

## CALIFORNIA COASTAL COMMISSION

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

Filed: 4/7/00  
Opening Hearing: 5/9/00  
180<sup>th</sup> Day: 10/4/00/  
Staff: MB-V  
Staff Report: 5/25/00  
Hearing Date: 6/13/00



## RECORD PACKET COPY

**STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** County of Ventura

**DECISION:** Approval with Conditions

**APPEAL NO.:** A-4-VNT-00-078

**APPLICANT:** Vern Bauman

**PROJECT LOCATION:** South of Pacific View Road and West of Deer Creek Road,  
Santa Monica Mountains (Ventura County)

**PROJECT DESCRIPTION:** Authorize ten acre lot created by illegal subdivision (APN:  
700-010-031)

**APPELLANT:** Commissioners Wan and Nava; Raffi Cohen and Astra  
Investments Capital, LLC

**SUBSTANTIVE FILE DOCUMENTS:** County of Ventura: Staff Report and  
Recommendations and Notice of Final Decision (Planned Development Permit for CCC-9904  
(PM-5203), undated.

**Summary of Staff Recommendation: Substantial Issue Exists**

The proposed land division creates a ten acre lot in an area of steep slopes and vacant land. The appeal by Commissioners Wan and Nava asserts that the project is inconsistent with Land Use Plan and Zoning Ordinance provisions relative to preservation of upland habitats, the minimum lot size required under the slope/density formula, sanitary facilities, potable water, and locating and planning new development. The appeal by Raffi Cohen/Astra Investments asserts that the project proposes access via a private road that crosses Cohen's property, but the applicant has no legal right to use this road and that the applicant has conducted unauthorized grading on the Cohen property.

The Staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed for the following reason: the proposed land division is inconsistent with the applicable policies and related zoning standards of the County's certified Local Coastal Program.

**I. Appealability to the Commission**

The proposed project is located south of Pacific View Road (a private road) and west of Deer Creek Road (a public road), in the Santa Monica Mountains (Ventura County). The proposed development is appealable because the division of land is not listed as a principal permitted use in the certified Local Coastal Program and is, therefore, within the appeals jurisdiction of the Commission. (Coastal Act Section 30603[a][1]).

**A. Project Description**

The local government decision was to issue a Coastal Development Permit to authorize a ten acre lot that was created by an illegal subdivision. The County legalized the lot through issuance of a conditional Certificate of Compliance pursuant to Government Code section 66499.35(b). The County staff report notes that: "The lot appears to have been created when the parcel was conveyed with only a grant deed in April 1968." The applicant, Verne Bauman acquired the property, along with Cherie Bauman, in 1977. In 1988, Verne and Cherie Bauman granted the property to James V. Berry. (See Grant Deed, Exhibit 1). Subsequently, the property was then transferred back to the current owners, Verne Bauman and Cherie Hanley (formerly Cherie Bauman). This transfer apparently occurred some time after 1995. The County decision to approve the project was based, in part, on its characterization of the present property owners as an "innocent purchasers" of an illegal lot.

**B. Appeal Procedures**

The Coastal Act provides for appeals to the Coastal Commission after certification of Local Coastal Programs (LCPs) of a local government's action on a Coastal Development Permit (CDP). Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses. (Coastal Act Section 30603[a]). Any development approved by a County that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, developments, which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5]).

The proposed project is not the principal permitted use in the certified LCP and is, therefore, appealable to the Commission. (Coastal Act Section 30603[a][1]).

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4]). Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal.

Procedurally, where the staff is recommending that the appeal raises a substantial issue, unless three or more Commissioners wish to hear arguments regarding the question of substantial issue, then substantial issue is deemed found. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal. If a substantial issue is found to exist, the Commission will proceed to a full public *de novo* hearing on the merits of this project at a subsequent hearing. If the Commission conducts a *de novo* hearing on the merits of the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. If a *de novo* hearing is held, testimony may be taken from all interested persons at the *de novo* hearing.

### **C. Local Government Action and Filing of Appeal**

The Coastal Commission certified the LCP Land Use Plan on June 18, 1982 and the implementing ordinances on April 28, 1983. The County of Ventura approved a Coastal Development Permit for this project on March 2, 1999, along with Planned Development Permit 1811 for Conditional Certificate of Compliance ("CCC") – 9904 and Parcel Map ("PM") – 5203.

The Commission received the Notice of Final Action on the project on March 24, 2000, and received both appeals of the County's action on April 7, 2000. The appeals were therefore filed within the 10 working day appeal period following the Commission's receipt of the Notice of Final Action as required by the Commission's administrative regulations.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued Coastal Development Permit is filed. The appeals were received on April 7, 2000. In accordance with section 13112 of the California Code of Regulations, the staff requested that the County provide the administrative record, consisting of all relevant documents and materials regarding the subject permit, within five days. A hearing on the appeal was set for the May 9 though

12, 2000 Commission hearing in Santa Rosa. A Staff Report was prepared on the project on April 24, 2000, recommending that the Commission open and continue the hearing pursuant to Section 13112 of the California Code of Regulations, since the administrative record had not yet been received. The Commission received the administrative record on May 4, 2000; however, this did not provide sufficient time for Commission staff to prepare a staff report prior to the May hearing recommending whether the appeal raises a substantial issue. Accordingly, at the Commission hearing on May 9, 2000, the Commission opened and continued the hearing on this appeal.

## **II. Staff Recommendation on Substantial Issue**

**MOTION** I move that the Commission determine that appeal A-4-VNT-00-078 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed pursuant to Section 30603 of the Coastal Act.

### **STAFF RECOMMENDATION**

Staff recommends a **NO** vote on the motion. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

### **RESOLUTION TO FIND SUBSTANTIAL ISSUE**

The Commission hereby finds that Appeal No. A-4-VNT-00-078 presents a substantial issue with respect to the grounds on which the appeal has been filed under Sec. 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

## **III. Findings and Declarations for Substantial Issue and No Substantial Issue**

### **A. Project description**

The proposed project consists of the legalization of illegally created ten acre lot (APN: 700-010-031) located south of Pacific View Road and West of Deer Creek Road, in the Santa Monica Mountains in Ventura County. The proposed lot is located below a significant ridgeline designated in the Local Coastal Program Santa Monica Coastal Zone Environmentally Sensitive Habitats Map, 1 ¼ mile north of Bass Rock, within the

upper reach of an unnamed canyon immediately west of Deer Creek Canyon. The Assessor's Map showing the lot is attached as Exhibit 2.

