agreement

Exhibit 6—Memorandum on Buck Gully Restoration and Protection Project

Exhibit 7—Coastal Development Permit No. 5-94-047 Conditions

Exhibit 8—Summary of Prior Commission Action in the Subject Area

**I. MOTION AND RESOLUTION**

**Motion:**

*I move that the Commission **approve** Coastal Development Permit Application No. 5-14-0688 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

**II. STANDARD CONDITIONS:**

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS:

1. **No construction or landform alteration below the topographic contour line located at 71.16 feet above Mean Sea Level.** By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that all construction (including but not limited to gazebos, secondary structures, fences, new retaining walls, pools of any size or depth, tennis courts or other activity areas) or landform alteration below the topographic contour line located at 71.16 feet above Mean Sea Level (as generally depicted on Exhibit 3 to the Coastal Commission staff report dated July 31, 2014), excluding the stairway authorized by Coastal Development Permit No. 5-14-0688 and landscaping maintained in conformity with the requirements of Special Condition No. 2 of Coastal Development Permit No. 5-14-0688, is prohibited.
2. **Conformance with submitted Landscaping Plan.** The permittee shall plant and maintain landscaping in conformity with the submitted Landscaping Plan dated April 7, 2014 submitted to the Commission on April 29, 2014, which provides for: (a) the removal of non-native and invasive plant species from the slope of Buck Gully and the re-planting of the slope with native, non- invasive, drought- tolerant coastal sage scrub or chaparral species, including the following species of vegetation: (i) *Rhus integrifolia* (Lemonade Berry), (ii) *Baccharis pilularis* var. *Pilularis Twin Peaks #2* (Twin Peaks), and (iii) *Encelia californica* (California Encelia); (b) the removal of non-native and invasive plant species from the base of Buck Gully and the re-planting of the base with native, non-invasive, riparian species, including the following species of vegetation: (i) *Salix lasiolepis* (Arroyo willow), and (ii) California bulrush; (c) monitoring of the landscaping for 5 years to ensure that the landscaping plan succeeds, and (d) ongoing maintenance of the landscaping in conformity with the plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Stairs.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit plans for painting or staining the existing stairway into Buck Gully in a color that minimizes its visibility, subject to review and approval by the Executive Director. The stairs shall be maintained in conformity with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
  
4. **Deed Restriction Amendment.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record a document (“Amendment”), in a form and content acceptable to the Executive Director, which shall amend the deed restriction, recorded as document no. 94-0592573 in the official records of Orange County, California (“Deed Restriction”) as it applies to the property subject to this permit only. The Amendment shall revise the Covenant, Condition and Restriction on page 3 of the Deed Restriction to read as follows: “Except as otherwise authorized by Coastal Development Permit No. 5-14-0688, all construction (including but not limited to gazebos, secondary structures, fences, new retaining walls, pools of any size or depth, tennis courts or other activity areas) or landform alteration is prohibited below the 71.16 feet above Mean Sea Level contour line as shown on Exhibit C attached hereto and incorporated herein by reference. The stairway authorized by Coastal Development Permit No. 5-14-0688 may remain in the area below the 71.16 feet above Mean Sea Level contour line provided that it is maintained in conformity with the requirements of Coastal Development Permit No. 5-14-0688. Landscaping shall be maintained in conformity with the requirements of Coastal Development Permit No. 5-14-0688 and the Landscaping Plan approved pursuant to that permit.” The Amendment shall also replace Exhibit C of the Deed Restriction with a formal legal description and graphic depiction prepared by a licensed surveyor of the portion of the subject property below the 71.16 feet above Mean Sea Level contour line, as shown on Exhibit 3 attached to this staff report.

#### **IV. FINDINGS AND DECLARATIONS:**

##### **A. PROJECT DESCRIPTION AND LOCATION**

The subject site is located at 352 & 354 Hazel Drive on the southeast side of Hazel Drive in Corona Del Mar, City of Newport Beach, County of Orange (**Exhibits 1-2**). The site is located in a developed residential area, just west of Pacific Coast Highway. The intersection of Poppy Drive and Ocean Boulevard is near the subject site to the west. Ocean Boulevard terminates at the intersection of Poppy Drive, where there’s an existing public park and public walkway, which descends to Little Corona Beach.

The existing residence is located on a southwest facing coastal canyon hillside (slope) overlooking Buck Gully, between the first public road and the sea, but is approximately 1,200 feet inland of the beach (**Exhibit 2**). Buck Gully is considered an environmental study area (ESA) in the City of Newport Beach certified Coastal Land Use Plan (CLUP). Single-family residences are located on both edges of the canyon, with some of those lots containing development that extends down to the middle of the canyon.

Buck Gully Canyon is located in the southern part of Newport Beach, between Corona Del Mar and Crystal Cove State Park. Buck Creek runs through the canyon, and has a watershed of approximately two square miles. Historically, Buck Creek was an ephemeral creek. Irrigation associated with residential development and the Pelican Hill Golf Club, however, has resulted in additional inputs of water to the creek that now runs perennially, with flows equaling approximately 17 million gallons per month during the dry season.

At the base of Buck Gully is a small stream and dense riparian vegetation. Between Pacific Coast Highway and Little Corona Beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper areas of the slopes near the homes at the top of the slopes. This segment of Buck Gully provides an area of good quality habitat capable of supporting a variety of wildlife.

The applicants, pursuant to the terms of a settlement agreement, have submitted an application for a coastal development permit (CDP) to: 1) request after the fact approval of a City-approved lot split per Parcel Map 95-178 and the installation of stairs on the canyon slope; 2) remove the non-native and invasive plant species from the canyon slope of Buck Gully on the rear portion of the subject lot; 3) replant the slope on the rear portion of the lot with native, non-invasive, drought-tolerant species appropriate to the habitat type; 4) implement a 5-year maintenance plan to be established under the supervision of a botanical professional in order to ensure the planted area flourishes without non-native species invading; 5) paint or stain the existing maintenance stairs, which have been affixed to the slope, so as to blend in with the adjacent soil and vegetation color; and 6) record an amendment to a deed restriction imposed under a prior CDP to exclude the existing stairway from the restriction, and put future owners on notice regarding the terms and conditions of the permit.

The Catanzarite's existing residence at 354 Hazel Drive is similar in size and scale to adjacent properties. Construction of the Catanzarite's residence was authorized by the City through an exclusion granted pursuant to Commission Commission-approved Categorical Exclusion Order No. E-77-5<sup>1</sup>. Notably, however, while the City wields some authority to approve development on the

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<sup>1</sup> Within certain defined geographic areas, and subject to specified criteria, Commission-approved Categorical Exclusion Order No. E-77-5 allows for demolition and construction of single family and 2-family residences and their appurtenant facilities in the R-1, R-1.5, R-2, R-3 and R-4 zoned districts without a coastal development permit.

lots along Buck Gully pursuant to Categorical Exclusion Order No. E-77-5, prior CDP's may have imposed conditions and/or restrictions on future development – as is the case here – which may affect the development plan.

The Catanzarite's existing residence at 354 Hazel Drive was built so as to be consistent with a deed restriction previously recorded against the subject property (and 2 adjacent properties at 340 & 344 Hazel Dr.) imposed by the Commission under Coastal Development permit No. 5-94-047 (Finch Trust)(described in additional detail below). That deed restriction prohibited many kinds of development below a topographic contour line located at 71.16 ft. above mean sea level (MSL). However, a stairway was also constructed below the 71.16 ft. contour line, which was not consistent with the previously imposed restriction. In this case, the applicants propose to change the restriction to allow them to retain the existing stairs at the rear of the property. Those stairs are made of pressure treated lumber and are secured with re-bar pins driven into the slope. The applicant states no grading was undertaken on the slope to construct the stairs. The stairs have 48 total steps, 4 landings, and descends approximately 40' to the bottom of Buck Gully. The stairs are entirely on the 354 Hazel Drive property and outside of City easements.

The applicants are also requesting approval of a lot split, resulting in the 352 Hazel Drive and 354 Hazel Drive properties. 352 Hazel Drive is an approximately 0.12 acre, somewhat rectangular lot, located between Hazel Drive and 354 Hazel Drive. No portion of 352 Hazel Drive abuts Buck Gully. This site is currently vacant. 354 Hazel Drive is an approximately 0.33 acre, somewhat trapezoid-shaped lot, located between 352 Hazel Drive and the approximate centerline of Buck Gully. This lot contains an existing single family residence as well as the canyon slope with stairway which descends into Buck Gully. It is worth noting that Categorical Exclusion Order No. E-77-5 also applies to 352 Hazel Drive, accordingly subsequent approval of a residence on 352 Hazel Drive is possible either through the City's Categorical Exclusion Order, or through a separate CDP should the subsequent development not comply with the City's Categorical Exclusion Order criteria.

## **B. BACKGROUND**

### **Summary of Recitals from the Settlement Agreement and Mutual General Release**

In 1994, the Catanzarites acquired the real property located at 352 Hazel Drive, Corona Del Mar, City of Newport Beach, which was one of several lots that resulted from a re-subdivision of six lots which were at one time owned by previous landowner, the Katherine S. Finch Family Trust ("Finch Trust"). The Finch Trust re-subdivided its six lots into three lots (the "Finch Resubdivision"). The Catanzarites re-subdivided their one lot property into two lots now known as 352 and 354 Hazel Drive with approval of the City of Newport Beach ("City") in or about 1996, denoted by City as



Resubdivision no. 1019 (the “Catanzarite Resubdivision”). The Catanzarites did not obtain a CDP for the Catanzarite Resubdivision.

The Catanzarites have completed construction of a single-family home at 354 Hazel. The Catanzarites have built a stairway that extends from a patio associated with the home at 354 Hazel, onto the slope of Buck Gully below the 71.16 feet above Mean Sea Level contour line (which the Catanzarites have referred to as the “85 foot contour line”).

On or about December 30, 2009, the Catanzarites filed an action against the City entitled *Kenneth J. Catanzarite, et al. v. City of Newport Beach, et al.*, Orange County Superior Court case no. 30-2009-00332874. The Catanzarites amended their complaint to add the Commission as a named defendant. On or about November 27, 2013, the Commission filed a cross-complaint. The Catanzarites have submitted this application pursuant to a settlement agreement intended to resolve the litigation.

