STATE OF CALIFORNIA – THE RESOURCES AGENCY PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

Filed: 6/16/97
Staff: LRO-SD
Staff Report: 7/16/97
Hearing Date: 8/12-15/97

STAFF REPORT: REQUEST FOR RECONSIDERATION **WED 12a**

APPLICATION NO.: A-6-LJS-96-162-R

APPLICANT: Thomas and Cinda Hicks AGENT: Matthew A. Peterson

PROJECT LOCATION: 8504 El Paseo Grande, La Jolla, San Diego, San Diego County. APN 346-090-12

PROJECT DESCRIPTION: Demolition of an existing two-level (1-story from east elevation and 2-story from west elevation), 12-foot high (east elevation), 2,300 sq.ft. single-family residence and construction of a three-level (2-story from east elevation and 3-story from west elevation), approx. 24-foot high (east elevation), 10,920 sq.ft. single-family residence on a 12,551 sq.ft. oceanfront lot.

COMMISSION ACTION AND DATE: Approved with Conditions, May 14, 1997

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted. (14 Cal. Code Regs., tit. 14, § 13109.2.)

The regulations state further that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states:

> The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

APPLICANT'S CONTENTION: In the attached letter dated 6/9/97, the applicant requests reconsideration of Special Conditions No. 1 and 2 on the grounds that the following errors of fact and law have occurred: 1) the Commission's action is a de facto Local Coastal Program amendment in violation of its statutory authority; 2) the applicant was not provided a fair or adequate opportunity to evaluate the Special Condition No. 1 prior to the hearing; 3) the applicant was unable to clarify issues after the Commission closed the public testimony portion of the hearing; 4) there is no justification for the condition requiring elimination of the second story; 5) the staff report contained factual errors; and 6) the applicant's request for a continuance was denied.

SUMMARY OF STAFF'S RECOMMENDATION:

The staff recommends that the Commission deny the request for reconsideration.

I. MOTION AND STAFF RECOMMENDATION:

Motion:

"I move that the Commission grant reconsideration of Special Conditions No. 1 and 2 of Coastal Development Permit No. A-6-LJS-96-162."

Staff Recommendation:

The staff recommends a NO vote. This will result in a denial of reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution to Deny Reconsideration:

The Commission hereby denies the request for reconsideration of Special Conditions No. 1 and 2 of Coastal Development Permit No. A-6-LJS-96-162 and adopts the findings set forth below on the ground that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and no error of fact or law has occurred which has the potential of altering the Commission's initial decision.

II. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

The applicant's first contention is that the Commission's action is a de facto LCP amendment in direct violation of its statutory authority, which is an error of law. Specifically, the applicant contends that the Commission imposed a new height restriction calculated by drawing a "stringline" from the ridge of adjacent homes and limiting the height of the subject proposed home to that of the two adjacent homes. The applicant further argues: "This new height limit has no

basis in law and is clearly an arbitrary land use restriction." It is also stated that the new height limit is inappropriate because the voters of San Diego approved "Proposition D" which allows structures in the coastal zone to be 30-feet high. The applicant believes that the imposition of a new height requirement for the subject residence results in a de facto amendment to the certified LCP because there are no provisions in the LCP which would support the restriction.

The Commission finds that Special Condition No. 1 requiring elimination of the second story of the proposed home is supported by the LCP policies that protect existing view corridors and support maintenance of the community character. These policies are discussed in detail in the Commission findings in support of its action, which are set forth in "Staff Report and Recommendation on Appeal," dated April 24, 1997, as supplemented on May 12, 1997 (the "Staff Recommendation"). The Commission's application of these policies to the proposed development is reasonable and supported by substantial evidence.

