

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
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Hearing Opened: 5/9/00
49th Day:
Staff: G. Timm
Staff Report: 4/17/01
Hearing Date: 5/7-11/01
Commission Action:



RECORD PACKET COPY

STAFF REPORT: APPEAL De Novo Hearing

LOCAL GOVERNMENT: County of Ventura

LOCAL DECISION: Approval with Conditions

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

APPLICANT: Vern Bauman

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

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

PROJECT DESCRIPTION: Legalization of an illegally subdivided 10-acre parcel by issuance of a Conditional Certificate of Compliance and Tentative Parcel Map.

SUBSTANTIVE FILE DOCUMENTS: County of Ventura Notice of Final Decision for Planned Development Permit 1811, CCC-9904 & PM-5203 and attached Staff Report & Recommendations; County of Ventura Certified Local Coastal Program (Land Use Plan & Coastal Zoning Ordinance).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with special conditions on the basis that the project, as conditioned, is in conformity with the applicable policies contained in the Certified Local Coastal Program (Land Use Plan and Zoning Ordinance Policies) for Ventura County relative to demonstrating the ability to develop the site in the future. Special conditions are recommended to address future development relative to geologic stability of the site, location of a building pad or envelope, the availability of water and sewage disposal facilities, open space on steep slopes and road access, including evidence of a legal road easement. Although the County made findings relative to the above-cited issues it deferred future determination of consistency until the building permit stage of development. The LCP requires that such determinations and findings be made

prior to approval of any development, including the creation of a new lot by subdivision.

PRIOR COMMISSION ACTION

The Commission found that Substantial Issue exists with respect to the grounds on which the appeal was filed – inconsistency with applicable policies and related zoning standards of the County's certified LCP at the June 13, 2000 Commission Meeting. The applicable standard of review for the Commission to consider at the de novo hearing is whether the proposed development is in conformity with the applicable policies contained in the certified Local Coastal Program for Ventura County. The Commission held a de novo hearing in August 2000 and continued the item in order to allow staff the opportunity to review information submitted at the hearing by a project proponent relative to the legality of the subject lot and to further investigate the legality of the 3 other 10 acre parcels which have been created from the original 40 acre parcel. Finally, staff notes that upon further investigation of documents obtained from the County that the 3 related 10 acre parcels (created from the original 40 acre parcel) have been previously approved by the County of Ventura by means of Certificate of Compliance in 1981 (lot 40), 1990 (lot 42), and 1994 (lot 41). Although records are incomplete there is evidence demonstrating that the Commission was notified in each case.

STAFF NOTE – CORRESPONDENCE

As indicated above the basis for appeal is that minimal or no evidence or analysis was provided relative to future development of the lot, which would be created or legalized by the proposed land division. The County found that it was appropriate to defer such site- specific determinations relative to geologic stability, the availability of water, septic system capability, road and pad grading to the building permit stage. However, the LCP requires and the Commission has required in numerous past permit actions that such evidence and analysis be submitted prior to approval of any land division including the legalization of a lot pursuant to a Certificate of Compliance. Commission staff has requested site-specific information relative to future developability of the lot from the applicant but the applicant has not responded to the requests.

Correspondence has been received from the County of Ventura in which it is argued that a Conditional Certificate of Compliance is not "development" within the meaning of the Coastal Act or the County's Zoning Ordinance (Exhibit 8). The Coastal Zoning Ordinance, however, contains the Coastal Act's definition of development. 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 found to be consistent with all applicable provisions of the County's certified LCP, which was certified in 1983. Further, staff notes that the County has processed the Conditional Certificate of Compliance through the issuance of a Coastal Development Permit and the County's Staff Report and Recommendation characterizes the development as a "subdivision" of land under the State Subdivision Map Act.

Mr. Paul Betoulier, who has entered into an escrow agreement to purchase the property from the applicant, has submitted additional information and correspondence. Mr. Betoulier has submitted copies of septic system and water well tests from three adjacent properties, evidence pertaining to a legal road easement to the project lot (exhibit 7), and a letter from a biologist stating that no evidence of *marcescent dudleya* was found on the property (exhibit 12). Other correspondence received from Mr. Betoulier is attached to the staff report in the exhibit section.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. A-4-VNT-00-078 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Local Coastal Program for the County of Ventura. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and / or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or

alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Special Conditions

1. Legal Road Access

PRIOR TO ISSUANCE of the Coastal Development Permit the Applicant shall submit the following to the Executive Director for review and approval:

- (a) Evidence of an alternative easement(s) that grants to the applicant or property owner the right to use Pacific View Road to access APN 700-010-310 and to construct a road providing access to Assessor's Parcel No. 700-010—310 from Pacific View Road, or;
- (b) Evidence in writing of a good faith effort to obtain such easement described above and rejection or refusal of such easement by the affected property owner(s).
- (c) Access to APN 700-010-310 must be taken from Pacific View Road unless this alternative is determined to be infeasible pursuant to (b) above.
- (d) If the applicant has submitted evidence pursuant to (b) above, the applicant shall also submit evidence of (1) a final court judgement or settlement agreement between the affected parties indicating that the applicant or property owner has the right to construct a road to provide access to Assessor's Parcel No. 700-010-310 from Deer Creek Road pursuant to the Easement recorded at Ventura County on November 1, 1961, at Book 2066, Page 378 and (2) an Easement to cross Assessor Parcel No. 700-010—42 to access Parcel No. 700-010-310.

2. Geology

PRIOR TO ISSUANCE of the Coastal Development Permit the applicant shall submit, for review and approval of the Executive Director evidence of a site specific engineering geology report which indicates that the subject site is free of significant risk of hazards from seismic activity, landslides, expansive soils and subsidence etc. and that development on the subject site within the designated building envelope and access to the property is feasible from an engineering geologic standpoint relative to the above stated hazards.

3. Potable Water

PRIOR TO ISSUANCE of the Coastal Development Permit the applicant shall submit for review and approval of the Executive Director evidence of:

- (a) A statement in writing of approval or agreement by Ventura County that demonstrates the availability of potable water to serve development on the subject site over its normal lifespan, or;
- (b) a site specific report addressing the use of a water well to serve development including data and analysis relative to depth of water, geologic structure, production capacity, degree of drawdown etc. which indicates that water is available to serve the development over its normal lifespan.

4. Sewage Disposal

PRIOR TO ISSUANCE of the Coastal Development Permit the applicant shall submit, for the review and approval of the Executive Director evidence of either: (a) the availability of existing public sewer service to the subject site adequate to serve the development over its normal lifespan from Ventura County Department of Public Works, or (b) a site specific septic system capability analysis including percolation test results indicating the availability and performance on on-site sewage disposal and treatment adequate to serve the project over its normal lifespan.

5. Open Space

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

- 1. Development shall not be permitted in areas containing over 30 percent slope.
- 2. All slopes over 30 percent shall be permanently maintained in their natural state as open space.

B. PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the future building envelope and all slopes exceeding 30 percent. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without approval of an amendment to this Coastal Development Permit by the Commission.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The proposed project consists of the legalization of an illegally created ten-acre lot by approval of a Conditional Certificate of Compliance, Tentative Parcel Map and Planned Development Permit. The site is located south of Pacific View Drive and west of Deer Creek Road in the Santa Monica Mountains. The site is located on a generally steep, south facing slope within the upper reach of an unnamed canyon and below a significant ridgeline in the Santa Monica Mountains. The site contains a flat area that has been identified as a future building site for a single-family dwelling and guest unit. No development of the site is proposed by this application although the intent of the application is to legalize the parcel for future development. Vegetation on the site consists of Chamise-Laurel Sumac Chaparral and Coastal Sage Scrub intermixed with deer weed, yucca, and bunch grasses. No riparian habitat or other Environmentally Sensitive Habitat has been identified on the project site.

Surrounding parcels range in size from 10 to over 400 acres. There are scattered residential structures in the immediate area, some of which are visible from portions of the subject site. The Coastal Land Use Plan Map designation for the site is Open Space and the Coastal Zoning Classification is C-O-S-M (Coastal Open Space – Santa Monica Mountains Overlay) Zone. The minimum lot size permitted in the C-O-S Zone is 10 acres, however, in some areas of the Santa Monica Mountains minimum lots sizes of 40 to 100 acres are required based on water availability, access, slope, geologic and fire hazards. Further, the Overlay requires application of a slope/density formula to determine the minimum lot size for newly proposed lots. Figure 31 in the certified Land Use Plan generally categorizes the area of the subject site as containing slopes greater than 25 percent. For slopes with average slopes of greater than 25 percent the minimum lot size is 40 acres for instance. The County did not apply the slope/density formula analysis to the proposed new lot nor did the County approval contain a site-specific analysis of water availability, percolation rates, geologic hazards or road access.