### **C. BIOLOGICAL RESOURCES**

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The City’s CLUP discusses areas which are environmentally sensitive in nature and lists Buck Gully as an area which may contain environmentally sensitive habitat area. The area of Buck Gully in the vicinity of 352 and 354 Hazel Drive is described in the City’s CLUP, in part, as follows:

*The lower (western) portion of Buck Gully is isolated from the upper Buck Gully by the Coast Highway. This area is closely confined by residential development on the south and north. The proximity to development, accessibility by local residents and their pets, and abundance of non-native ornamental plant species detract from the quality of habitat for wildlife species in this area. The upper (eastern) portion of Buck Gully is a broad, open, relatively undisturbed canyon. Coastal sage scrub and mixed chaparral dominate much of the area, except for the riparian corridor along the canyon bottom and the tops of the canyon, which are influenced by the adjacent residential development. Much of the native vegetation near the rim of the canyon has been removed to reduce wildfire hazard.*

*Ornamental and non-native plant species from the adjacent residential development have encroached into Buck Gully, especially in the lower, narrow portions. Annual grasslands in Buck Gully consist of nonnative annual grasses and forbs. Some non-native inclusions were also observed in the Diegan coastal sage scrub, southern mixed chaparral, and southern willow scrub habitats.*

The City's CLUP contains a number of Policies that are relevant to development in and around Buck Gully, and in particular to the proposed development here, including Policy 4.1.3-1 which states, in part:

*Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:*

- C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.*
- D. Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.*

As previously stated, the proposed development is located adjacent to and within Buck Gully, which the City of Newport Beach CLUP considers an environmental study area (ESA) (**Exhibits 1-2**). According to the CLUP, the 74.2-acre Buck Gully Environmental Study Area (ESA) does not include the sections of the canyon that are located outside of the coastal zone or within Newport Coast. The ESA is bordered by the Pacific Ocean to the southwest, and residential and commercial development to the southeast, northwest, and north of the site. Pacific Coast Highway (PCH) bisects the canyon. Drainage from Buck Gully empties on to Little Corona Beach. The portion of Buck Gully between the extension of Fifth Avenue (inland of PCH) and Little Corona Beach is under private ownership.

Located at the base of Buck Gully is a small stream and dense riparian vegetation. Between Pacific Coast Highway and Little Corona Beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper areas of the slopes near the homes at the top of the slopes. Potential impacts to the natural habitats in the Buck Gully study area include erosion, contaminated urban runoff, increased human activity, ambient noise, and invasive species.

The Commission's staff ecologist, Dr. Jonna Engel, visited Bucky Gully in the vicinity of the Catanzarite's residence on July 1, 2011, to review that area in conjunction with Coastal

Development Permit No. 5-10-238 (Stream restoration and sedimentation control project consisting of installation of three stepped gabion grade control structures, two sub surface flow wetlands, and five bendway weirs, revegetation with native plants, and 10,000 cubic yards of balanced cut and fill). Dr. Engel wrote a Memorandum for the stream restoration and sedimentation control project, stating the project site: 1) contains ESHA, and 2) would result in the restoration of the project site (**Exhibit 6**). Specifically, Dr. Engel's memorandum states, in part:

Although no listed species were found in the riparian habitat, southern arroyo willow riparian habitat is designated rare by the California Department of Fish and Game, Biogeographic Data Branch, California Natural Diversity Database. In addition, southern arroyo willow riparian habitat is easily disturbed and degraded by human activities and development as evidenced by the current degraded condition of this habitat within Buck Gully. Based on its rarity and susceptibility to disturbance, the southern arroyo willow riparian habitat does rise to the level of environmentally sensitive habitat (ESHA). While the habitat is degraded and riddled with non-native and invasive species, it still supports valuable ecosystem services and native species....

Restoration is a resource dependent, allowable use in ESHA. The Buck Gully restoration and protection project will return the Buck Gully stream corridor to a more natural southern arroyo willow riparian habitat by removing non-native and invasive plant species, restoring native habitat, managing and maintaining the stream channel and flows, and improving water quality. Without intervention, lower Buck Gully will remain constantly disturbed and limited to an early successional stage (pioneer) community best suited to opportunistic (weedy) species. The Buck Gully restoration and protection project will stabilize the stream bed and remove non-native and invasive species so that natural ecosystem processes and functions can proceed and a more natural and biologically diverse southern riparian community can become established. In addition to restoring the riparian corridor, the restoration and protection project will also improve the coastal sage scrub habitat along the upper hillsides of Buck Gully by removing non-native and invasive species. Another outcome and ecological benefit of the project will be a stronger distinction between the upper and dryer (xeric) coastal sage scrub community and the lower and wetter (mesic) southern arroyo willow riparian community. Finally, restoration of the coastal sage scrub and southern riparian habitat is also important in terms of providing appropriate habitat for rare species such as California gnatcatchers, least Bell's vireos, southwestern willow flycatchers, and southern pond turtles. And while southern steelhead, *Oncorhynchus mykiss*, have not historically been recorded in Buck Gully Creek, the Buck Gully restoration and protection project will create more suitable steelhead habitat.

Again, Dr. Engel's memorandum clearly states that that the southern arroyo willow riparian habitat located in Buck Gully in the vicinity of the Catanzarite's residence qualifies as ESHA. And, although no listed species were found to be present within the project area at the time of Dr. Engel's review of the site for CDP No. 5-10-238, streams in Southern California in general are rare but ecologically important habitats, and are often threatened by adjacent development. In addition, Dr. Engel points out that southern arroyo willow riparian habitat is easily disturbed and degraded by human activities and development, which was apparent during her review of Buck Gully in July of 2011. While the habitat in Buck Gully is degraded and riddled with non-native and invasive species, it still supports valuable ecosystem services and native species.

The applicant's proposal to remove the non-native and invasive plant species from the slope on the rear of the property and replant native, non-invasive, drought-tolerant species such as Lemonade Berry, Twin Peaks #2, California Encelia, Arroyo Willow, and California Bulrush, will serve to enhance and improve the habitat in Buck Gully over current conditions. Special Condition No. 2 memorializes this plan. In addition, while potential adverse impacts to biological resources could result from authorizing a stair structure on the slope, the slope itself at the subject site was not known to have contained or supported any significant native habitat. Rather, the stairs are a means to allow the slope to be restored with native habitat and maintained free of invasive, non-native plants that degrade the habitat in Buck Gully.

It should be noted that the slope at the subject site is very steep compared with other slopes along the gully and it would be very difficult to implement the replanting and maintenance plan at the site without the stairs. The stairs do not lead to any other type of access or use within the Gully itself, and approval of this coastal development permit should not be construed to permit or otherwise set a precedent for other properties to rely on and/or justify constructing similar stairs for such purposes. All proposed development must be considered on a case by case basis considering the facts and distinguishing features on those other sites.

Finally, the proposed lot split will not result in adverse impacts to the adjacent habitat, primarily because the new area to be developed as a result of the lot split is located between the existing residence – which abuts Buck Gully – and Hazel Drive, where no sensitive habitat currently exists. Therefore, as conditioned, the Commission finds the proposed project is consistent with Section 30240 of the Coastal Act.

#### **D. VISUAL RESOURCES**

Section 30251 of the Coastal Act states, in 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting*

As stated in the City's CLUP, "Newport Beach is located in a unique physical setting that provides a variety of spectacular coastal views, including those of the open waters of the ocean and bay, sandy beaches, rocky shores, wetlands, canyons, and coastal bluffs." And, "The City has historically been sensitive to the need to protect and provide access to these scenic and visual resources . . ."

Accordingly, the CLUP contains a number of policies that adverse impacts to coastal views caused by new development including, but not limited to, the following:

- 4.4.1-1 *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*
- 4.4.1-2 *Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*
- 4.4.1-3 *Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.*
- 4.4.1-4 *Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.*
- 4.4.1-5 *Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.*

The stairs proposed to be retained and the area proposed to be replanted and maintained are located on a coastal canyon slope approximately 1,200 feet inland of Little Corona Beach (**Exhibits 1-2**). Views of the coastal canyon hillside from the beach are already partially obstructed by adjacent development on both the coastal and coastal canyon hillside. Also, existing vegetation obstructs views of the project site from the beach.

Buck Gully and a portion of the existing residence, including the maintenance stairs can be viewed from Pacific Coast Highway, as well as from Seaward Road, which is on the opposite side of Buck

Gully from Hazel Drive (**Exhibit 4**). The existing stairs constitute a potential adverse impact to coastal views of the coastal canyon hillside. However, as described in Special Condition No. 3 the applicant is proposing to paint or stain the existing stairway in a color approved by the Executive Director to reduce those potential impacts. In addition, the applicant will plant 4-5 gallon Lemonade Berry to provide additional screening of the stairs from public viewpoints. Once revegetation of the site and painting or staining of the stairs has been completed, the stairs are not expected to be visible from public vantage points or otherwise degrade the scenic and visual qualities of the Coast.

Finally, the proposed lot split will not result in adverse impacts to visual resources, primarily because the new area to be developed as a result of the lot split is located between the existing residence (which abuts Buck Gully) and Hazel Drive, where there are no public views to and along the coast. Therefore, the Commission finds the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

#### **E. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in relevant part:

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

*(2) adequate access exists nearby...*

Section 30213 of the Coastal Act states, in part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30240 of the Coastal Act states, in part:

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30604(c) of the Coastal Act requires that a specific finding regarding public access and recreation shall be made for all development between the nearest public roadway and the shoreline. The proposed development is located approximately 1,200 feet from Little Corona Beach. Access to Little Corona Beach is provided by a trail at the terminus of Ocean Boulevard (**Exhibit 2**). To the west is Corona Del Mar Park State Beach, which also provides beach access and recreation.

The proposed development is located approximately 1,200 feet from the public walkway from Ocean Boulevard to Little Corona Beach. Development proposed in this permit application, including the lot split, will not interfere in any way with the public's ability to use the walkway. Therefore, the Commission finds that adequate public access exists in proximity to the proposed development and that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Sections 30210, 30211, 30212, 30213, 30221, 30240, and 30604(c) of the Coastal Act.

## **F. DEVELOPMENT**

Section 30240 of the Coastal Act states:

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

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30253 of the Coastal Act states, in part:

*New development shall do all of the following:*

*(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Policy 4.1.3-1 of the City's CLUP states, in part:

*Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from sources including, but not limited to, those identified in Table 4.1.1:*

*D. Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat.*

Policy 4.4.3-18 of the City's CLUP states:

*Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements.*

Preservation and enhancement of the City's coastal canyons, like Buck Gully, is a goal supported by both the environmental protection policies of the Coastal Act, as well as the City's CLUP. Encroachment into the canyon by development increases the potential for the introduction of non-native plant species; predation of native species by domestic animals; and destabilization of the canyon from excess irrigation. Encroaching development can also threaten the visual quality of the canyons. The above-cited policies encourage habitat protection and enhancement; minimization of visual impacts and landform alteration; and



avoidance of the cumulative adverse impacts caused by development encroachment into the canyon.

Special Condition No. 2 of Coastal Development Permit 5-94-047 (Finch Trust) previously imposed a restriction that ‘no construction or landform alteration will be permitted below the 71.16 feet above Mean Sea Level contour line’ on the subject lot and 2 adjacent lots involved in that permit. That condition, which was proposed by the applicant and carried forward the condition of a City-issued permit, was intended to ‘...minimize significant adverse impacts to the habitat values in Buck Gully...’ As previously discussed in this staff report, the existing lot contains a stairway that extends from the patio associated with the home at 354 Hazel, onto the slope of Buck Gully below the 71.16 feet above Mean Sea Level contour line (which the Catanzarites have referred to as the “85 foot contour line”). Again, although Buck Gully is not specifically identified as ESHA in the City’s CLUP, the Commission’s biologist has previously made a determination that ESHA does exist within Buck Gully in the vicinity of the subject property. Therefore, the mere existence of the stairs allows for activities that may adversely affect ESHA.