While there is a citywide 30-foot height limit in the zoning code, as discussed in the public hearing on this item, the height of structures must also be consistent with the policies and other ordinances of the LCP. Discretionary review of new development is achieved through the coastal development permit process which involves not only applying the zoning requirements, but also the LCP land use plan policies. In the subject case, the proposed development was not consistent with the LCP policies, as proposed, and needed to be revised in order to be consistent. Because the proposed residence was located in a view corridor, and because of its location, on the seaward site of the street, it directly impacted the public views from a public scenic roadway. The LCP supports the use of restrictions to make new development consistent with its policies. Therefore, the Commission did not amend the LCP through its action on the subject development and no error of law has occurred.

A second contention raised by the applicant is that the applicant was not provided a fair and adequate opportunity to evaluate the staff recommended condition limiting the height of the proposed home. The applicant states: "Applicant did not find out until the day before the hearing that staff had proposed and recommended a revised height limit." Staff changed the wording of Special Condition No. 1 by an addendum to the staff report; the addendum was dated May 12, 1997 and distributed on May 13, 1997, the day before the hearing. However, the change in wording did not revise the height limit, it simply clarified the height limit. Further, staff made this clarification in response to an assertion by the applicant's representative that the wording of the condition as originally proposed could be misinterpreted. The original condition language for Special Condition 1(a), which was included in the staff report of April 24, 1997 stated:

> 1(a). The proposed residence shall not exceed 12 feet in height in one-story or an elevation of +44.5 feet as measured according to the City of San Diego height regulations and as shown in Exhibit No. 1;

The staff report accompanying this recommended condition indicated that the condition was intended to limit the height of the proposed home to the height of the nearby homes on the same side of the street. These homes are limited to 12 feet in height on the East elevation by deed

restrictions. The applicant's representative suggested that because of the City's methods for determining height, the language of the proposed special condition 1(a) would result in a residence that was of a lower elevation than the ridge lines of the adjacent homes to the immediate north and south. Commission staff agreed that limiting the height of the proposed home to 12 feet in height might not carry out the intent of limiting the height of the proposed home to the height of the adjacent homes.

Commission staff agreed to clarify the condition language in order to eliminate the uncertainty as to where the height should be measured from, as it related to the adjacent homes to the immediate north and south. The revised condition language reads as follows:

> 1(a) The proposed residence shall not, at any point, exceed an elevation derived from a stringline drawn between the maximum roof elevations of the residential structures adjacent to the north and south of the subject site, as shown in concept on the attached Exhibit No. 11. ...

This above described "revision" did not revise the staff recommendation--it merely *clarified* the height limit that was being required through the special condition. The second story was already eliminated in the first version of the special condition. The clarification to the condition did not further restrict the number of stories that could be constructed from the east elevation. Thus, the applicant's receipt of the April 24 staff report with the original condition language (which was mailed to the applicant on April 25, 1997) and receipt of the May 12 addendum the day before the hearing provided an adequate opportunity to consider the staff recommendation that the height of the home be limited to be consistent with the neighboring homes on the same side of the street.

The applicant also contends that the special condition requiring elimination of the entire second story was not justified since only a small portion of the second story extended into the view shed. However, the Commission's condition is based upon both protection of views and maintenance of community character, as demonstrated by the findings. The Commission found that the proposed residence would not only adversely impact public views from a scenic public roadway, but would also be inconsistent with the community character of the surrounding neighborhood in terms of its bulk, size and height. The residence, at a proposed size of 10,920 sq.ft., would be much greater than any of the homes in the entire block, which range in size from approx. 1,518 sq.ft. to 5,000 sq.ft. As discussed in the findings, the certified LUP for the La Jolla area contains policies that support protection of public views and community character. Limiting the proposed development to one story will protect both the existing view corridor and the community character. The findings state:

> . . . [T]he Commission is attaching a condition which requires revised plans for a redesign of the home to reduce its height, scale and bulk in order to both preserve the existing view corridor, as well as to make it consistent with the community character of the homes in the surrounding area. (Staff Recommendation at page 18.)