The applicant's lot resulted from an illegal subdivision that the County determined occurred in 1968. Based on the Assessor's map, it appears that one forty acre lot was divided by grant deeds into four, square ten acre lots, including the applicant's lot. The applicant, Verne Bauman, and Cherie Bauman, originally acquired the property in 1977. However, in 1988, Verne and Cherie Bauman granted the property to James V. Berry. (See Grant Deed, Exhibit 1). Subsequently, the property was then transferred back to the current owners, Verne Bauman and Cherie Hanley (formerly Cherie Bauman). This transfer apparently occurred some time after 1995. The Coastal Commission sent a letter to Mr. Bauman dated March 30, 1982, that informed him that the lot was illegally subdivided and that all subdivisions of land require a coastal development permit.

Pursuant to Government Code section 66499.35(b), when a property owner requests a certificate of compliance for a lot that was illegally created, the county may impose all conditions that would have been applicable under the local ordinances in effect at the time the applicant *acquired* the lot. If the current owner was the one who created the illegal lot, the County may impose all conditions applicable to current land divisions at the time the conditional certificate of compliance is issued. Furthermore, Government Code Section 66499.34 provides:

"No local agency shall issue any permit or grant any approval necessary to develop any real property which has been divided, or has resulted from a division, in violation of the provisions of this division or of the provisions of local ordinances enacted pursuant to this division if it finds that development of such real property is contrary to the public health or the public safety ...."

The Coastal Act defines "development" to include: "subdivision pursuant to the Subdivision Map Act ..., and any other division of land, including lot splits, ... ." (Section 30106). Because the applicant's lot was created by an illegal subdivision of land, the applicant's proposal to legalize creation of the lot at this time constitutes a division of land, which is "development" under the Coastal Act. Accordingly, the proposed development requires a coastal development permit under the Coastal Act. To obtain approval of a coastal development permit, the proposed development must be consistent with all provisions of the County's certified LCP. As noted above, the County's LCP was certified in 1983.

Most of the lot is steep with the exception of a flatter area at the top of the ridge. The site consists of predominantly shrubs, such as deer weed and bush lupine, yucca and bunch grasses. The project site also contains rock outcroppings containing dudleya. The project area is characterized as containing existing landslide zones and high landslide/mudslide hazard zones (Ventura County, Seismic and Safety Element, 1974). Soil is characterized as either very rocky loam, 30 to 75 per cent slopes on the valley slopes or eroded clay loam slopes of 9 to 15 percent near the ridge top (US Department

of Agriculture, Soil Survey Ventura Area, California, 1970). The project site and surrounding area is designated as slope greater than 25 % in Figure 31 in the Land Use Plan component of the Local Coastal Program.

Surrounding property is vacant with the exception of portions of Pacific View Road near Deer Creek Road. Several single family residences are found to the east, overlooking Deer Creek Road, but none are visible from the project site. State Parks land (Pt. Mugu State Park) is located approximately one mile to the west and one mile to the north of the subject property.

## **B. Issues Raised by the Appellants**

Commissioners Wan and Nava, Appellants, allege that the project is inconsistent with the Ventura County Local Coastal Program because the development is inconsistent with Land Use Plan and Zoning Ordinance provisions relative to preservation of upland habitats, minimum lot size required by the slope/density formula, sanitary facilities, potable water, and locating and planning new development.

Appellant Raffi Cohen/Astra Investments alleges that: "a road was built without any approval, permission, or legal rights. He trespassed on our property. He misled the County of Ventura that he had my permission to do this. He never did have this easement." In addition, Raffi Cohen/Astra Investments assert that the appeal concerns: "Easement to build road through our property. We are appealing because they do not have the easement they are claiming." No policies or requirements of the Local Coastal Program were cited in the appeal.

## **C. Local Government Action and Filing of Appeal**

The approval of a coastal development permit at the local level, as noted, resulted in County approval of a ten acre lot. The County of Ventura approved a Coastal Development Permit on March 2, 1999, along with a Planned Development Permit 1811 for Conditional Certificate of Compliance ("CCC") – 9904 and Parcel Map ("PM") – 5203). The County permit was subject to standard conditions and special conditions relative to a botanical survey during the May and June flowering season, determination of suitability of connection to a sewer system or installation of a septic system, and determination of the availability of potable water, for purposes of future building permits.

## **D. Substantial Issue Analysis**

### **1. Appeal By Commissioners Wan and Nava**

Section 30603(b)(1) of the Coastal Act stipulates that:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the

certified Local Coastal Program or the public access policies set forth in this division.

The Commission determines that a substantial issue exists with respect to the grounds on which the appeal has been filed for the following reason: the proposed residence is inconsistent with the applicable policies and related zoning standards of the County's certified Local Coastal Program ("LCP"). The County's LCP was certified by the Commission in 1983. The Commission finds that the standards in the County's certified LCP apply to this project, because the LCP was certified before the applicant acquired the property and because the applicant is proposing new development that requires a coastal permit and therefore must comply with all provisions of the County's LCP.

The Appellant's contentions raise valid grounds for an appeal for the reasons set forth below.

**a. Preservation of Upland Habitats**

The appellants contend that the land division does not identify the future building envelope as required by Policy 6 for the Santa Monica Mountains in the Environmentally Sensitive Habitats Section of the South Coast Area Plan. Policy 6 requires identification of the future building envelope on the parcel map. The project has not complied with this requirement and is therefore inconsistent with the LCP.

The appellants further contend that the land division is inconsistent with Policy 6 provisions that require that areas of over 30% slope shall be permanently maintained in their natural state through an easement or other appropriate means and shall be recorded on the final tract or parcel map or on a grant deed as a deed restriction submitted with the final map. Such a determination was not made as part of the local review process. Based on inspection of the site, large areas of over 30% slope are present on the site. The project is inconsistent with this policy because neither an easement, or other appropriate means that is recorded on the parcel map or in a deed restriction, was required to preserve areas of over 30% slope in their natural state.

The following is also applicable relative to the Zoning Ordinance in the certified LCP:

1) The project is located in the Santa Monica Mountains Overlay (M) Zone where under Sec. 8177-4.2.1 all new development shall preserve all unique vegetation, such as *Dudleya Cymosa* Var. *Marascens*. This requirement is also found in the LCP policies, in the South Coast Area Plan, Santa Monica Mountains, Policy 1. No biological inventory has been conducted of the site and therefore, it is impossible to identify locations of unique vegetation on the site and preserve them. In cases where unique habitats are found on the project site, permanent open space through a recorded easement or deed restriction is required by Sec. 8177-4.2.2 a of the Ordinance. The project has not complied with these requirements.

2) Under Sect 8177-4.2.4 of the Ordinance all land divisions shall be evaluated for consistency with the Land Use Plan and inconsistent development shall be denied.