Although the stairs extend below the 71.16 ft contour limit line established in Special Condition No. 2 of CDP 5-94-047, the Commission is unaware of any evidence that would suggest construction of the stairs has had any significant adverse impacts to the habitat values of Buck Gully. In fact, based on the unique facts and distinguishing features of the properties at issue in this proposed development, the stairs will facilitate enhancement of the canyon habitat as described elsewhere in these findings. The Commission emphasizes that construction of the stairs did not involve landform alteration, or grading of any kind of the slope, because the stairs were affixed to the slope solely with rebar. Therefore, even though the stairs were not consistent with the written restrictions in Special Condition No. 2 of CDP 5-94-047, they can be found consistent with the intent of those restrictions (i.e. to protect habitat and avoid landform alteration).

Policy 4.4.3-18 of the City’s CLUP requires that new development be compared against the predominant line of existing development, and held to that existing line, in order to avoid further encroachment into the canyon. Typically, the Commission looks at the predominant line of principal structures (like a house) and the predominant line of accessory improvements (like decks). There are houses and decks along the canyon with which to compare similar development; however, in Buck Gully, there is a secondary type of existing accessory development, such as stairs and paths that lead from various decks and patios toward the canyon bottom. These stairs and paths on nearby lots take many different forms, including very low impact (such as pavers set on existing grade) to higher impact types that have involved slope terracing and installation of retaining walls. Considering that the ultimate goal is to minimize all types of development that encroach into the canyon, in order to be found consistent with the Coastal Act and the City’s CLUP, any such secondary

development will likely have to be both low impact and necessary to serve a purpose related to protecting and/or enhancing the habitat. Accordingly, as noted above, the stairs at issue in this CDP were designed for low impact, because the stairs avoid native vegetation and landform alteration; and the stairs are necessary to ensure successful revegetation of the slope. In this way, the applicant's proposal to retain the stairs is consistent with the predominant line of similar secondary accessory development in the canyon.

To ensure that future development is consistent with the Chapter 3 policies of the Coastal Act, and to maintain the predominant line of existing development in the vicinity of the subject property, the Commission finds that Special Condition No.s 1 and 4 must be imposed. Therefore, as conditioned, the development conforms with Sections 30240 and 30253 of the Coastal Act.

#### **G. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified CLUP was updated on October 13, 2005, and again in 2009. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The CLUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the City's CLUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program that is consistent with the Chapter 3 policies of the Coastal Act.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation

measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

As proposed and conditioned, the development will not cause significant adverse effects on the environment. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found to be consistent with CEQA and the policies of the Coastal Act.

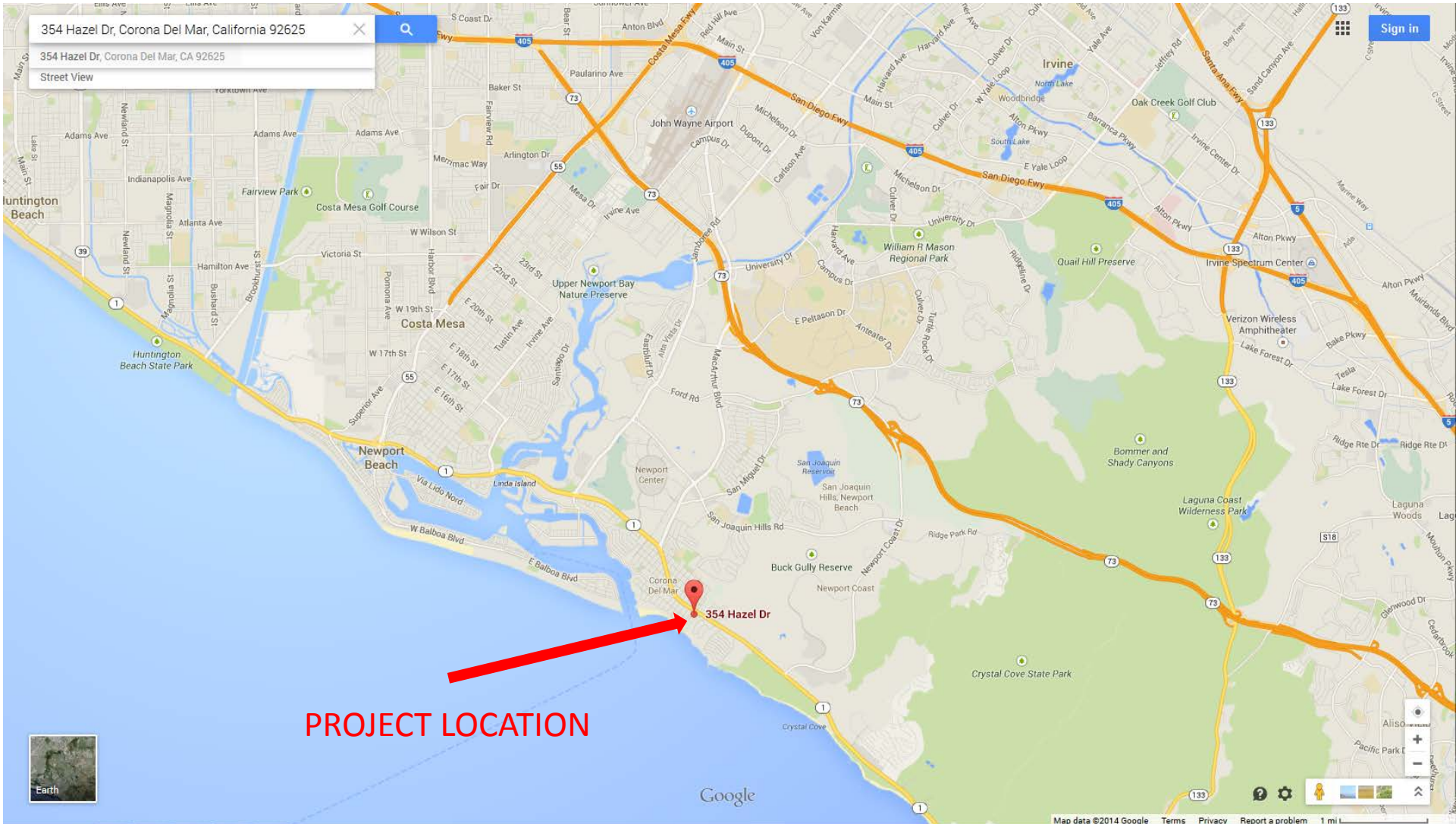
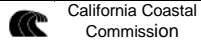
## **APPENDIX A**

**Substantive File Documents:** Coastal Development Permit Application File No. 5-14-0668; Settlement Agreement and Mutual General Release dated March 13, 2014; Buck Gully Restoration and Protection Project, Memorandum from Dr. Jonna Engel, Staff Ecologist, July 27, 2011; Coastal Development Permit Application File No. 5-10-238; Coastal Development Permit Application File No. 5-94-047 (Finch Trust).