Thus, the Commission finds the condition was reasonably related to the adverse impacts of the proposed development and would make the proposed development consistent with the LCP. For this reason, the Special Condition No. 1 is justified and no error of law has occurred.

The applicant also objects to what he refers to as an "expanded definition" of a view corridor; contending that the characterization of the view corridor directly conflicts with the LCP which distinguishes between "viewsheds" vs. "view corridors." The applicant asserts that after the public hearing was closed, there was no opportunity for the public or the applicant to clarify the issues or address the Commission and therefore the applicant was precluded from correcting the record after the public testimony portion of the hearing was closed.

The Commission finds that the issue of what views are protected by designation of a view corridor was fully discussed in the staff report and during the public testimony portion of the public hearing. Specifically, the staff report stated:

> The applicant has also challenged the interpretation of what constitutes a "view corridor" and has interpreted the view corridor to consist of linear parallel lines along the public right-of-way of Camino del Collado, curb-to-curb (excluding sidewalks) which would extend westerly into the setback area of the two residences at the streetend. Thus, the applicant contends the views to the horizon across the top of the home are not part of a view corridor. This interpretation is due to the definition of view corridor contained in the draft La Jolla LUP referenced above. However, in past Commission actions addressing public view blockage, the Commission has found that the symbol of an arrow shown in a westerly direction on the visual access maps of the certified LCP means more than a "linear" view to the ocean. Wherever a view corridor exists, there is typically a "viewshed" associated with such a view corridor. In this particular case, the subject site is located within the viewshed of the designated visual access corridor. The Commission finds the fact that the definition of view corridor contained in the draft LUP may be interpreted to eliminate a viewshed, is reason for modification to that language in the future. (Staff Recommendation at page 12.)

Furthermore, in a letter dated 5/14/97, the applicant objected to the staff interpretation of a view corridor. The applicant had also expressed these objections to staff in a meeting on 2/20/97 between the applicant and Commission staff. Thus, clearly the applicant knew what staff's recommendation was regarding the protection of view corridors and had ample opportunity to discuss this as an issue at the public hearing on the project. After closing the public testimony portion of the hearing, the Commissioners discussed the issue of what views are protected by a view corridor designation. The discussion addressed the staff recommendation as well as the arguments raised during the public hearing. The applicant had an opportunity during the hearing to present his views, rebut the arguments made during the hearing, and to describe his objection to the staff recommended interpretation of the LCP. After the close of the public testimony, the Commission ultimately adopted the staff recommendation. The applicant had advance notice of the staff recommendation and had an adequate opportunity to respond to it at the public hearing. Thus, the applicant had a fair and adequate opportunity to address the view corridor issue prior to the Commission action.

Furthermore, contrary to applicant's assertions, the certified LCP does not contain or define the term "viewshed" nor does it define the term "view corridor". The applicant's contentions as to the meaning of these terms are based on a Land Use Plan amendment that was never effectively certified and therefore is ineffective. The Commission's interpretation of the currently certified LCP view corridor protection policies and its application of these policies to the applicant's proposed development is reasonable and supported by the LCP. The Commission discussed this issue in full detail at the May 14 hearing and ultimately agreed with the staff interpretation of a view corridor to which the applicant had had an adequate opportunity to review, consider and respond. Therefore, this issue is not new relevant information which could have altered the Commission's decision on the matter.

The applicant's last contention is that the April 24, 1997 staff report contained errors of fact as shown in a table attached to the request for reconsideration. The asserted errors of fact relate to the square footages of the residences in the subject block. These residences are described in a list on page 15 of the staff report. The applicant's table purports to provide more accurate square footage for these homes. The applicant's square footages are based upon information taken from 1994-95 TRW records, as noted in the footnote of the applicant's table. The list on page 15 of the staff report identifies the square footages of residences as approved in coastal development permits issued by the Coastal Commission. However, Exhibit No. 8 to the staff report shows the square footages of these same residences based upon the 1995/96 TRW records. Thus, the information provided by the applicant is not new information nor is it necessarily the most accurate. The square footages based upon the latest TRW (which was included in the staff report) shows that some homes are slightly larger than when first approved for construction. However, the existing sizes are significantly smaller than the proposed development. Thus, the TRW information supports the Commission finding that the proposed home is out of character with the surrounding homes.