Under Sec. 8177-4.2.4 a. future building envelopes shall be identified on all applications and on the final subdivision map. Under Sec. 8177-4.2.4 b. all identified environmentally sensitive habitat areas and areas over 30 % slope shall be permanently maintained in their natural state through an easement or deed restriction on the final map. As explained above, the proposed project does not comply with these requirements because neither future building envelopes, environmentally sensitive habitat areas, nor slopes over 30% were identified and because the proposed project does not provide, through an easement or deed restriction, that environmentally sensitive habitat areas and slopes over 30% on the site will be permanently maintained in their natural state.

For the above reasons, the project is inconsistent with the LCP.

**b. Minimum Lot Size Based on Slope/density Formula**

Policy 7 in the Hazards Section of the South Coast Area Plan provides for minimum lot sizes for subdivisions in the Santa Monica Mountains in the Open Space zone based on the average slope. The County did not make any determination regarding the average slope on the property or the minimum lot size allowed under Policy 7. However, Figure 31 in the LUP indicates that the subject property has an average slope of at least 25 %. For property zoned open space having an average slope greater than 25%, forty acres is the minimum lot size required by the LCP – Policy 7 in the Hazards Section for Santa Monica Mountains. The proposed lot of ten acres in size is below this minimum lot size. Therefore, the project is inconsistent with this Policy.

**c. Sanitary Facilities**

Policy 3 in the Public Works Section of the South Coast Area Plan provides that new development in the Santa Monica Mountains should be self-sufficient with respect to sanitation and not require the extension of growth-inducing services. Policy 3 also requires that each individual development will be able to provide sanitary facilities over its normal lifespan. The proposed development creates a lot where a single family residential development may be built as a principal permitted use without the potential of appeal to the Commission. The proposed land division does not indicate that sanitary facilities are available for such a potential future use. Past Commission experience has indicated that septic capability may not exist in the Santa Monica Mountains due to geologic structure. The ability of the site to accommodate on site sanitary systems must be demonstrated by geotechnical analysis prior to approval of a permit for a land division. Without this information, it is not possible to determine that the proposed project complies with Policy 3. Approval of the proposed development without the information necessary to determine whether it complies with Policy 3 is inconsistent with the LCP.

Sec.8177-4.1.3 in the certified Local Coastal Program Zoning Ordinance specifies that no development shall be approved in the Santa Monica Mountains Overlay (M) Zone unless, for the lifespan of the project, sewer service is available in the immediate area



or septic facilities can be provided consistent with LCP policies. Sewer service is not available in this location. The project location is many miles away from any sanitary sewer system and extension of any system to the area is unlikely. No determination has been made relative to whether conditions on the site are acceptable for a septic system, as discussed previously. Approval of the proposed development without the information necessary to determine whether it complies with this section of the Zoning Ordinance is inconsistent with the LCP.

**d. Potable Water**

Policy 3 in the Public Works Section of the South Coast Area Plan provides that new development in the Santa Monica Mountains should be self-sufficient with respect to water availability and not require the extension of growth-inducing services. Policy 3 also requires that each individual development will be able to provide potable water over its normal lifespan. The proposed development creates a lot where a single family residential development may take place as a principal permitted use. Past Commission experience has indicated that water capability may not exist in the Santa Monica Mountains due to geologic structure. Sec.8177-4.1.1 in the certified Local Coastal Program Zoning Ordinance specifies that no development shall be approved in the Santa Monica Mountains unless the development can serve potable water through private services during the normal lifespan of the project. The proposed land division does not include any finding that potable water is available to provide water over the normal lifespan of development of a single family residence.

Section 8177-4.1.2 states that when a water well is necessary to serve the development, a test well shall be required and data shall be provided relative to depth of water, geologic structure, production capacities, degree of drawdown, etc. The administrative record does not contain evidence indicating that a test well has been drilled or the required data obtained. Further, this section of the Ordinance requires the cumulative impact on riparian resources and other coastal resources shall be identified. A riparian area is immediately adjacent to the project site. Drawdown of a well could potentially affect the riparian area. Although a determination is required that on a cumulative basis that the proposed well will not adversely impact coastal resources, no such studies have occurred and no determination has been made that potable water is available to serve a single family residence on the proposed parcel, without adverse cumulative impacts. The proposed development is inconsistent with this section of the Zoning Ordinance for these reasons.

**e. Locating and Planning New Development**

The objective under the Locating and Planning New Development Section of the South Coast Area Plan is "To preserve the South Coast sub-area in as natural a state as possible while maintaining the private property rights and needs for public safety." The proposed development is inconsistent with preservation of the area in as natural a state as possible because it allows for increased residential development through a subdivision that creates a lot that is only 10 acres in size. As explained above, this lot

size does not comply with the minimum lot size required in this location pursuant to the applicable slope density formula set forth in the LCP. Allowing additional residential development is inconsistent with the objective of preserving the South Coast Area in as natural a state as possible, while providing for public safety and protecting private property rights.

Policy 2 under the Locating and Planning New Development Section of the South Coast Area Plan states that, consistent with the environmental characteristics and limited service capacities of the area, only very low density development as prescribed in the Open Space designation will be permitted in the Santa Monica Mountains and that the slope/density formula will be used to "determine the minimum lot size for any proposed land division." As stated above, the proposed land division is inconsistent with this policy because the slope/density formula was not used to determine the minimum lot size and the proposed land division creates a 10 acre lot, where the application of the slope density formula and lot size standards set forth in the LCP requires a minimum 40 acre lot.

For all the reasons set forth above, the proposed project is inconsistent with the LCP.

## **2. Appeal By Raffi Cohen and Astra Investment Capital, LLC**

As noted above, the grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. Appellant Raffi Cohen/Astra Investments alleges that the applicant does not have the legal right to build a road, or to use any road, on his (Cohen's) property to access the applicant's proposed lot. He also asserts that a road has been graded on his property by the applicant, or the applicant's representative, without permission or any legal right to construct a road across this property.

The Commission's regulations require private appellants to exhaust local appeals. (14 California Code of Regulations, section 13111(a); 13573(a)). It appears from the administrative record that Raffi Cohen/Astra Investments did not file a local appeal in this matter. However, the regulations provide that exhaustion of local appeals shall not be required if "the local government jurisdiction charges an appeal fee for the filing or processing of appeals." (14 California Code of Regulations, section 13573(a)(4)). The County issued a Notice of Final Action dated March 8, 2000 for this project that states that the County will charge a fee for filing of a local appeal. (This Notice also incorrectly states that the project is *not* appealable to the Coastal Commission; based on review of the administrative record, a corrected Notice was not issued). Because the County stated in this Notice that a fee would be charged for filing an appeal, the Commission cannot require exhaustion of local appeals. Therefore, we will evaluate the issues raised in the appeal filed by Cohen/Astra Investments.