# EXHIBIT# 1

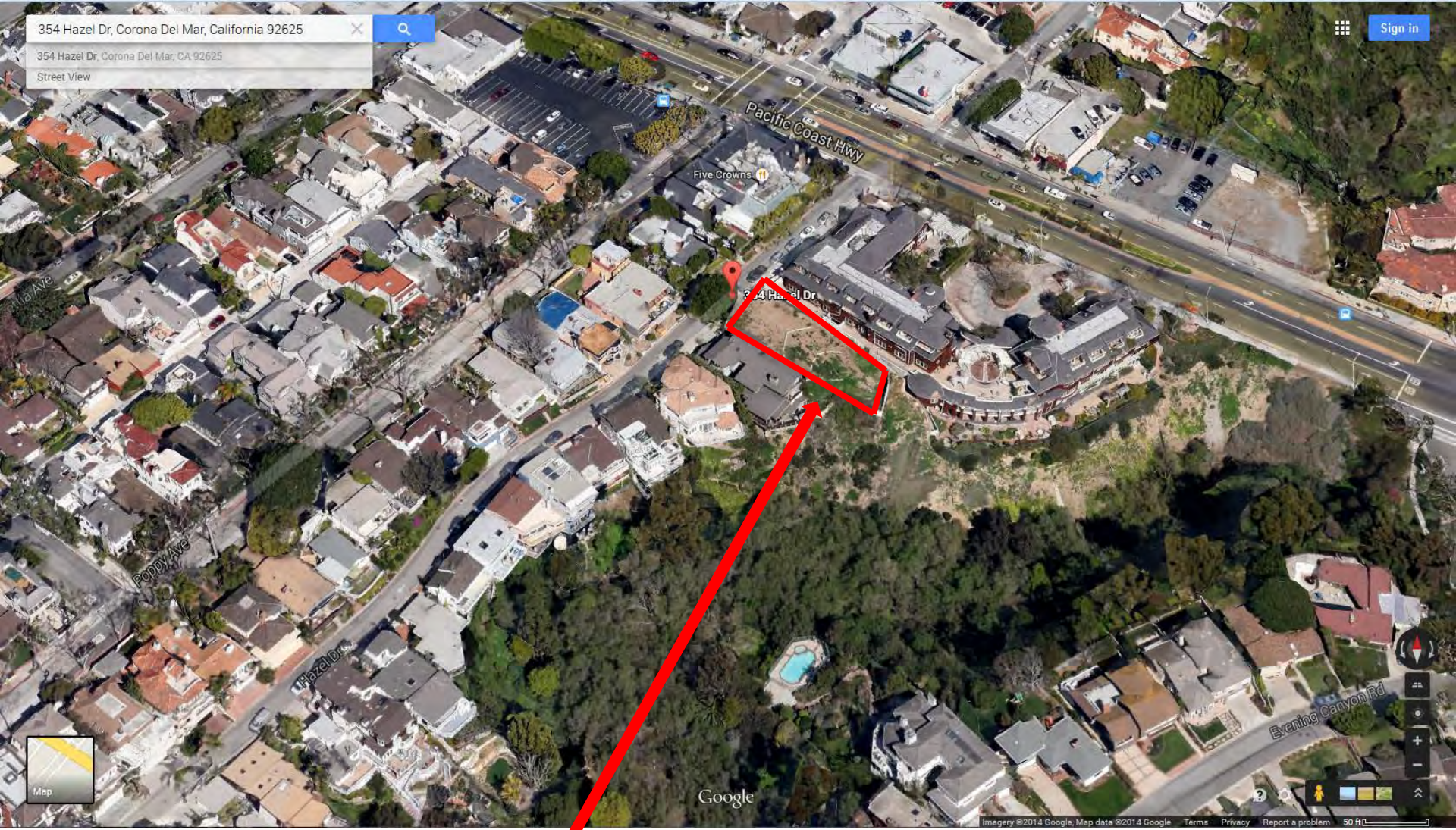
Vicinity Map  
1 of 1

Application Number:  
**5-14-0688**



**PROJECT LOCATION**



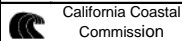


**PROJECT LOCATION**

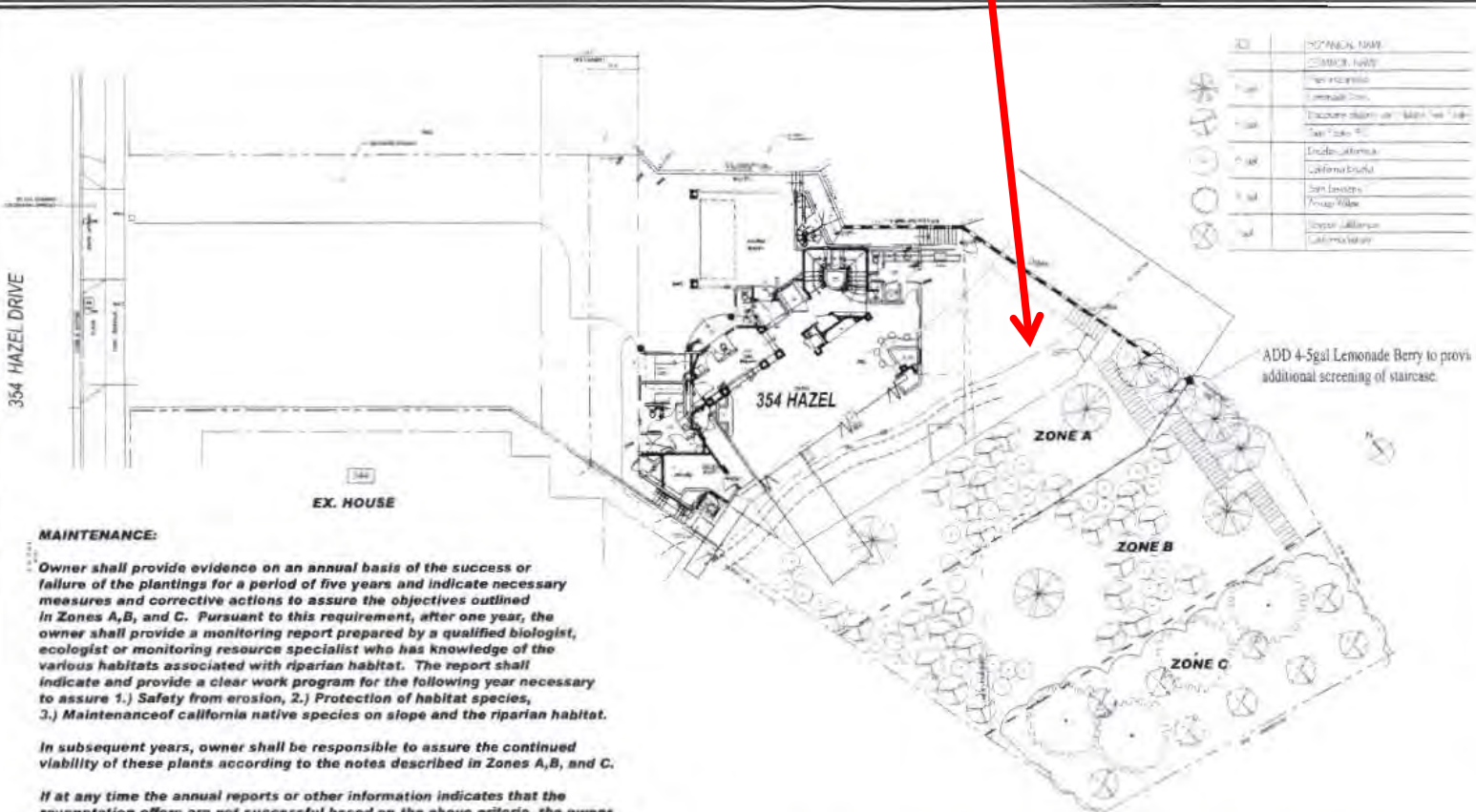
**EXHIBIT# 3**

Site Plan  
1 of 1

Application Number:  
**5-14-0688**



**71.16' Topographic Contour Line**



**MAINTENANCE:**

Owner shall provide evidence on an annual basis of the success or failure of the plantings for a period of five years and indicate necessary measures and corrective actions to assure the objectives outlined in Zones A,B, and C. Pursuant to this requirement, after one year, the owner shall provide a monitoring report prepared by a qualified biologist, ecologist or monitoring resource specialist who has knowledge of the various habitats associated with riparian habitat. The report shall indicate and provide a clear work program for the following year necessary to assure 1.) Safety from erosion, 2.) Protection of habitat species, 3.) Maintenance of California native species on slope and the riparian habitat.

In subsequent years, owner shall be responsible to assure the continued viability of these plants according to the notes described in Zones A,B, and C.

If at any time the annual reports or other information indicates that the revegetation efforts are not successful based on the above criteria, the owner shall replant in accordance with the specifications outlined in Zones A,B, and C.

**IMPLEMENTATION AND COMPLETION OF THE RESTORATION PLAN:**

Owner shall implement and complete the restoration plan within 90 days of the issuance of the permit. The owner shall comply with all provisions of the restoration plan, including the planting plan and maintenance program.

**ZONE A & B-**

These areas are planted with plantings and spacings per City of Newport Beach Fire Department. Located in these zones are Rhus intergrifolia-Lemonade Berry, Baccharis pilularis var. Pilularis Twin Peaks'-Twin Peaks #2, and Encelia californica-California Encella. These are to provide support to the slope. There is irrigation located in these zones to establish the new landscape and can be used in the case of a fire to provide water to the area. These plants are planted in 5 gal sizes. The owner will provide maintenance to this area to keep out any plants that are not part of those on the list. These zones also have Lemonade Berry planted on Northeast side of stairs to provide screen from visibility of staircase from PCH.

**ZONE C-**

This area is the riparian zone to be planted with 5 gal Salix lasiolepis-Arroyo Willow and 1 gal Scirpus californicus-California bulrush as an understory plant to help establish the riparian habitat. All non-native plant species to be removed and this is to be maintained to keep out non-native species.

ADD 4-5gal Lemonade Berry to provide additional screening of staircase.

PERMIT NO.

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APPROVED BY THE CITY OF NEWPORT BEACH  
CITY ENGINEER  
DATE: 04/29/2014

**BGE DESIGN**  
Bioscience & Geotechnical Engineering  
1000 S. GARDEN ST., SUITE 100  
NEWPORT BEACH, CA 92660  
TEL: 949.646.1234  
WWW.BGEDESIGN.COM

**RESTORATION PLAN**

**CUSTOM HOME**  
354 HAZEL DR.  
CORONA DEL MAR, CA


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| DATE    |  |
| BY      |  |
| SCALE   |  |
| PROJECT |  |
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**RECEIVED**  
South Coast Region  
APR 29 2014  
CALIFORNIA  
COASTAL COMMISSION

**EXHIBIT# 4**

**Site Photographs**  
1 of 6

Application Number:  
**5-14-0688**

 California Coastal  
Commission

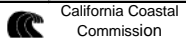


**PROJECT  
LOCATION**

**STAIRS**

**EXHIBIT# 4**  
Site Photographs  
2 of 6

Application Number:  
**5-14-0688**



# BUCK GULLY – EAST LOOKING SOUTHWEST






**EXHIBIT# 4**

**Site Photographs**  
3 of 6

Application Number:  
**5 - 1 4 - 0 6 8 8**

 California Coastal  
Commission


# STAIRS



**EXHIBIT# 4**

**Site Photographs**  
4 of 6

Application Number:  
**5-14-0688**

 California Coastal  
Commission

# SUBJECT SITE – REAR SLOPE LOOKING WEST



**EXHIBIT# 4**

**Site Photographs**

5 of 6

Application Number:

**5-14-0688**



California Coastal  
Commission

# SUBJECT SITE – REAR SLOPE LOOKING DOWN INTO BUCK GULLY



# SUBJECT SITE – 352 and 354 HAZEL DRIVE



354 HAZEL DRIVE

352 HAZEL DRIVE

## SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (“Agreement”) is effective as of March 13, 2014 and is made by and between Kenneth J. Catanzarite and Kim Catanzarite (collectively “the Catanzarites”), on the one hand, and the California Coastal Commission (“Commission”), on the other hand. This Agreement will sometimes refer to the Catanzarites and Commission collectively as the “Parties.” This Agreement is made with reference to the following facts:

### RECITALS

A. In 1994, the Catanzarites acquired the real property located at 352 Hazel Drive, Corona Del Mar, Newport Beach, California, which was one of several lots that resulted from a re-subdivision of six lots which were at one time owned by previous landowner, the Katherine S. Finch Family Trust (“Finch Trust”). The Finch Trust resubdivided its six lots into three lots (the “Finch Resubdivision”). The Catanzarites re-subdivided their one lot property into two lots now known as 352 and 354 Hazel Drive with approval of the City of Newport Beach (“City”) in or about 1996, denoted by City as Resubdivision no. 1019 (the “Resubdivision”). The Parties disagree as to whether the Resubdivision is legally effective. This Agreement will refer to 352 Hazel Drive as the “352 Property” and 354 Hazel Drive as the “354 Property.” Sometimes the 354 Property and the 352 Property shall be referred to collectively, and solely for convenience, as the “Hazel Properties.”

B. The Hazel Properties are located within the coastal zone as defined by the California Coastal Act, California Public Resources Code §§ 30000 et seq. (“Coastal Act”). The Commission issued a coastal development permit for the Finch Resubdivision. No party applied to the Commission for or received from the Commission a coastal development permit for the Resubdivision. The Commission contends that the Resubdivision is “development” within the meaning of the Coastal Act and that the Catanzarites’ failure to obtain a coastal development permit for the Resubdivision violates the Coastal Act. The Catanzarites contend among other things that: (1) the Resubdivision and recordation of Parcel Map 95-178 constituted notice and opportunity for the Commission to object or take action and that it failed to do so and, as such, the Hazel Properties are two legal lots, specifically the 354 Property and the 352 Property; and (2) they have vested development rights by virtue of, among other reasons (i) their City building permits for the Hazel Properties, (ii) Categorical Exclusion Orders (“CEO”) E-77-5, 48-07 and 47-07, and (iii) the completion of 354 Hazel consistent with recorded view easements.

C. The Hazel Properties are located along Buck Gully, with 354 Hazel on the gully side and 352 Hazel along the street side of the Hazel Properties. The Catanzarites have completed construction of a single-family home at 354 Hazel. The Catanzarites have built a stairway that extends from the home at 354 Hazel, onto the slope of Buck Gully below the 71.16 feet above Mean Sea Level contour line (which the Catanzarites have referred to as the “85 foot contour line”).