In addition, the last column of the applicant's table labeled as "Remarks", includes information indicating which properties have a 12-foot high deed restriction attached to the site; however, again, this information was also included in the Commission staff's report in Exhibit No. 8 and is not new information. Lastly, the applicant has indicated that for three properties (8526, 8534 and 8516 El Paseo Grande), the residences are actually three stories from the west elevation as opposed to two stories and for one project located at 8564 El Paseo Grande, the residence is actually two stories vs. 1-story from the east elevation as noted in Exhibit #8 of the staff report. In response to this contention, even if this were the case, the changes pertaining to the western elevation of the residences would not have affected the public view corridor. Furthermore, it was acknowledged in the staff report as well as at the public hearing that there were numerous residences in the subject block that appeared as three-stories from their western elevations. With regard to the property at 8564 El Paseo Grande, staff has photographs and slides which document that the residence is only one story from the east elevation. In addition, the applicant was well aware of the number of stories of each home on each lot and had numerous photographs of all the residences in the block, which were attached as exhibits to letters addressed to each Commissioner, and which were also shown at the Commission hearing. Thus, there was a visual depiction of the size of the homes in

the surrounding neighborhood. Thus, the information presented by the applicant is either not new or if new, does not have the potential to alter the Commission's decision.

The identification of previously unknown information and the revisions made by the applicant are not new information that could not have been presented at the hearing, and are not errors of fact that have the potential for altering the Commission's decision.

Finally, the applicant states in the conclusion of the request for reconsideration that if the applicant had known the Commission would recharacterize view corridors into "viewsheds", that a chance to redesign the proposed residence to eliminate any encroachment into the viewshed could have been considered. Also, the applicant's representative stated that a request for a continuance was made by the applicant to consider the opportunity to redesign the residence to address the view corridor issue; however, this request was rejected at the hearing. In response to these final statements made by the applicant, the Commission finds that the applicant had ample opportunity to suggest a redesign of the residence to the Commission during the public testimony portion of the hearing. Commission staff had made its concerns known to the applicant relatively early in the review process in a meeting held at the Commission's San Diego area office on 2/20/97, as earlier noted. The applicant also was provided a copy of the April 24 staff report, which sets forth staff's recommended application of the LCP policies to the proposed development. Thus, the applicant had ample opportunities to prepare a possible redesign of the proposed residence and could have presented such a redesign to the Commission at its hearing on May 14, 1997.

In addition, in response to the statement that the Commission denied the applicant's request for a continuance, the Commission's regulations provide applicants with the right to one postponement of a hearing. (See Cal. Code Regs. tit. 14, § 13085.) These regulations allow for granting this right to a postponement prior to the public hearing, not after the hearing. In this case, not only did the applicant request the postponement after the hearing, he requested it after the Commission had placed a motion on the table and had voted on an amending motion. Furthermore, the applicant had already been granted a continuance, which had resulted in the proposed project being continued from the April 1997 meeting to the May 1997 meeting. Thus, the applicant did not have a right to a continuance. The granting of a continuance was solely within the Commission's discretion. The Commission's denial of a continuance was reasonable given the applicant's adequate opportunity to review the issues prior to the hearing and to present his views at the hearing, and given the amount of time already spent on this item by the Commission and Commission staff.

Finally, the applicant requests reconsideration of both Special Conditions No. 1 and 2. The applicant's request however, does not identify any reasons for reconsideration of Special Condition No. 2, which addresses landscaping. The Commission is not aware of any grounds for reconsideration of Special Condition No. 2.