The appellants assert that there is no easement allowing use of a road across the Cohen property to access the proposed lot from the nearest public road (Deer Creek Road). Because the Commission does not currently have the evidence to determine if this assertion is correct, the Commission finds that this raises a substantial issue regarding consistency with the LCP. If there is no easement allowing this access, then it is not known where an alternative access road will be located, or even whether the applicant will be able to acquire any legal access rights.

The Coastal Zone Ordinance has several relevant provisions that the project could not be found to comply with, if the applicant does not have the legal right to cross private property to reach his lot from Deer Park Road. These provisions are listed below:

Section 8177-4.1.4: "Development outside of the established 'Community' area shall not directly or indirectly cause the extension of public services (roads, sewers, water, etc.) into an open space area."

Section 8177-4.2.2: "All new upland development shall be sited and designed to avoid adverse impacts on environmentally sensitive habitat areas."

Section 8177-4.2.3: "Construction and/or improvements of driveways or accessways which would increase access to any property shall be permitted only when it has been determined that environmental resources in the area will not be adversely impacted by the increased access. Grading cuts shall be minimized by combining the accessways of adjacent property owners to a single road where possible. The intent is to reduce the number of direct ingress-egress points from public roads and to reduce grading. At stream crossings, driveway access for nearby residences shall be combined. Hillside roads and driveways shall be as narrow as is feasible and shall follow natural contours."

Section 8177-4.2.6: "Development shall not be sited on ridgelines or hilltops when alternative sites on the parcel are available, and shall not be sited on the crest of major ridgelines."

The County's findings in its Approval Letter state: "The subdivision has either record title to or a contractual right to acquire title to all rights-of-way necessary to provide any proposed off-site access from the proposed subdivision to the nearest public road." (County's Approval Letter, Finding M., page 2). However, the only access shown on the Accessor's map shows a road (labeled Pacific View Road), which crosses the Cohen property, and then crosses another private lot that is adjacent to the applicant's property. (Pacific View Road does not touch the applicant's property; however, and therefore construction of an additional road leading off Pacific View Road will also be necessary to provide access to applicant's lot). If the County relied on Pacific View Road as the access route to the proposed lot, the finding that the County made conflicts with the allegations of appellants, Cohen/Astra Investments, who claim that the applicant has no legal rights to use the private road (Pacific View Road) where it crosses their property.

If an access road must be proposed at an alternative location, other than Pacific View Road, this could involve environmental impacts that would not be consistent with the LCP and that have not yet been evaluated. Therefore, the appellants have raised a substantial issue regarding compliance with the LCP provisions cited above.

The other issue raised by Cohen/Astra Investments relates to grading of a road across the Cohen/Astra Investments property. This was not authorized as part of the CDP that is the subject of this appeal and is therefore not relevant to the determination of substantial issue. However, this grading may involve a potential violation of the Coastal Act. We are not aware of any Coastal Development Permit issued by the County or the Commission that would allow applicants or their agents to grade a road at this off-site location. The Commission staff has asked the County to investigate and take appropriate enforcement action. If the County fails to do so, then the Commission may pursue an appropriate enforcement action.

RECORDED AT THE REQUEST OF  
CHICAGO TITLE CO. 78

RECORDING REQUESTED BY

AND WHEN POSSIBLE, THE TAX DEDUCTIBLE AMOUNTS SHOWN  
BELOW SHALL BE SUBMITTED TO

James V. Berry

552 Rosecrans Ave.  
Manhattan Beach CA 90266

MAIL TAX STATEMENTS TO

Same as above

1710-LY

86-116105 : Rec Fee 7.00  
: DOC 165.00  
: PCO 20.00  
Recorded : SUR 10.00  
Official Records : Total 202.00  
County of  
Ventura  
Richard D. Dean  
Recorder  
8:00am 15-Aug-88 : FF 2

## GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 165.00

- ☐ computed on full value of property conveyed, or  
☐ computed on full value less value of liens or encumbrances remaining at time of sale.  
☐ unincorporated area, AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
Verna V. Bauman and Cherie A. Bauman, as tenants in common

hereby GRANT(s) to

James Vernon Berry, a single man

the following described real property in the unincorporated area  
County of Ventura, State of California:

Legal description is attached hereto and made a part hereof.

Dated ~~September~~ May 26, 1988

STATE OF CALIFORNIA }  
COUNTY OF Ventura } ss.

On this 26th day of May, in the year 88  
before me, the undersigned, a Justice of the Peace, personally  
appeared Verna V. Bauman and Cherie A. Bauman  
☐ personally known to me  
☒ proved to me on the basis of satisfactory evidence  
to be the person whose name is subscribed to this instrument,  
and acknowledged to me that he (she or they) executed it.

Signature

Christine Pancoast

NOTARY PUBLIC IN AND FOR THE STATE

Verna V. Bauman  
Verna V. Bauman  
Cherie A. Bauman  
Cherie A. Bauman



(This area for official notarial seal)

MAIL TAX STATEMENTS AN DIRECTOR APPROVE

Application A-4-VNT-00-078

(Bauman)

Exhibit 1

1988 Grant Deed

AP 200-010-215  
98058-A



98053-A  
DESCRIPTION

## DESCRIPTION

## PARCEL 1:

The Northwest quarter of the Southeast quarter of the Northeast quarter of Section 17, Township 1 South, Range 20 West, San Bernardino Meridian, according to the Official Plat thereof.

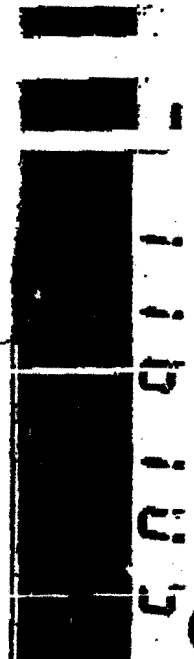
EXCEPT one-half of the oil, gas and mineral rights in, and to said land as reserved by Hall, Marquardt & Co., a Partnership, in deed recorded March 4, 1938 as Document No. 9072 in Book 1395 Page 222 of Official Records.

## PARCEL 2:

An easement for ingress and egress, pipe lines and pole lines over a 30 foot strip within the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 17, Township 1 South, Range 20 West, San Bernardino Meridian, according to the Official Plat thereof.