D. On or about December 30, 2009, the Catanzarites filed an action against City of Newport Beach, et al., Orange County Superior Court case no. 30-2009-00332874 (the “Declaratory Relief Action”). The Catanzarites amended their complaint to add Commission as a named defendant. On or about November 27, 2013, the



Commission filed a cross-complaint in the Declaratory Relief Action. On or about October 7, 2011, the Catanzarites filed a second action against City and Commission entitled *Kenneth J. Catanzarite, et al. v. City of Newport Beach, et al.*, Orange County Superior Court case no. 30-2011-00513654 (the “Writ Action”). On or about September 16, 2013, the Catanzarites filed a third action against City entitled *Kenneth J. Catanzarite, et al. v. City of Newport Beach, et al.*, Orange County Superior Court case no. 30-2013-00675775 (“the “Breach of Contract Action”). The Catanzarites amended their complaint to add Commission as a named defendant. This Agreement will sometimes refer to the Declaratory Relief action, the Writ Action and the Breach of Contract Action collectively as the “Actions.” Each of the Actions concerns the Hazel Properties. The Declaratory Relief and Breach of Contract Actions are currently pending. The Catanzarites voluntarily dismissed the Writ Action without prejudice on or about June 4, 2012.

E. The Parties now wish to fully resolve all claims and defenses asserted by and against each other in the Actions arising from the events and transactions giving rise to the Actions. By entering into this Agreement, none of the Parties admits the merit of any of the allegations, claims or defenses asserted by the other against him, her or it. By way of example, (1) the Catanzarites contend that a deed restriction recorded in connection with the Finch Resubdivision should have no legal effect and should not apply to both Hazel Properties, while the Commission contends that the deed restriction binds the Catanzarites and restricts their use of the Hazel Properties; (2) the Catanzarites dispute that they were or are obligated to obtain a coastal development permit for the Resubdivision, while the Commission contends that the Catanzarites violated the Coastal Act by effecting the Resubdivision without a coastal development permit and remain obligated to obtain such a permit; and (3) the Catanzarites contend that the allegations asserted in their complaints in the Actions have merit while the Commission disputes the merits of the allegations, and the Commission contends that the allegations asserted in its cross-complaint in the Declaratory Relief Action has merit while the Catanzarites dispute the merits of the allegations. The Parties enter into this Agreement solely to avoid the burden and expense of further litigation of the Actions. The Catanzarites expressly reserve all claims against the City asserted in the Actions.

THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Application for Coastal Development Permit.

a. Within 30 days of the date of execution of this Agreement, the Catanzarites will submit to the Commission an application for an after-the-fact coastal development permit for the Resubdivision and approval of the stairway on the slope of the 354 Property (“Application”) in accord with all applicable requirements of the Coastal Act and the Commission’s regulations governing coastal development permit applications, except that the application fee payable upon filing of the application shall be modified as provided in subparagraph (d), below. Notwithstanding the foregoing, the Catanzarites shall not be required to submit the Application unless Commission staff indicates that they will recommend that the Commission approve the Application subject only to the conditions set forth in Paragraph 1.c., below.

b. Commission staff shall work as expeditiously as possible to process the Catanzarites’ Application. The Catanzarites shall timely respond to all requests for information and

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| <b>EXHIBIT# 5</b><br><b>Settlement Agreement</b><br>2 of 9  |
| Application Number:<br><b>5-14-0688</b>   |
|  California Coastal Commission |

documentation required by Commission at all stages of the coastal development permit application process. Provided the Catanzarites timely respond to all requests for information and documentation required by Commission at all stages of the coastal development permit application process, Commission staff will recommend that the Commission approve the Application subject only to the conditions set forth in Paragraph 1.c., below.

c. Nothing in this Paragraph or this Agreement does require, or shall be construed to require, Commission to issue a coastal development permit for the Resubdivision or stairway. Nothing in this Paragraph or this Agreement does, or shall be construed to, limit or dictate the Commission's discretion or its application of applicable law to the facts presented by the Catanzarites' coastal development permit application during its decision-making process. The Commission retains full discretion under applicable law to approve, approve with conditions, deny or otherwise act upon the Catanzarites' Application. In particular, in addition to its standard conditions, the Commission reserves the right to impose conditions that include the following:

i. Prohibiting the Catanzarites from construction or landform alteration below the 71.16 feet above Mean Sea Level contour line at the 354 Property, excluding the existing stairway into Buck Gully.

ii. Requiring that the Catanzarites submit for Commission review and approval a landscaping plan that provides for: (a) the removal of non-native and invasive plant species from the slope of Buck Gully and the re-planting of the slope with native, non-invasive, drought- tolerant coastal sage scrub or chaparral species, including one or more of the following species of vegetation: (A) *Rhus integrifolia* (Lemonade Berry), (B) *Baccharis pilularis* var. *Pilularis* Twin Peaks #2 (Twin Peaks), and (C) *Encelia californica* (California Encelia); (b) the removal of non-native and invasive plant species from the base of Buck Gully and the re-planting of the base with native, non-invasive, riparian species, including one or more of the following species of vegetation: (A) *Platanus racemosa* (Sycamore), (B) *Populus balsamifera* (Black Cottonwood), and (C) *Salix lasiolepis* (Arroyo willow); (c) strategic planting to minimize visibility of the stairway, (d) monitoring of the landscaping for 5 years to ensure that the landscaping plan succeeds, and (e) ongoing maintenance of the landscaping in conformity with the plan.

iii. Requiring that the Catanzarites paint or stain the existing stairway in a color approved by the Commission that minimizes its visibility.

iv. Requiring recordation of a deed restriction against the Hazel Properties that (a) replaces the existing Deed Restriction on the Hazel Properties, Document No. 94-0592573, recorded in the Official Records of Orange County, California, to specifically exclude the existing stairway from the restriction, and (b) puts future owners on notice regarding terms and conditions of the permit.

d. The Catanzarites shall bear all fees and costs required of coastal development permit applicants under the Coastal Act in connection with their coastal development permit application for the Resubdivision, except that the after-the-fact permit application fee payable by Catanzarites at the time of filing the coastal development permit application under 14 Cal. Code of Regulations section 13055(d) shall be limited to \$48,420.



2. Conditions Precedent to Settlement.

a. This Agreement and the provisions of Paragraphs 3 through 16, inclusive, below, shall have no force and effect unless one of the following occurs, which shall be conditions precedent to the effectiveness of this Agreement and of the provisions of Paragraphs 3 through 16, inclusive, below:

i. The Commission approves the Catanzarites' coastal development permit application for the Resubdivision and stairway as described in Paragraph 1, above (including subject to one or more of the conditions described in Paragraph 1(c)(i)-(iii), above). The Commission's vote at a public hearing so approving the Catanzarites' coastal development permit shall constitute satisfaction of the condition precedent described in Paragraph 2(a) above, whether or not the Catanzarites accept the coastal development permit so approved.

ii. The Commission approves the Catanzarites' coastal development permit subject to conditions in addition to or different from those conditions described in Paragraph 1(c)(i)-(iv), above. In such event, the condition precedent described in Paragraph 2(a) above shall be satisfied only if the Catanzarites accept the coastal development permit so approved. The Catanzarites' acceptance of the coastal development permit will be deemed complete upon the Catanzarites' transmittal of confirmation in writing of their acceptance received within 30 days of the public hearing on the application. If the Catanzarites do not accept the coastal development permit within 30 days of the public hearing on the application, the condition precedent described in Paragraph 2(a) above will be deemed unsatisfied and this Agreement shall terminate.

b. In the event the Commission denies the Catanzarites' coastal development permit application, or in the event the Catanzarites do not accept the coastal development permit in the circumstances described in Paragraph 2(a)(ii), above, this Agreement including its recitals shall be void and of no effect, except only that this Section 2.b. shall survive, the parties will be returned to their respective positions with regard to the Actions as if this Agreement had never been executed, and none of the Parties shall be deemed to have waived any rights against the other. In such event, (1) no party to this Agreement shall argue, attempt to introduce into evidence, or question any witness in cross- or direct examination in either of the Actions (at trial or in pre- or post-trial proceedings) about any of the terms of this Agreement, about drafts of this Agreement, or about the fact that any of the Parties executed this Agreement; and (2) any evidence about the Catanzarites' application, processing and pursuit of the after the fact coastal development permit, public hearings related thereto, comments by private landowners related thereto, and/or the fact that the Catanzarites pursued the coastal development permit shall be subject to Evidence Code § 1152 and applicable case law.

c. A court order staying the Declaratory Relief Action, including the provisions of Code of Civil Procedure section 583.310 (i.e., the 5-year rule) for a period of not less than six months to allow the Parties to consummate this Agreement.





d. Pending the hearing on the coastal development permit for the Resubdivision, the Catanzarites shall undertake no development, construction or landform alteration at 352 Hazel. Should the Commission determine that the Catanzarites have violated this provision, the Commission may terminate this Agreement, withdraw any pending coastal development application, any and all permit fees paid by the Catanzarites shall be forfeited. The Commission acknowledges that the Catanzarites will request that the City continue its building permit for the 352 Property without the need for construction; however, should the City refuse to do so, the Commission agrees that the Catanzarites shall not prejudice their vested rights claim by not pursuing their City building permit during the Application process. By agreeing to this provision, the Commission in no way acknowledges or agrees that the Catanzarites have a vested rights claim.

3. Dismissal of Actions With Prejudice.

Within 7 days of the date the Commission votes at a public hearing to approve the Catanzarites' coastal development permit application in accordance with Paragraph 2.a.i., or the the Catanzarites' written notice to the Commission accepting the coastal development permit in accordance with Paragraph 2.a.ii., the Catanzarites will file Requests for Dismissal With Prejudice as to the Commission only in the Declaratory Relief Action, the Writ Action and the Breach of Contract Action. The Catanzarites will provide the Commission with conformed copies of each Request for Dismissal With Prejudice once filed and with copies of the Court's dismissal orders once entered by the Court, at the address for notices listed below.