In conclusion, the Commission finds that the applicant has not presented relevant new evidence or errors or law or fact that have the potential for altering the Commission's decision to impose

Special Conditions No. 1 and 2. As such, the Commission finds that there is no basis for reconsideration of these conditions.

(6162-R.doc)

THOMAS O. HICKS

June 9, 1997

Chairman Rusty Areias and Members of the
CALIFORNIA COASTAL COMMISSION
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

Re: Application No. A-6-LJS-96-162

Dear Chairman Areias and Members of the California Coastal Commission:

Pursuant to Coastal Commission Regulations Section 13109.1 et. seq., please accept this as our formal request for reconsideration of the special conditions which were attached to the Coastal Development Permit by the Commission's action on May 14, 1997. The justification for the request for reconsideration is attached.

We would respectfully request that this matter be scheduled as soon as possible for the Commission's consideration.

Thank you for your courtesy.

Sincerely,

Thomas O. Hicks

TOH/dlh
Enclosure
cc: Matthew A. Peterson, Esq.
Mr. Peter M. Douglas, Executive Director

200 CRESCENT COURT
SUITE 1600
DALLAS, TEXAS 75201
(214) 740-7300

TO: Peter M. Douglas
Executive Director
CALIFORNIA COASTAL COMMISSION

Date: June 9, 1997

VIA: UPS Overnight Delivery
Return Receipt Requested

THE HICKS RESIDENCE

Application No. A-6-LJS-96-162

REQUEST FOR RECONSIDERATION

THE HICKS RESIDENCE

Application No. A-6-LJS-96-162

REQUEST FOR RECONSIDERATION

California Coastal Commission regulation § 13109.1 et seq. deals with the topic of reconsideration. Section 13109.2 states that:

> "Anytime within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the Regional Commission to grant a reconsideration of the denial of an application for a coastal development permit, or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the Executive Director of the Commission within 30 days of the final vote."

The Coastal Commission approved a Coastal Development Permit with staff recommended conditions on May 14, 1997.

The grounds for reconsideration of a permit action are provided in Public Resources Code § 30627 which states in part:

> "The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error in fact or law has occurred which has the potential of altering the initial decision."

The purpose of this letter is to request that the Commission reconsider the staff recommended Special Conditions No. 1 and 2.

THE COMMISSION'S ACTION IS EQUIVALENT TO A DE FACTO LOCAL COASTAL PROGRAM AMENDMENT IN DIRECT VIOLATION OF ITS STATUTORY AUTHORITY. THIS VIOLATION CONSTITUTED AN ERROR OF LAW

The Commission conducted lengthy deliberations after the public testimony portion of the hearing was closed on the Permit. The Commissioners voting on the prevailing side took pains to assert their viewpoint that development on the seaward side of public streets close to the beach should be subjected to special design standards, i.e., that structures should be smaller and lower in elevation than similar structures on the inland side of the street. The new height restriction which was suggested by staff and accepted by the Commission is calculated by drawing a "string line" from the ridge of adjacent homes and then limiting the height of any home which is between to the height of the two adjacent homes. This new height limit has no basis in law and is clearly an arbitrary land use restriction. This new height limitation is inappropriate since the voters of San Diego passed an initiative (Prop "D") which allows homes and other structures in the Coastal Zone to be 30' tall. Prop "D" does not distinguish between beachfront and "inland" coastal properties.

The clear testimony of the Applicant and others, as well as the comments by the Commission staff by Commissioners themselves, noted that no such height limit restriction or other design standard exists in the Certified LCP ("LCP"). The proposed home

is significantly smaller than the maximum building envelope as permitted by the LCP and has been designed in accordance with all of the standards established in the LCP and the various implementing ordinances.

In declaring its intent to apply this special differential treatment to the "first tier" development (irregardless of LCP policies to the contrary), the Commission exceeded both its appellate and planning authority jurisdiction, and essentially imposed a "de facto LCP amendment" on the City of San Diego.