## PARCEL 3:

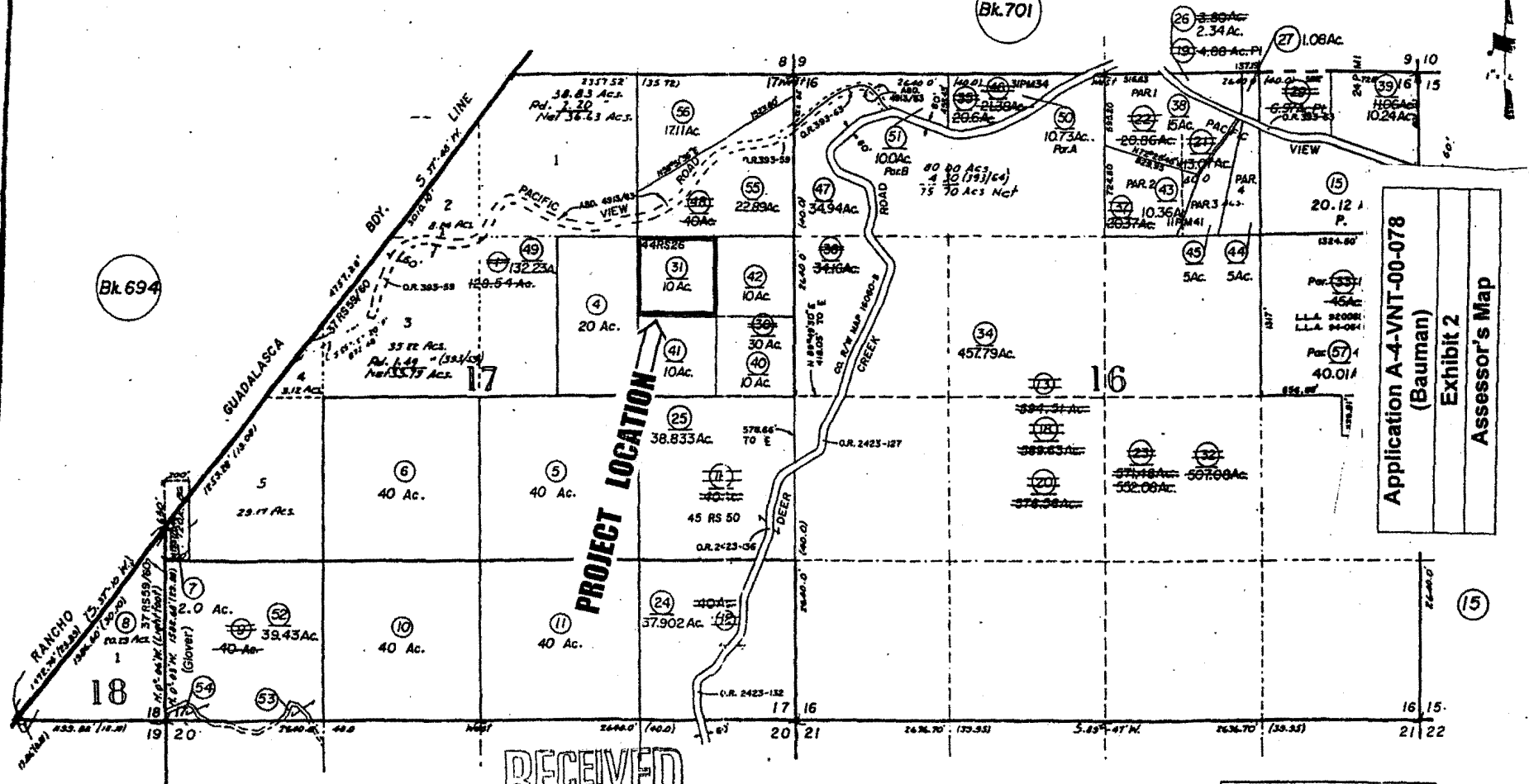
An easement for ingress and egress, pipe lines and pole lines over that certain 30 foot strip lying within the West half of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 16, Township 1 South, Range 20 West, San Bernardino Meridian, according to the Official Plat thereof, and as said 30 foot strip existed on October 24, 1961.



SEC. 16, 17 & 18 T.1 S., R.20 W. S.B.B. & M.

Tax Rate Area  
71004 71037  
71012

700-01  
SEP 2 9 1994



Application A-4-VNT-00-078  
(Bauman)  
Exhibit 2  
Assessor's Map

RECEIVED

MAR 24 2000

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

NOTE- Assessor's Block Numbers Shown in Ellipses  
Assessor's Parcel Numbers Shown in Circles  
Assessor's Mineral Numbers Shown in Squares

Assessor's Map Bk. 700, Pg. 01  
County of Ventura, Calif.  
ZONE G-O-S (M)

EXHIBIT "3"

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Commissioners Sara Wan & Pedro Nava  
C/O 45 Fremont St #2000  
San Francisco, CA 94105- (415) 904-5260  
Zip 2249 Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: County of Ventura

2. Brief description of development being appealed: Legalize a 10 acre illegal lot created by conveyance of grant deed in April 1978

3. Development's location (street address, assessor's parcel no., cross street, etc.): Pacific View Road off and south west of Deer Creek Road, Santa Monica Mountains

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: X
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-VNT-00-37

DATE FILED: April 7, 2000

DISTRICT: South Central

H5: 4/88

Application A-4-VNT-00-078 (Bauman)
Exhibit 3
Appeal (Wan & Nava)

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APR 07 2000

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☒ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☐ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: March 6, 2000

7. Local government's file number (if any): Planned Development Permit 1811 for CCC-9904(PM-5203)

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Vern Bauman  
2930 Fall River Circle  
Thousand Oaks, CA 91326

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

"SEE ATTACHED REASONS"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

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APR 07 2000

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Signature of Appellant(s) or  
Authorized Agent

Date

NOTE: If signed by agent, appellant(s)  
must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

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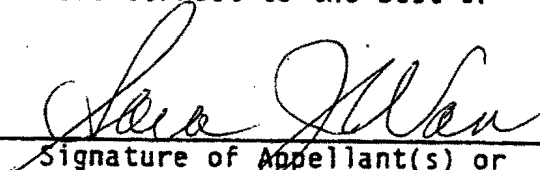
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RECEIVED

APR 07 2000

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

  
Signature of Appellant(s) or  
Authorized Agent

Date \_\_\_\_\_

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\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

#### Section IV. Reasons Supporting This Appeal

##### 1. Preservation of Upland Habitats

The land division project does not identify the future building envelope as required by Policy 6 for the Santa Monica Mountains in the Environmentally Sensitive Habitats Section of the South Coast Area Plan. Policy 6 requires identification of the future building envelope on the parcel map. The project has not complied with this requirement. Under Section 8177-4.2.4 of the LCP Zoning Ordinance, all land divisions shall be evaluated for consistency with the Land Use Plan and inconsistent development shall be denied. Under Sec. 8177-4.2.4 a. future building envelopes shall be identified on all applications and on the final subdivision map. The project is inconsistent with this Ordinance provision.