4. Mutual Releases.

a. Subject to Paragraph 4(b), below, the Commission, for itself and its officers, Commissioners, directors, governing members, staff, attorneys, employees and agents, fully and forever releases the Catanzarites, and each of them, and each of his, her or their officers, directors, shareholders, subsidiaries, affiliates, successors, transferees, assignees, employees, agents, representatives and attorneys from any and all liability, claims (including for attorneys' fees and/or costs), demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the Actions.

b. The release described in Paragraph 4(a), above, shall not apply to, and expressly excludes, all claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action the Commission now holds or may in the future hold arising from any of the following:

i. Alleged violations by the Catanzarites of conditions the Commission imposes on a coastal development permit issued to the Catanzarites on their application described in Paragraph 1, above.

ii. Past or future violations by the Catanzarites of any provisions of the Coastal Act relating to the Property or any other property owned by the Catanzarites, other than claims arising from the Resubdivision and stairway.

c. The release described in Paragraph 4(a), above, shall not apply to, and expressly



excludes, all claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action that any member of the public has against the Catanzarites arising from alleged violations of the Coastal Act. The Commission is not authorized to, and does not, release any such claims on behalf of members of the public.

d. The Catanzarites, and each of them, for himself, herself and themselves, and for each of his, her or their officers, directors, shareholders, subsidiaries, affiliates, successors, transferees, assignees, employees, agents, representatives and attorneys, fully and forever release the Commission, and its officers, Commissioners, directors, governing members, staff, attorneys, employees, agents, representatives, affiliates, successors, transferees and assignees from any and all liability, claims (including for attorneys' fees and/or costs), demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the Actions. Notwithstanding anything herein to the contrary, the Catanzarites expressly reserve any and all claims they have against the City in the Actions or otherwise.

e. The release described in Paragraph 4(d), above, shall not apply to, and expressly excludes, all claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action the Catanzarites may hold against the Commission arising from the Commission's denial of the coastal development permit application described in Paragraph 1, above, or approval of the coastal development permit on terms and conditions different than those specified in Paragraph 1(c)(i)-(iii), above.

f. Each of the Parties acknowledges that there is a risk that, after the execution of this Agreement, one or more of the Parties may incur injury, loss, damage, costs, attorneys' fees, or expenses, which are in some way caused by or connected with the events, transactions, matters and/or issues referred to herein, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. The Parties further acknowledge that there is a risk that such damages as are presently known may hereafter become more serious than the Parties now anticipate. Nevertheless, the Parties, and each of them, acknowledge that this Agreement has been negotiated and agreed upon in light of that realization. All Parties have had the benefit and advice of counsel. The Parties are aware and have been advised by their counsel of the provisions of California Civil Code section 1542, which provide as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Except as provided in Paragraphs 4(b) and (e), above, each of the Parties waives the provisions of California Civil Code section 1542, and any analogous provisions of state or federal statutory or decisional law. Notwithstanding anything herein to the contrary, the Catanzarites expressly reserve any and all claims they have against the City in the Actions or otherwise.

g. The releases set forth in Paragraphs 5(a), (d) and (f), above, exclude and shall not

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|---|
| <b>EXHIBIT# 5</b><br><b>Settlement Agreement</b><br>6 of 9  |
| Application Number:<br><b>5 - 1 4 - 0 6 8 8</b>   |
|  California Coastal Commission |

operate to bar or otherwise affect any rights, claims or causes of action of any of the Parties against another Party arising from the breach of any terms of this Agreement. Notwithstanding anything herein to the contrary, the Catanzarites expressly reserve any and all claims they have against the City in the Actions or otherwise.

5. Parties Bear Their Own Costs. The Parties shall bear their own costs, expenses and attorneys' fees in connection with the Actions and the negotiations, drafting, and consummation of this Agreement.

6. Enforcement of Agreement. The parties stipulate, covenant and agree that the Agreement shall be enforceable by any judge of the Superior Court of the County of Orange pursuant to California Code of Civil Procedure section 664.6. The parties stipulate, covenant and agree that the Superior Court of the County of Orange may retain jurisdiction over the Parties to enforce the terms of this Agreement until performance in full of the terms of this Agreement.

7. Breach of Agreement. Strict compliance with the requirements of this Agreement by all Parties is required. The Parties agree that money damages alone would be an inadequate remedy for a breach of any provisions of this Agreement, and agree that the provisions of this Agreement may also be enforced by a preliminary or permanent mandatory or prohibitory injunction or other equitable order or decree of a court of competent jurisdiction. The agreed remedies set forth above will not be construed to limit or derogate from any other legal or equitable remedy authorized by any applicable law. In any action filed to enforce any terms of this Agreement, the prevailing party in such action shall be entitled to recover its attorneys' fees and costs.

8. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and may not be modified except by a writing executed by each of the Parties. This Agreement supersedes any written or oral agreement(s) or representations(s) that preceded or may have preceded execution of this Agreement. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement.

9. No Assignment. Each of the Parties represents and warrants that he, she, they or it has not assigned or transferred any claims released in this Agreement, and that he, she, they or it is the sole owner of such claims.

10. Notices. Notices to the Parties concerning this Agreement, any of its terms, or the Parties' performance or obligations under the Agreement, shall be given as follows:

If to the Catanzarites, to:

Kenneth J. Catanzarite  
Catanzarite Law Corporation  
2331 West Lincoln Avenue  
Anaheim, California 92801  
Email: kcatanzarite@catanzarite.com  
Tel.: (714) 520-5544  
Fax: (714) 520-0680

If to Commission, to:

Mitchell E. Rishe  
Deputy Attorney General  
State of California, Dept. of Justice  
300 South Spring St., Suite 1702  
Los Angeles, California 90013  
Email: Mitchell.Rishe@doj.ca.gov  
Tel.: (213) 897-6224  
Fax: (213) 620-6005

The Parties shall promptly notify each other in writing of any changes to their contact information listed above.

11. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

12. Representation by Counsel. Each of the Parties warrants and represents that he, she, they or it have been represented by counsel of their own choosing in the negotiation and drafting of this Agreement, and that he, she, they or it understands fully and voluntarily consents to all of the provisions in this Agreement.

13. Interpretation. The terms of this Agreement are the product of arms length negotiations between the Parties. No provision of this Agreement will be construed against the drafter of the Agreement. Any titles or headings of the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties and may not be used for the interpretation of or determination of the validity of this Agreement or any provision of this Agreement.

14. Authorization. Each person signing this Agreement represents and warrants to the Parties that he or she is fully authorized to sign the Agreement on behalf of the Party for whom/which he or she is signing, and thereby to bind such Party to each and all of the terms of this Agreement.

15. Severability. In the event that a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid and in effect unless a Party's consideration materially fails as a result of the invalidity.

16. Counterparts. This Agreement may be executed in two or more counterparts as if all Parties signed one document and each executed counterpart shall be regarded as if it is an original document. Execution may be by facsimile copy or PDF.

Date: \_\_\_\_\_


\_\_\_\_\_  
KENNETH J. CATANZARITE

Date: \_\_\_\_\_

\_\_\_\_\_  
KIM CATANZARITE

**EXHIBIT# 5**  
Settlement  
Agreement  
8 of 9

Application Number:  
**5-14-0688**

 California Coastal  
Commission

Date: March 13, 2014

CALIFORNIA COASTAL COMMISSION



BY: CHARLES LESTER  
EXECUTIVE DIRECTOR

**CALIFORNIA COASTAL COMMISSION**

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

**M E M O R A N D U M**

**FROM:** Jonna D. Engel, Ph.D., Ecologist  
**TO:** John Del Arroz, Coastal Analyst  
**SUBJECT:** Buck Gully Restoration and Protection Project  
**DATE:** July 27, 2011

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**Documents Reviewed:**

RBF Consulting. July 1, 2011. Development Permit Application: Subsequent Information, Buck Gully Restoration Project; for California Coastal Commission Coastal

RBF Consulting. Feb. 6, 2011. Buck Gully Restoration Project - Review of the Restoration Strategy and Protection Measures.

City of Newport Beach and RBF Consulting. October 2010. Initial Study and Mitigated Negative Declaration; Buck Gully Restoration Project (JN 10-104465).

California Department of Fish and Game, South Coast Region. Feb. 2, 2011. Final Lake of Streambed Alteration Agreement; Notification No. 1600-2010-0317-R5; City of Newport Beach, Buck Gully Restoration Project.

Bonterra Consulting (Ann M. Johnston, Principal, Biological Services and Amber S. Oneal, Senior Project Manger/Ecologist). Dec. 8, 2009. Results of Special Status Plant Survey for the Buck Gully Project Site in Corona Del Mar, , City of Newport Beach, Orange County, California . Letter report to Mr. Richard Beck, RBF Consulting.

Bonterra Consulting (Amber S. Oneal, Senior Project Manger/Ecologist and Sam C. Stewart, IV, Project Manager/Ecologist). Nov. 12, 2009. Results of Southwestern Pond Turtle Survey for the Buck Gully Project Site in Corona Del Mar, , City of Newport Beach, Orange County, California . Letter report to Mr. Richard Beck, RBF Consulting.

Bonterra Consulting (Amber S. Oneal, Senior Project Manger/Ecologist). Sept. 10, 2009. Results of Least Bell's Vireo and Southwestern Willow Flycatcher Survey for the Buck Gully Project Site in Corona Del Mar, , City of Newport Beach, Orange County, California . Letter report to Ms. Sandy Marquez, USFWS.

**EXHIBIT# 6****Memorandum****1 of 6**

Application Number:

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Commission

Bonterra Consulting (Amber S. Oneal, Senior Project Manger/Ecologist). June 11, 2009. Results of Coastal California Gnatcatcher Survey for the Buck Gully Project Site in Corona Del Mar, , City of Newport Beach, Orange County, California . Letter report to Ms. Sandy Marquez, USFWS.

Bonterra Consulting (Ann M. Johnston, Principal, Biological Services and Amber S. Oneal, Senior Project Manger/Ecologist). February 14, 2008. Biological Constraints Assessment for the Guck Gully Project Site in Corona Del Mar, City of Newport Beach, Orange County, California. Letter report to Mr. Richard Beck, RBF Consulting.

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Buck Gully Canyon is located in south Newport Beach, between Corona Del Mar and Crystal Cove State Park. It is bordered by the Pacific Ocean to the southwest and residential and commercial development to the southeast, northwest, and north. Pacific Coast Highway bisects the canyon. Buck Creek runs through the canyon within an approximately two square mile watershed that empties at Little Corona Beach. Historically, Buck Creek was seasonal and would dry up in the late spring and summer. However, irrigation associated with single family residences and a golf club built along the hillsides of the watershed in the 1990's has resulted in additional water input to the stream so that it now runs year round.

The shift of Buck Creek from ephemeral to perennial flow, along with a reduction in sediment contributions due to development of the canyon edges has caused significant alterations to the hydrology and physical character of the stream, including significant erosion and degradation of the canyon. Increased flows have scoured the canyon bottom, leading to downcutting, or lowering of the stream elevation. One dramatic example is a 10 foot downcut that migrated 200 feet upstream between 2000 and 2005. Until 2010 a rock outcropping prevented further erosion, however, that outcropping recently failed and the erosion is again progressing upstream. Other impacts include deposition of large amounts of sediment near the stream mouth, reduction in water quality and pervious areas, split stream flows, debris islands, incised channels, flows shifting away from the center of the canyon, and stagnation of open waters.

While Buck Canyon continues to support native habitat, the section below Pacific Coast Highway is significantly degraded because of the alterations described above as well as from incursion of non-native and invasive plants. The large increase in the amount of water flowing through Buck Canyon and the change in water flow patterns is mirrored by changes in the biological community. The City of Newport Beach LUP provides the following description for the portion of Buck Gully below Pacific Coast Highway:



*The lower (western) portion of Buck Gully is isolated from the upper Buck Gully by the Coast Highway. This area is closely confined by residential development on the south and north. The proximity to development, accessibility by local residents and their pets, and abundance of non-native ornamental plant species detract from the quality of habitat for wildlife species in this area. The upper (eastern) portion of Buck Gully is a broad, open, relatively undisturbed canyon. Coastal sage scrub and mixed chaparral dominate much of the area, except for the riparian corridor along the canyon bottom and the tops of the canyon, which are influenced by the adjacent residential development. Much of the native vegetation near the rim of the canyon has been removed to reduce wildfire hazard. Ornamental and non-native plant species from the adjacent residential development have encroached into Buck Gully, especially in the lower, narrow portions. Annual grasslands in Buck Gully consist of nonnative annual grasses and forbs. Some non-native inclusions were also observed in the Diegan coastal sage scrub, southern mixed chaparral, and southern willow scrub habitats. Potential impacts to the natural habitats in this study area include erosion, contaminated urban runoff, increased human activity, ambient noise, invasive species, and uncontrolled public access.*

In order to restore native habitats, stabilize the bed gradient of lower Buck Gully, and reduce the potential for gradual or catastrophic failure of the adjacent canyon slopes, the City of Newport Beach is proposing a restoration and slope protection project similar to the one successfully completed in Morning Canyon which is immediately east of Buck Gully Canyon (CDP 5-05-221). The main goals of the Buck Gully restoration and protection project are to 1) re-establish the stream in its natural location near the center of the canyon, 2) stabilize canyon slopes by eliminating uncontrolled erosion, 3) stabilize the streambed and restore native habitats including the wetland community at the mouth of the canyon and the riparian habitat throughout, and 4) improve water quality within the stream and ocean.