Both the Commission and the City of San Diego have approved coastal development permits for beachfront residences as high as 30' within La Jolla Shores and elsewhere in the City's coastal zone. The proposed residence is only 23' in height at the street elevation. Yet, contrary to those previous actions, and contrary to the Commission-certified LCP, the Commission imposed a drastically lower height limit on this particular project. Certain Commissioners' remarks which preceded the vote, made it clear that its intent was to go in a new direction by establishing and imposing a lower height limit on projects on the seaward side of El Paseo Grande. This action constitutes a de facto amendment to the City's LCP since nothing in the Certified LCP would support or authorize such a restriction.

The appropriate vehicle for imposing requirements or conditions which deviate from an existing Certified LCP is an LCP Amendment. Under Section 30500(c) of the California Coastal Act ("Coastal Act"), it is the local government, in this case, the

City of San Diego, which determines the precise content of an LCP, subject to Commission certification. Under Section 30514(a) of the Coastal Act, that LCP can be amended, but such an amendment must be initiated by the local government (in this case, the City of San Diego). The City did not, and has not, proposed such an amendment. Moreover, even if the Commission possessed the lawful authority to initiate an LCP Amendment of its own volition, it failed to conform to the public participation, public notice and public hearing requirements of Section 30503 of the Coastal Act.

The Commission's approval of this de facto LCP Amendment was a clear error of law. If the Commission believes an amendment to an LCP is necessary, the procedure for accomplishing such an amendment is set forth in Section 30519.5 of the Coastal Act. The Commission cannot unilaterally amend a Certified LCP.

The Applicant was prevented from asserting this error of law at the public hearing for the Hicks Application because of the Commission's hearing procedures. The discussion by Commissioners which revealed the true nature of the Commission's intent to apply special and stringent new design controls, and arbitrary height limits on future proposed development within the first tier of lots (regardless of the existence of the LCP which contains contrary policies) occurred after the close of the public testimony portion of the hearing. The Commission's hearing procedures prevented members of the public, including the Applicant, from addressing the Commission or participating in any

discussion by Commissioner's after the public testimony portion of the hearing was closed.

THE APPLICANT WAS NOT PROVIDED A FAIR OR ADEQUATE OPPORTUNITY TO EVALUATE THE STAFF RECOMMENDED CONDITIONS WHICH WERE PROVIDED AT THE VERY LAST MINUTE BEFORE THE HEARING

While the Applicant was aware that staff was recommending a significant and unprecedented modification to the project, the Applicant did not find out until the day before the hearing that staff had proposed and recommended a revised height limit. Applicant's consultants did not have any time to either analyze the revised recommendation or revise the exhibits based upon this last minute revised staff recommended condition.

Staff's purported justification for imposing the dramatic condition requiring the elimination of the entire 2nd story element was based upon its perceived blockage of a "view corridor" down Camino del Collado.

Even if one was to accept the new and broader definition suggested by staff that a view corridor is a "view shed" which includes all horizon views, the condition imposed should not have mandated the complete elimination of the 2nd story. Only a small portion of the 2nd floor extended into what staff now suggests is a "view shed." As such, there was no justification for a condition which required the complete elimination of the 2nd story element.

While the Applicant still does not accept the expanded definition of what a view corridor is, even if staff were correct, the condition imposing the height limit should have only been applicable to those portions of 2nd story which, in staff's opinion, encroached into the "view shed", to wit, only the north westerly portion of the 2nd story.

It became apparent at the hearing that the whole discussion of what constitutes a view corridor led to confusion since there is no definitive standard by which to evaluate the project's impact (or lack thereof) to the view corridor shown in the LCP. As with the unprecedented height limit condition, certain members of the prevailing side unequivocally stated that they were going to classify view corridors as also including view sheds and horizon views. This new characterization is in direct conflict with the LCP which clearly distinguishes between "view sheds" and "view corridors." This new and broader interpretation is not supported by any provision of the LCP and its implementing ordinances or the Coastal Act. Because of the Commission's procedures, once the hearing was closed, there was no opportunity for the public or the Applicant to clarify the issue or otherwise address the Commission. Therefore, the Applicant was precluded from correcting the record after the public testimony portion of the hearing was closed.