Policy 6 under policies for the Santa Monica Mountains in the Environmentally Sensitive Habitats Section of the South Coast Area Plan also requires that areas of over 30% slope shall be permanently maintained in their natural state through an easement or other appropriate means and shall be recorded on the final tract or parcel map or on a grant deed as a deed restriction submitted with the final map. The County has not made any finding relative to the slopes present on the site. Based on inspection of the site and Figure 31 of the Land Use Plan, it is expected that areas of over 30% slope are present. The project has not complied with the requirement for an easement, or other appropriate means that is recorded on the parcel map, to preserve these areas in their natural state. Under Sec. 8177-4.2.4 b. of the LCP Zoning Ordinance all identified environmentally sensitive habitat areas and areas over 30 % slope shall be permanently maintained in their natural state through an easement or deed restriction on the final map and no development is permitted on slopes over 30 %. The project is inconsistent with this ordinance provision.

Accordingly, the proposed land division is inconsistent with the policies requiring protection of upland habitats of the Santa Monica Mountains.

The project is located in the Santa Monica Mountains Overlay (M) Zone where under Sec. 8177-4.2.1 of the certified LCP Zoning Ordinance all new development shall preserve all unique vegetation such as *Dudleya Cymosa* Var. [or ssp.] *Marascens*. In cases where such habitats are found on the project site, permanent open space through a recorded easement or deed restriction is required by Sec. 8177-4.2.2 a. The project has not complied with this requirement.

## 2. Slope/density Formula

Policy 7 in the Hazards Section of the South Coast Area Plan provides for minimum lot sizes for subdivisions in the Santa Monica Mountains in the Open Space zone based on the average slope. The subject property has an average slope of at least 25 % as shown on Figure 31 in the LUP. For property with an average slope greater than 25%, the minimum lot size required by this LCP Policy is forty acres. The proposed lot of ten acres in size is below this minimum lot size. The County did not make any determination regarding the average slope on the property or the minimum lot size allowed under Policy 7. For the above reasons, the project is inconsistent with this Policy.

## 3. Sanitary Facilities

Policy 3 in the Public Works Section of the South Coast Area Plan provides that new development in the Santa Monica Mountains should be self-sufficient with respect to sanitation and not require the extension of growth-inducing services. Policy 3 also requires that each individual development will be able to provide sanitary facilities over its normal lifespan. The proposed development creates a lot where a single family residential development may take place as a principal permitted use. The proposed land division does not indicate that sanitary facilities are available. Past Commission experience has indicated that septic capability may not exist in the Santa Monica Mountains due to geologic structure. Therefore, the proposed development is inconsistent with Policy 3.

Sec.8177-4.1.3 in the certified Local Coastal Program Zoning Ordinance specifies that no development shall be approved in the Santa Monica Mountains Overlay (M) Zone unless, for the lifespan of the project, sewer service is available in the immediate area or septic facilities can be provided consistent with LCP policies. Sewer service is not available in this location. No determination has been made relative to whether conditions on the site are acceptable for a septic system. The proposed development is inconsistent with this section of the Zoning Ordinance for these reasons.

## 4. Potable Water

Policy 3 in the Public Works Section of the South Coast Area Plan provides that new development in the Santa Monica Mountains should be self-sufficient with respect to water availability and not require the extension of growth-inducing services. Policy 3 also requires that each individual development will be able to

provide potable water over its normal lifespan. The proposed development creates a lot where a single family residential development may take place as a principal permitted use. The proposed land division does not indicate that potable water is available. Past Commission experience has indicated that water and/or septic capability may not exist in the Santa Monica Mountains due to geologic structure. Therefore, the proposed development is inconsistent with Policy 3.

Sec.8177-4.1.1 in the certified Local Coastal Program Zoning Ordinance specifies that no development shall be approved in the Santa Monica Mountains unless the development can serve potable water through private services during the normal lifespan of the project. Section 8177-4.1.2 states that when a water well is necessary to serve the development, a test well shall be required and data shall be provided relative to depth of water, geologic structure, production capacities, degree of drawdown, etc. The cumulative impact on riparian resources and other coastal resources shall be identified. A riparian area is immediately adjacent to the project site. A determination is required that on a cumulative basis that the proposed well will not adversely impact coastal resources. No such studies have occurred and no determination has been made that potable water is available to serve a single family residence, a principal permitted use, on the proposed parcel. The proposed development is inconsistent with this section of the Zoning Ordinance for these reasons.

## **5. Locating and Planning New Development**

a. The objective under the Locating and Planning New Development Section of the South Coast Are Plan is "To preserve the South Coast sub-area in as natural a state as possible while maintaining the private property rights and needs for public safety." The proposed development is inconsistent with preservation of the area in as natural a state as possible because of the issues cited above relative to lot size and provision of water and sewer services. In addition, approval of the proposed land division that allows additional residential development is inconsistent with the objective of preserving the South Coast Area in as natural a state as possible and providing public safety and is not required to protect private property rights.

b. Policy 2 under the Locating and Planning New Development Section of the South Coast Are Plan states that, consistent with the environmental characteristics and limited service capacities of the area, only very low density development as prescribed in the Open Space designation will be permitted in the Santa Monica Mountains and that the slope/density formula will be used to "determine the minimum lot size for any proposed land division." As stated above, the proposed land division is inconsistent with this policy because the slope/density formula was not used to determine the minimum lot size and the proposed land division creates a 10 acre lot, where the application of the slope

density formula and lot size standards set forth in the LCP requires a minimum 40 acre lot for parcels with average slope of greater than 25%.

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
87 SOUTH CALIFORNIA ST, 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

### SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

RAEEL COHEN - ASTRA INVESTMENT CAPITAL LLC  
421 S. BEVERLY DRIVE, #507  
BEVERLY HILLS CA 90212 (310) 277-2227 x207  
Zip Area Code Phone No.  
(310) 531-1770 FAX

### SECTION II. Decision Being Appealed

1. Name of local/port government:

2. Brief description of development being appealed: EASEMENT TO BUILD ROAD THROUGH OUR PROPERTY  
We are appealing because they do not have the easement they are claiming.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 9351 DEER CREEK ROAD

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: \_\_\_\_\_

c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/08

Application A-4-VNT-00-078

(Bauman)

Exhibit 4

Appeal (Astra/Cohen)