To accomplish these goals the city is proposing to install six bendway weirs, three gabion drop structures, two subsurface flow wetlands, and remove non-native and invasive species and restore native habitats. The bendway weirs are designed to slow and redirect flow toward the center of the stream in order to reduce channel bank erosion. The weirs will be placed into the hillside, covered with soil, and planted with native riparian vegetation to mimic a natural stream bank. The gabion drop structures are designed to maintain a more natural stream channel, reduce stream energy, and establish a stable stream bed to address the current downcutting and severe stream channel migration problems. The drop structures will be covered with soil and planted with native vegetation. The subsurface flow wetlands are features of the project designed to improve water quality. They will be constructed between the drop structures and consist of a mix of sand, gravel, and soil wrapped with filter fabric. The subsurface flow wetlands will filter water and eventually become vegetated with native wetland/riparian plants. Once the bendway weirs, gabion drop structures, and subsurface flow wetlands are in place, the city will remove remaining non-native and invasive plants and restore native wetland, riparian, and coastal sage scrub habitats. A





Buck Gully restoration and monitoring plan must be submitted to the Commission for review and approval before the permit for the project is issued to the city.

The city contracted BonTerra Consulting to perform biological surveys of Buck Gully Canyon. BonTerra mapped plant communities, surveyed for special status plant species, and conducted protocol surveys for California Gnatcatcher, *Poliioptila californica californica*; Least Bell's Vireo, *Vireo bellii pusillus*; Southwestern Willow Flycatcher, *Empidonax traillii extimus*; and southwestern pond turtle, *Actinemys marmorata pallida*. BonTerra mapped coastal freshwater marsh, southern arroyo willow riparian habitat, ornamental, and coastal bluff scrub habitat. They found that all of the habitats were invaded to a greater or lesser degree by non-native and invasive plants. They identified three special status plant species, Santa Catalina Island desert-thorn, *Lycium brevipes var. hassei*; California box-thorn, *Lycium californicum*, and wooly seablite, *Suaeda taxifolia*; within coastal bluff scrub habitat which will not be impacted by the Buck Gully restoration and protection project.

BonTerra conducted protocol surveys for California gnatcatchers, least Bell's vireos, and southwestern willow flycatchers, in April, May, June, and July 2009. They did not observe any of these species during their respective surveys. Yellow warblers, *Dendroica petechia*, a CDFG Species of Special Concern, were observed in the southern arroyo willow habitat in April and May. However, they were not observed in June or July so BonTerra assumed they were migrants. BonTerra conducted protocol southwestern pond turtle surveys in May 2009; no southwestern pond turtles were observed during their surveys.

On Friday, July 1<sup>st</sup>, 2011, John Del Arroz, Coastal Analyst, and I, visited Buck Gully Canyon with Robert Stein and Iris Lee from the City of Newport and Richard Beck and Wesley Salter from RBF Consulting. We entered the west side of the canyon via the public pathway to Little Corona Beach. Closest to the beach the canyon supports coastal bluff scrub dominated by native species including California buckwheat, *Eriogonum fasciculatum*; coast goldenbush, *Isocoma menziessii*; and large salt bush, *Atriplex lentiformis*. The canyon mouth where Buck Gully stream outflows is a wetland habitat dominated by, and nearly full of, cattail, *Typha sp.*, with coyote bush, *Baccharis pilularis*, and non-native castor bean, *Ricinus communis*; nasturtium, *Tropaeolum majus*; common celery, *Apium graveolens*; and African umbrella-sedge, *Cyperus involucratus*, along the edges.

To enter the canyon we climbed a metal guard rail and crossed through degraded coastal sage scrub habitat that is mapped as "ornamental" by BonTerra. I identify the lower half of the area mapped as ornamental by BonTerra, closest to the beach, as "degraded coastal sage scrub", because it does support a significant amount of coastal sage scrub species. The area I was able to observe, below and south of the restrooms, is dominated by both native and non-native species including native coastal sage, *Artemesia californica*; lemonade berry, *Rhus integrifolia*; coyote bush, toyon, *Heteromeles arbutifolia*; California sunflower, *Encelia californica*; California buckwheat, and coast goldenbush and non-native myoporum, *Myoporum laetum*; acacia, *Acacia*



sp.; bougainvillea, *Bougainvillea spectabilis*; castor bean, fennel, *Foeniculum vulgare*; ice plant, *Carpobrotus edulis*; mustard, *Hirschfeldia incana*; and nasturtium.

The lower sides of the canyon and the canyon bottom support southern arroyo willow riparian habitat characterized by an extremely thick and invaded understory layer and a depauperate canopy layer. Although historically Buck Gully Creek would be dry in the summer, there was a lot of water flowing through the canyon during our site visit. This shift from an ephemeral to a perennial system, along with an influx of invasive plant species has created a significantly altered riparian habitat. Increased water availability has resulted in replacement of native species adapted to drier conditions with natives, non-natives, and invasive species, adapted to wetter conditions. The existing native trees are low in diversity, low in abundance, and stunted; the understory layer is unnaturally thick; and the creek is choked along much of the reach by native, non-native and invasive species. In addition, ornamental species have been introduced to both hillsides and the canyon bottom from backyard landscaping.

Currently the section of Buck Gully below Pacific Coast Highway supports a significantly altered and invaded southern riparian habitat and a stream that is causing serious hillside undercutting and canyon bottom erosion. Healthy southern riparian habitat would support a canopy layer consisting of sycamore, *Platanus racemosa*; coast live oak, *Quercus agrifolia*; black cottonwood, *Populus balsamifera*; and arroyo willow, *Salix lasiolepis*. However, the lower section of Buck Gully only supports a few scattered and stunted sycamore trees that are crowded by dense thickets of arroyo willow, blackberry; *Rubus ursinus*; poison oak, *Toxicodendron diversilobum*; and non-native and invasive species including date palms; *Phoenix cnariensis*; myoporum, and giant reed, *Arundo donax*. Typical southern riparian understory habitat would include arroyo willow but at significantly lower densities as well as a more diverse and more evenly distributed array of natives. We had difficulty walking up stream because the vegetation was so thick. The stream itself is lined with some natives such as California bulrush, *Scirpus californicus* and rush, *Juncus sp.* as well as non-natives including nasturtium; periwinkle, *Vinca minor*; and English ivy, *Hedera helix*. The stream is also choked along much of the lower reach by non-natives including water cress, *Rorippa nasturtium-aquaticum*. The canyon bottom is a maze of thick vegetation, scoured out stream channels, piles of debris, and large mounds of deposited sediment. We stopped when the vegetation became too thick to continue and where a large rock and palm tree formed a waterfall and were temporarily blocking further canyon bottom erosion.

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat as:

*...any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Although no listed species were found in the riparian habitat, southern arroyo willow riparian habitat is designated rare by the California Department of Fish and Game,



Biogeographic Data Branch, California Natural Diversity Database. In addition, southern arroyo willow riparian habitat is easily disturbed and degraded by human activities and development as evidenced by the current degraded condition of this habitat within Buck Gully. Based on its rarity and susceptibility to disturbance, the southern arroyo willow riparian habitat does rise to the level of environmentally sensitive habitat (ESHA).

While the habitat is degraded and riddled with non-native and invasive species, it still supports valuable ecosystem services and native species.

Coastal Act Section 30240 states the following:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Restoration is a resource dependent, allowable use in ESHA. The Buck Gully restoration and protection project will return the Buck Gully stream corridor to a more natural southern arroyo willow riparian habitat by removing non-native and invasive plant species, restoring native habitat, managing and maintaining the stream channel and flows, and improving water quality. Without intervention, lower Buck Gully will remain constantly disturbed and limited to an early successional stage (pioneer) community best suited to opportunistic (weedy) species. The Buck Gully restoration and protection project will stabilize the stream bed and remove non-native and invasive species so that natural ecosystem processes and functions can proceed and a more natural and biologically diverse southern riparian community can become established. In addition to restoring the riparian corridor, the restoration and protection project will also improve the coastal sage scrub habitat along the upper hillsides of Buck Gully by removing non-native and invasive species. Another outcome and ecological benefit of the project will be a stronger distinction between the upper and dryer (xeric) coastal sage scrub community and the lower and wetter (mesic) southern arroyo willow riparian community. Finally, restoration of the coastal sage scrub and southern riparian habitat is also important in terms of providing appropriate habitat for rare species such as California gnatcatchers, least Bell's vireos, southwestern willow flycatchers, and southern pond turtles. And while southern steelhead, *Oncorhynchus mykiss*, have not historically been recorded in Buck Gully Creek, the Buck Gully restoration and protection project will create more suitable steelhead habitat.



**EXHIBIT# 7**

CDP 5-94-047

(Finch Trust)

1 of 4

Application Number:

**5-14-0688**California Coastal  
Commission

STATE OF CALIFORNIA—THE RESOURCES AGENCY

Th 19b

PETE WILSON, Governor

**CALIFORNIA COASTAL COMMISSION**SOUTH COAST AREA  
15 W. BROADWAY, STEAMBOAT ACTION CLUB  
P.O. BOX 1430  
LONG BEACH, CA 90801  
(310) 590-9071

Filed: April 18, 1994  
 49th Day: June 6, 1994  
 180th Day: October 15, 1994  
 Staff: John T. Auyong  
 Staff Report: September 1, 1994  
 Hearing Date: September 13-16, 1994  
 Comm. Action on Findings:



- Approved as Recommended  
 Denied as Recommended  
 Approved with Changes  
 Denied  
 Other

*copy of  
original  
staff report  
& CDP  
attached*

**STAFF REPORT: REVISED FINDINGS**

APPLICATION NO.: **5-94-047**  
 APPLICANT: Katherine S. Finch Trust AGENT: Charles Hurst  
 PROJECT LOCATION: 344-352 Hazel Drive, Corona del Mar, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Approval of Tentative Parcel Map No. 93-186 to reconfigure five lots and a portion of a sixth lot which together currently comprise approximately 0.8 acres into three new lots. No increase or decrease in acreage would result. No construction or landform alteration will be permitted below the 71.16 feet above Mean Sea Level contour line as required by Special Condition No. 8 of approval of Resubdivision No. 1002 by the City of Newport Beach.