THE STAFF REPORT CONTAINED BOTH ERRORS OF FACT AND AND ERRORS OF LAW

Many errors were contained within the staff report (see attached redline version). These errors of fact may have misled the certain Commission Members concerning the character of the surrounding neighborhood. While the Applicant did catch one blatant misrepresentation of fact concerning the size of the Sarnoff Residence (The Ramada Inn of La Jolla Shores), other errors of fact were not readily discovered. The Exhibit contained within the staff report which contained the errors was relied upon and in fact referenced by Commissioners as supporting the staff recommended conditions.

There are also issues associated with the staff recommended conditions which clearly violate certain constitutional protection (equal protection and due process of law).

Public Resources Code § 30010 states in part:

> "The Legislature hereby finds and declares that this division is not intended and shall not be construed as authorizing the Commission for a governing body or a local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore."

Both the arbitrary height limit and the broader and more subjective definition of what constitutes a view corridor have

clearly damaged private property for the benefit of the public and for the public's use without the payment of just compensation. In addition, the arbitrary height limit is an unreasonable restriction of land use which bears absolutely no relationship or "nexus" to the anticipated impacts of the project.

CONCLUSION

This reconsideration is based upon relevant new evidence which could not have been presented at the hearing. If the Applicant had known that the Commission was going to recharacterize view corridors into "view sheds," the Applicant would have, at least, been able to evaluate the potential for a redesign to eliminate the encroachment into the view shed (as it existed when the application was acted upon at the City of San Diego).

When it became evident to us that certain Commissioners agreed with the staff's new and broader definition of what constitutes a view corridor, the Applicant's representative requested a continuance to evaluate whether there was the potential for a redesign which would address the view corridor issue. This request was summarily rejected. Therefore, Applicant was not presented with any opportunity to respond to what amounts to a "de facto" LCP amendment and a new standard of review which is not contained within the LCP. As stated above, there were also many errors of fact and law which have the potential of altering the initial decision.

After having said all that, we believe that a modified project could be presented that would eliminate the encroachment into the view corridor (even as staff interprets it) which existed at the time that the City of San Diego unanimously approved the Coastal Permit. Further, it is possible that other redesign measures can be incorporated which would further reduce the height of the home as well as mitigate other obstructions which exist within the view corridor.

We believe that the rationale contained within this document in combination with the potential for a redesign warrant a reconsideration. Clearly, the stated goals of the prevailing side were to "preserve and, if possible, enhance the view corridor." A redesign will be able to accomplish those goals.

Errors or Deviations from Staff's Report (dated 24 April 1997)

items printed in red is information added by us to complete Staffs Report.

CDP#	ADDRESS	SIZE OF HOME	# OF STORIES	HGT. OF HOME	REMARKS
F0156	8552	unknown 3,997sf	2 west 1 east	unknown	12' deed restricted
F1121	8526	unknown 4,491sf	1 east 2 west	unknown	12' deed restricted Same property as F8956
F5455	8494	unknown 1,628sf	2 west 1 east	unknown	
F6211	8554	4,223sf 4,236sf	2 west 1 east	unknown	12' deed restricted
F7251	8562	3,353sf 3,750sf	1 east 2 west	14' east	12' deed restricted
F8956	8526	4,027sf 4,491sf	1 east 2 west	12' east unknown	12' deed restricted We have noted this to be 3 stories visually on the west elev. This is the same property as F1121
6-82-35	8534	710sf to exg. 2,365sf 3,075sf total - by their count 2,884sf	2 west 1 east	24' max.	We have noted this to be 3 stories visually on the west elevation.
6-83-203	8564	lower level addition 5,000sf total 4,525sf	3 west 1 east	unknown unknown	We have noted this to be 2 stories on the east elevation
6-84-80	8454	4,000sf 3,992sf	2 east 2 west	unknown	
6-84-559	8516	1,755sf to exg. 2,857sf 3,976sf	2 west 1 east	16' max.	12' deed restricted We have noted this to be 3 stories visually on the west elevation
6-85-520	8550	3,780sf 4,098sf	3 west 1 east	14-15' east	
A-6-LJS-91-290	8406	10,450sf	2 over subterr.	13-25' east	Expired permit
A-6-LJS-91-272	8542	7,300sf 2,624sf previous house	3 west 1 east	13-20' east	Under construction