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning Administrator c. Planning Commission

b. City Council/Board of Supervisors d. x Other OWNER - ASTRA INV. CAPITAL

6. Date of local government's decision: \_\_\_\_\_

7. Local government's file number (if any): \_\_\_\_\_

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

ROAN VERNE GAUMAN, THUNDERBOLT OAKS, CA

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

MAR-27-2000 MON 18:47

IDICA COASTAL COMM S.CENTRAL

TEL: 1800 944 1111

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PAUL A ROAD WAS BUILT WITHOUT ANY APPROVAL, PERMISSION,  
OR LEGAL RIGHTS. HE TRESPASSED OUR PROPERTY. HE  
MISLED THE COUNTY OF VENTURA THAT HE HAD MY PERMISSION  
TO DO THIS. HE NEVER DID HAVE THIS EASEMENT.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

  
Signature of Appellant(s) or  
Authorized Agent

Date

4/7/00

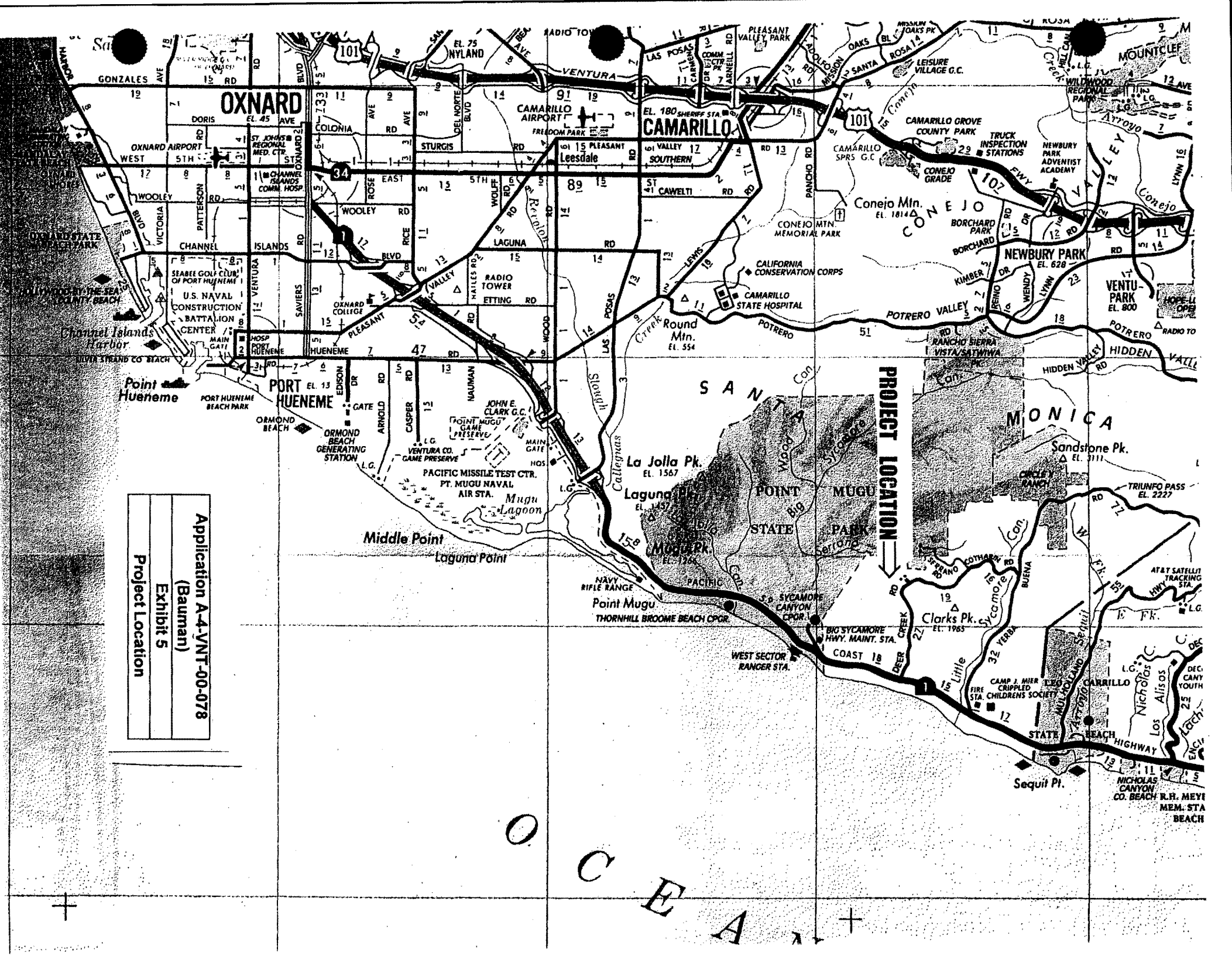
NOTE: If signed by agent, appellant(s)  
must also sign below.

Section VI. Agent Authorization

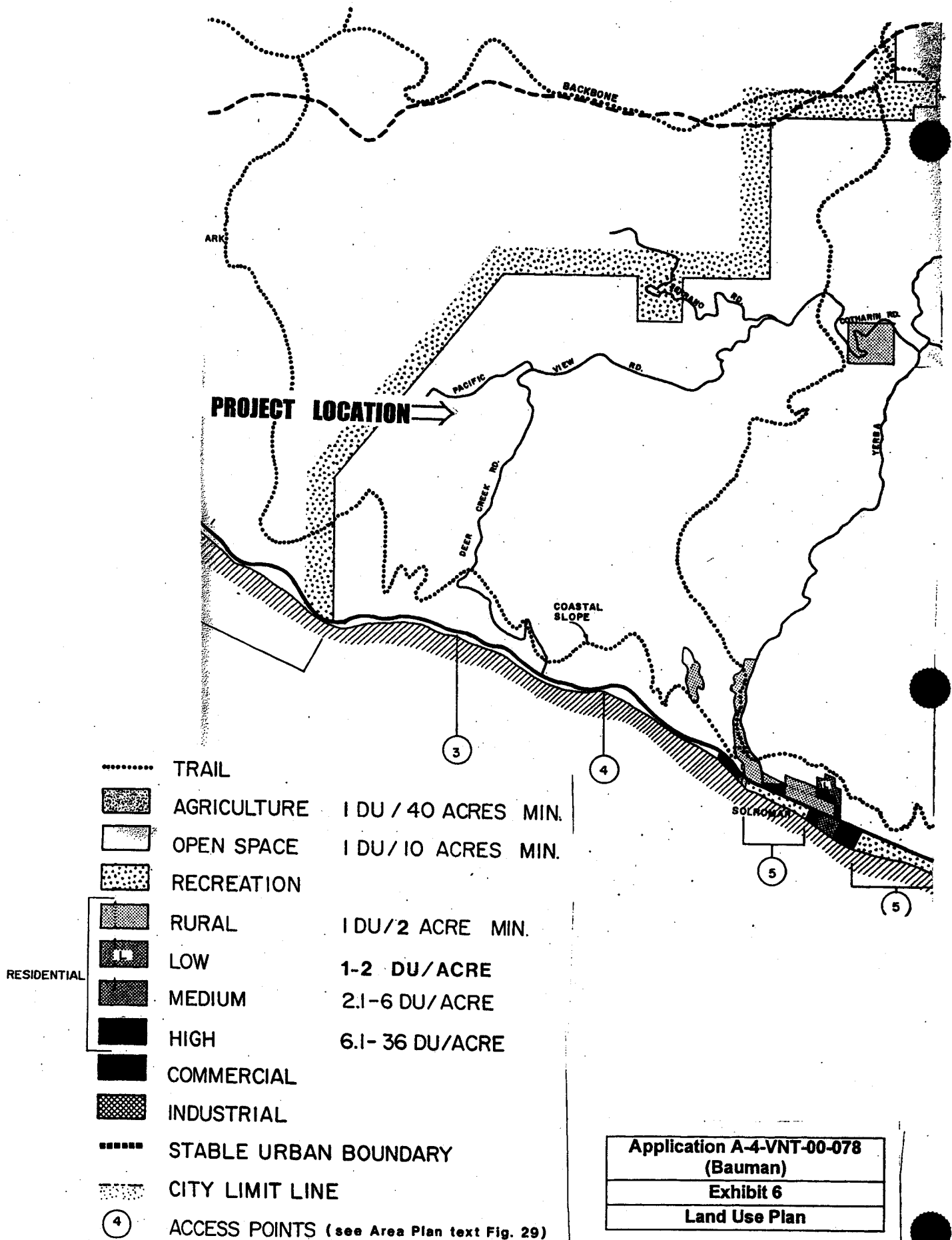
I/We hereby authorize \_\_\_\_\_ to act as my/our  
representative and to bind me/us in all matters concerning this  
appeal.