Zoning: R-1  
 Plan designation: Single-Family Detached Residential

LOCAL APPROVALS RECEIVED: Resubdivision No. 1002, Approval-in-Concept 238-94

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan

COMMISSION ACTION: **Approval with conditions**

DATE OF COMMISSION ACTION: **May 12, 1994**

COMMISSIONERS ON PREVAILING SIDE: Calcagno, Doo, Giacomini, Glickfield, Karas, Rynerson, Rick, Wright, Chairman Gwyn

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on May 12, 1994 approving with conditions coastal development permit 5-94-047 for: (1) approval of Tentative Parcel Map No. 93-186 to reconfigure five lots and a portion of a sixth lot which together currently comprise approximately 0.8 acres into three new lots, with no increase or decrease in acreage; (2) no construction or landform alteration below the 71.16 feet above Mean Sea Level contour line (consistent with Special Condition No. 8 of approval of Resubdivision No. 1002 by the City of Newport Beach); and (3) an offer-to-dedicate a portion of vacated Glen Drive for public access purposes.

Application Number:

**5-14-0688**California Coastal  
Commission**I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

**Approval with Conditions.**

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public road and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation provisions of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS:****1. Corrected Draft Final Map**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a corrected draft Final Parcel Map, as it would be submitted for recordation, showing that the incorrectly denoted 85 foot contour line has been correctly denoted as the 71.16 feet above Mean Sea Level contour line, since no construction or landform alteration would be allowed below this contour line consistent with the applicant's project description.

**2. Deed Restriction (Buffer Area/Future Development)**

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director of the Coastal Commission, which shall provide that:

To provide adequate protection for the environmentally sensitive areas within Buck Gully, it shall be required that:

a) no construction or landform alteration will be permitted below the 71.16 feet above Mean Sea Level contour line on all lots proposed by Tentative Parcel Map 93-186 consistent with the applicant's project description, and

(b) a 25 foot wide buffer area as provided for in the City of Newport Beach Certified Land Use Plan shall be established on the rear portions of all lots proposed by Tentative Parcel Map 93-186. Said buffer area shall be measured from the rear (gully side) property line. All construction (including but not limited to gazebos, secondary structures, stairs, fences, new retaining walls, pools of any size or depth, tennis courts or other activity areas) and landform alteration shall be expressly prohibited in said buffer area.

Where said 25 foot wide buffer area and the area below said 71.16 feet above Mean Sea Level contour line overlap, the more restrictive requirement shall take precedence.

The document shall run with the land, binding all successors and assigns, and shall be recorded free and clear of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

Application Number:

**5-14-0688**California Coastal  
CommissionSpecial Conditions (cont'd)3. Offer to Dedicate Easement for Public Access

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record an offer to dedicate an easement, subject to the review and approval of the Executive Director, for public access for road or trail purposes over that portion of land shown on Tentative Parcel Map 93-186 as vacated Glen Drive. Such offer shall be for a period of twenty-one (21) years or until such time as the Commission approves a coastal development permit application by the City of Newport Beach to vacate Glen Drive, whichever comes first.

IV. FINDINGS AND DECLARATIONSA. Project Description

The applicant is requesting approval of Parcel Map 93-186 to reconfigure five lots and a portion of a sixth lot currently comprising approximately 0.8 acres. The City imposed a special condition that no construction or landform alteration can occur below the 71.16 feet above Mean Sea Level (MSL) because the subject site is located adjacent to Buck Gully, an environmentally sensitive area identified in the City of Newport Beach Certified Land Use Plan (Exhibit E). The applicant has amended the project description to include this special condition (see Exhibit B). A single family residence currently exists on part of the site. No development on this residence is being proposed as part of this permit application. The subject site is located between the nearest public roadway and the sea.

B. Environmentally Sensitive Habitat Areas (ESHAs)

Section 30240 of the Coastal Act states:

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

In addition, the City's Certified Land Use Plan (LUP) states, in part:

Between Pacific Coast Highway and the beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper portions of the slopes near the homes at the top of the slopes. This section of Buck Gully provides a good-quality habitat capable of supporting a variety of wildlife.

## Summary of Prior Commission Action in the Subject Area

According to staff records, the Commission has previously taken action on the following projects that are in the immediate project vicinity along Hazel Drive and Evening Canyon Road (the road fronting the homes on the opposite side of Buck Gully):

### Hazel Drive:

On July 16, 1982, the Commission approved Coastal Development Permit 5-82-388 (Zatlin). CDP 5-82-388 allowed the addition of 1,133 square feet of floor area and 172 square feet of deck with a spa to a 1,622 square foot existing single-family residence located at 214 Hazel Drive. No Special Conditions were imposed. The staff report stated that the lot abuts Buck Gully, which the City of Newport Beach considers an environmentally sensitive habitat area (ESHA).

On November 4, 1986, the Commission approved Waiver 5-86-838-W (Medley). CDP 5-86-838-W was a waiver that allowed an addition of a 970 square foot second story to an existing 2,017 square foot single family residence located at 222 Hazel Drive.

On June 15, 1989, the Commission approved Administrative Permit 5-89-353 (Hoshaw). CDP 5-89-353 permitted the remodel and addition of 562 square feet to a 2,788 square foot single family residence located at 212 Hazel Drive. Special Conditions imposed were: 1) conformance with geotechnical recommendations, 2) submittal of a drainage plan which demonstrates that drainage on site will be directed to the street or on-site detention/desilting basins and 3) submittal of an irrigation plan, which minimizes watering of landscaping. The staff report stated that the proposed addition would not extend seaward of any existing structure on site and that there would be no alteration of natural landforms on site. A geology report reported by G. A. Nicoll and Associates for this project site noted the following: "...a 1+/- foot deep recent surficial slope failure at the toe of the rear slope, probably caused by overwatering and drainage at the fill slope." The geology report also stated that it anticipates further ravelling or other minor failures unless the condition is corrected. The geology report concluded that the site was suitable for the proposed project, if the recommendations of the report were implemented.

During the winter storms of 1997 and 1998, Buck Gully experienced severe erosion, downcutting and widening of the drainage channel. In addition, a concrete outlet structure at the beach was destroyed along with the lower section of the public walkway to Little Corona Beach at the beach level.

On January 29, 1998, Emergency Permit No. 5-98-010-G (City of Newport Beach) was issued by the Executive Director. The Emergency Permit was for the removal of broken concrete on the landing, flattening of wall debris, the placement of filter fabric, approximately 120 cubic yards of rip-rap around storm damaged landing and repair of the public access ramp.

On August 13, 1998, a follow-up Coastal Development Permit 5-98-010 (City of Newport Beach) for the Emergency Permit CDP 5-98-010-G was approved by the Commission. The permit approved: reconstruction of a damaged concrete structure, reconstructing an existing 8" sewer line which crosses Buck Gully, removal of approximately 30' of a 24" storm drain,

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restoration of the stream bed, repair of the public access ramp to Little Corona State Beach and revegetation of the project site with native vegetation. Special Conditions imposed were: 1) the development be in conformance with the condition of approval for the Department of Fish and Game's (Agreement Regarding Proposed Stream or Lake Alteration" (5-141-98); 2) prior to issuance of permit, submittal of a "Conceptual Revegetation Plan and Monitoring Program" for review and approval by the Executive Director and 3) development shall not occur on the access ramp from Ocean Boulevard leading to the beach between the beginning of the Memorial Day weekend to the end of the Labor Day weekend.

On July 7, 1998, the Commission approved Coastal Development Permit 5-98-084 (Justice). CDP 5-98-084 allowed the demolition of a 3,200 square foot, one story residence with detached garage and construction of a 24 foot high, three story (including basement), 6,739 square foot single family residence with a 527 square foot garage at 210 Hazel Drive. Grading consisted of 650 cubic yards of cut and 50 cubic yards of fill. Special Conditions imposed were: 1) conformance with geotechnical recommendations, 2) disposal location and 3) submittal of a landscaping plan. The residence is located on a southwest facing slope (coastal bluff) overlooking Buck gully and Little Corona Beach. The property alignment is towards the coast and not Buck Gully. The site is situated on a coastal bluff, but is separated from the beach and coastal bluff edge by a 10 foot wide public walkway to Little Corona Beach from the terminus of Ocean Boulevard and open space. Therefore, the subject site is not exposed to wave attack. The approved residence is a minimum 40 feet from the 10 foot wide public walkway. At a minimum, therefore, the approved residence is at least 50 feet from the bluff edge.

On December 11, 2001, the Commission approved Coastal Development Permit No. 5-01-182. CDP 5-01-182 approved: demolition of an existing single-family residence and construction of a 25'-2" high, 4,138 square foot two-story with a basement single family residence with an attached two car and one car garage totaling 710 square feet at 218 Hazel Drive. Also, construction of retaining walls, fence, deck/terraces and stairways will also take place. In addition, a drainage line from the site leading into Buck Gully is proposed. A total of 800 cubic yards of grading will take place. Grading will consist of 400 cubic yards of cut, 80 cubic yards of fill and 320 cubic yards of export. The proposed structure will be supported by shallow spread footings or continuous footings and/or moderately deep caissons.


On January 10, 2008, the Commission approved Waiver 5-07-356-W. CDP 5-86-838-W was a waiver that allowed an addition and remodel to an existing 1,657 square foot one-story single-family residence with an attached 236 square foot one-car garage at 218 Hazel Drive. The proposed project includes: 1) demolition of the existing attached 236 square foot one-car garage; 2) construction of a new 670 square foot three-car garage; 3) an addition of 180 square feet of livable area to the 1<sup>st</sup> floor; and 4) a new 1,091 square foot 2<sup>nd</sup> floor over the new three-car garage and new livable area. Post project, the one-story single-family residence will be 2,928 square feet with an attached 670 square foot three-car garage.

On August 10, 2011, the Commission approved Coastal Development Permit No. 5-10-238. CDP 5-10-238 approved stream restoration and sedimentation control project consisting of installation of three stepped gabion grade control structures, two sub surface flow wetlands, and

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five bendway weirs, revegetation with native plants, and 10,000 cubic yards of balanced cut and fill within the lower reach of Buck Gully.

Coastal Development Permit P-5262 allowed for an addition to a single-family residence at 222 Hazel Drive.

**Evening Canyon Road:**

Coastal Development Permit 5-82-122 approved demolition and construction of a single-family residence with a pool at 211 Evening Canyon Road. Coastal Development Permit amendment 5-82-122-A amended conditions 2 and 3 of the permit.

Coastal Development Permit No. 5-84-779 approved a single-family residence with pool and garage at 211 Evening Canyon Road.

Coastal Development Permit No. 5-85-148 approved a remodel and addition of a lower floor, as well as construction of a pool and spa at 215 Evening Canyon Road.

Waiver 5-09-252-W allowed for the combination of two (2) existing lots to create (1) 1.003 acre parcel for the properties at 227 & 233 Evening Canyon Road.

P-8115 allowed for the remodel of the single-family residence, including addition of a deck at 227 Evening Canyon Road.

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