All information has been cross checked between staff's exhibits #'s 7, 8, & 9 and from the 1994-95 TRW report.

PETERSON & PRICE
A PROFESSIONAL CORPORATION
LAWYERS
530 B STREET, SUITE 2300
SAN DIEGO, CALIFORNIA 92101-4454

TELEPHONE
619-234-0361
FAX
(619) 234-4786
INTERNET
LAW@PETERSONPRICE.COM

EDWARD F. WHITTLER
MARSHAL A. SCARR
MATTHEW A. PETERSON
LARRY N. MURNANE
JENNIFER L. CUSICK

OF COUNSEL
PAUL A. PETERSON

FILE NO.

July 16, 1997

4949.002

Chairman Rusty Areias and Members of the
CALIFORNIA COASTAL COMMISSION
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

THIS WRITTEN MATERIAL IS SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION IN ACCORDANCE WITH THE NEW EXPARTE COMMUNICATION REQUIREMENTS OF PUBLIC RESOURCES CODE SECTIONS 30319-30324. THIS MATERIAL IS A MATTER OF PUBLIC RECORD AND HAS BEEN SUBMITTED TO ALL COASTAL COMMISSIONERS, THEIR ALTERNATES, AND THE COASTAL COMMISSION STAFF.

Re: Application No. A-6-LJS-96-162

Dear Chairman Areias and Members of the California Coastal Commission:

We represent Tom, Cinda and the Hicks Family with regard to the above-referenced application.

As you know, on May 14, 1997, the Coastal Commission approved the Application, but imposed very stringent special conditions which effectively required a complete redesign of the project and an evisceration of the second story.

On June 13, 1997, we subsequently filed a request for reconsideration which you will be considering at your August 1997 meeting (see attached xerox copy).

Pursuant to Public Resources Code Section 30801, any action challenging a permit or a condition imposed on a permit must be filed within 60 days of the decision.

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-96-162-R
Letter From Applicant's Representative (without attachment

We contacted your Legal Staff as well as the Attorney General's office and asked whether or not they would agree to enter into a "Tolling Agreement" pending the outcome of the Request for Reconsideration. The purpose of the Tolling Agreement would have been to maintain the "status quo" pending the outcome of the Request for Reconsideration and any follow up hearing on the matter. However, your Legal Staff and the Attorney General's office indicated to us that they would not enter into a Tolling Agreement.

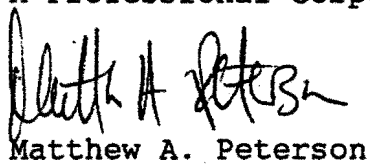
Therefore, in order to preserve our client's legal remedies and based upon the denial of our request for a Tolling Agreement, we were compelled to file a lawsuit against the Coastal Commission within the applicable 60-day statute of limitations.

We are hopeful that our clients will not have to pursue litigation against the Coastal Commission and that through the Reconsideration process a fair and equitable settlement will be reached between the parties.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

cc: Peter M. Douglas, Executive Director
Ralph Faust, Esq., Chief Legal Counsel
Laurinda Owens, Coastal Program Analyst
Nancy Lucast, Principal, Lucast Consulting
Island Architects West
Tom, Cinda and the Hicks Family