Signature of Appellant(s)

Date



Application A-4-VNT-00-078  
(Bauman)  
Exhibit 5  
Project Location



Application A-4-VNT-00-078 (Bauman)
Exhibit 6
Land Use Plan

## LAND USE PLAN

county of ventura local coastal program  
resource management agency planning division,

Serrano Canyon

Boundary, Pt. Mugu State Park

Significant  
Ridgeline

PROJECT LOCATION

Stream

Corridor

Deer Creek

View Road

Road

Canyon

Deer

Application A-4-VNT-00-078 (Bauman)
Exhibit 7
Environmentally Sensitive Habitats Map (LUP)

NEWTON KALMAN  
*Attorney at Law*

April 17, 2000

Honorable Commissioners  
Of The California Coastal Commission  
45 Fremont Street #2000  
San Francisco, CA 94105-2219

Attention: Sara Wan and Pedro Nava

Re: Appeal No. A-4-VNT-00-37  
Planned Development Permit 1811 for CCC-9904 (PM-5203)

RECEIVED  
APR 20 2000  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Honorable Commissioners,

I have been retained by Paul Betouliere and Susan Betouliere as their attorney to represent them in connection with all matters relating to the above-numbered appeal to the California Coastal Commission.

Mr. and Mrs. Betouliere have entered into a sales escrow agreement with Verne W. Bauman and Cheri A. Hanley, whereby Mr. Bauman and Ms. Hanley have agreed to sell Parcel 31, Assessor's Parcel Number: 700-0-010-315 to my clients, Mr. and Mrs. Betouliere, who have agreed to buy said property.

By the terms of the sales escrow agreement, the sellers, Verne Bauman and Ms. Hanley have acknowledged that they have agreed to cooperate in expediting the completion of the Certificate of Compliance.

Mr. Verne Bauman has previously made the application for the Conditional Certificate of Compliance to the County of Ventura Planning Department. Mr. Verne Bauman is hereafter in this letter referred to as the "Applicant."

The legal rights of the applicant, Verne Bauman, as the innocent purchaser are mandated by Ventura County policy. Mr. Bauman's in-laws, Mr. and Mrs. Robert Holbrook, received this property on April 1, 1968 and they retain their status under the innocent purchaser protection afforded by Ventura County policy.

Application A-4-VNT-00-078 (Bauman)
Exhibit 8
Letter from Newton Kalman

Page 2

On July 5, 1977, applicants Mr. and Mrs. Verne Bauman were given this property, Parcel 31, as a "gift of love and affection" by Mrs. Baumans' parents, Mr. and Mrs. Holbrook, who thereby acquired the status of innocent purchaser with the acquisition of this gift.

In 1968 and 1977, these family members, Holbrook and Bauman respectively, had and have to this day, protection afforded as innocent purchasers under Ventura County policy, which mandates that innocent purchasers are allowed to follow the rules of the day. The acquisition of Parcel 31 by the Baumans by gift from the Holbrooks predates the creation of the California Coastal Commission and its implementation of the Local Coastal Program Zoning Ordinances. The rules of the day, whereby the applicants were and are protected by and through Ventura County policy, allow for a minimum lot size of 10 acres.

The California Coastal Commission has previously approved the legal status on the two adjacent ten-acre parcels, APN: 700-0-010-425 and APN: 700-0-010-415. Parcels 42, 41 and Parcel 31 is part of the same underlying 40-acre parent parcel, and has approved without exception more than 40 previous attempts whereby the County of Ventura has used the same formula, during the past 15 years, to create a legal lot with "innocent purchaser" status, as provided for under State Law and/or Ventura County policy.

This appeal by the California Coastal Commission makes reference to the following sections from its Local Coastal Program Zoning Ordinance:

Sections: 8177-4.2.4  
8177-4.2.4b.  
8177-4.2.1  
8177-4.2.2a  
8177-4.1.3  
8177-4.1.1  
8177-4.1.2

Said LCP Ordinances and noted sections are not relevant to and do not pertain to and/or affect the legal rights afforded by State Law, and/or Ventura County policy, to the present applicant, Mr. Verne Bauman.

Any attempt of the California Coastal Commission to add additional conditions to the Conditional Certificate of Compliance Number- 9904 must necessarily violate the Civil Rights and Land Use Rights of the applicant, Mr. Verne Bauman, and will destroy the utility and salability of Parcel 31, a 10 acre lot.

Page 3

I request your cooperation, courtesy and kind consideration, and that you review the information provided herein. I respectfully request that the California Coastal Commission remove its' Appeal No: A-4-VNT-00-37 from the previously approved County of Ventura Conditional Certificate of Compliance Number 9904.

Sincerely,

NEWTON KALMAN

cc: County of Ventura  
Land Use Permits Section  
Nancy Butler Francis, Manager

California Coastal Commission  
Mr. Merle Betz

Verne Bauman