The applicant's lot resulted from an illegal subdivision that the County determined occurred in 1968. (See grant deed, Exhibit 5) Based on the Assessor's map, it appears that one forty acre lot was divided by grant deeds into four, square 10 acre parcels, including the applicant's lot. The applicant, Verne Bauman, and Cherie Bauman, originally acquired the property in 1977. However, in 1988, the Baumans granted the property to James V. Berry. (See grant deed, Exhibit 6). Subsequently, the property was transferred back to the current owners, Verne Bauman and Cherie Hanley (formerly Cherie Bauman). This transfer apparently occurred some time between 1995 and 1998. Coastal Commission staff sent a letter to Mr. Bauman in 1982 informing him that the lot was illegally subdivided

and that all subdivisions of land require a Coastal Development Permit. Commission staff have determined, however, that three of the four lots created by the illegal subdivision have previously been issued Conditional Certificates of Compliance by the County and Commission staff received prior notification of each approval. The lots have been conveyed to different owners. Therefore, it is not possible to retain a 40-acre lot based on slope percentage. All lots, including the subject site conform with the minimum zoning designation of 10 acres, however.

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 ...

Therefore, for the reasons provided above, the Commission finds that the proposed land division does constitute development which has occurred subsequent to the effective date of the Coastal Act and certification of the County LCP and is subject to conformance with the policies and provisions of the County's Local Coastal Program.

B. Consistency with Local Coastal Program Policies – Standard of Review

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development approved by a Coastal County which is not designated as the principal permitted use in a land use category, such as the proposed project). In this case, the proposed development has been previously appealed to the Commission, which found, during a public hearing on June 13, 2000, that a substantial issue was raised.

As a "de novo" application, the standard of review for the proposed development is the policies and provisions of the County of Ventura Local Coastal Program (LCP) which was certified by the Commission on April 28, 1983. Further, the

Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County of Ventura LCP as guiding policies. The LCP consistency issues raised by the proposed development are discussed in the following sections.

**C. County Findings for Approval and Required Special Conditions –
Conformance with Certified Local Coastal Program**

Several issues are raised by the County's approval of the proposed project relative to conformance with applicable policies contained in the certified LCP. These issues include:

- Identification of a building envelope.
- Grading required for future residential development of site.
- Environmental assessment of site required for land division.
- Application of Santa Monica Mountains (M) Overlay Zone requirements including the slope / density formula to determine minimum lot size.
- Percolation test results or septic system capability analysis for future sewage disposal.
- Availability of potable water to serve future development.
- Hazards and constraints associated with future development of the subject parcel (and the remaining 10-acre parcel) relative to geologic stability, steep slopes and erosion, and wildfires.
- Evidence of legal road easement across adjacent properties.

In its approval of a Conditional Certificate of Compliance and tentative Parcel Map to legalize the illegally created lot the County found that the proposed project is consistent with the intent and provisions of its Local Coastal Program. However, the County made numerous findings based on assumptions rather than site-specific analysis. Further, the County attached several special conditions which, in effect, deferred determination of consistency with several applicable LCP (LUP and Zoning) policies to the future permitting stage for residential development on the site. Findings and special conditions required by the County that are applicable to the issues raised in the appeal and the conformance of those findings and / or required special conditions with the certified LCP are discussed below.

The County found that "the proposed project is compatible with the current General Plan, Local Coastal Plan and Zoning Ordinance" because the "10-acre lot met the zoning requirements for lot size at the time of the illegal subdivision." (The illegal subdivision occurred in 1968 prior to passage of the Coastal Act and the certification of the LCP.) The County determined that the lot was exempt from any requirements to meet current minimum lot size restrictions which require parcels of "10 acres or greater" based on the application of the present Coastal Open Space Land Use Plan and Zoning designation including the slope / density formula and other policies required by the Santa Monica Mountains (M) Overlay Zone.

As discussed above in the Project Description and Background Section, the Commission does not agree with the County's rationale that the lot does not have to meet current LUP and Zoning requirements. The applicant initially acquired the lot in 1977 (after the effective date of the Coastal Act), subsequently sold the lot to another party in 1988 and reacquired the parcel in 1998 through foreclosure sale. Further, Commission staff informed the applicant that the lot was illegally subdivided and that a Coastal Development Permit was required in 1982. (See exhibit 8). As previously indicated, 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 in effect at the time the lot was acquired.

The County found that the project was consistent with the intent and provisions of policies requiring the protection of Environmentally Sensitive Habitat because "the current application does not include any development of the parcel, therefore, no impacts are expected as a result of this project." The finding stated that "any future development will require additional review as stated in the conditions of approval." In other words, the County did not analyze potential future impacts and consistency with applicable LCP policies of future residential development arising out of the land division to legalize the 10-acre lot. The County deferred any determination of LCP consistency with applicable resource protection policies until the future building permit stage of development.

Specifically, the County did not apply the current applicable C-O-S-M (Coastal Open Space - Santa Monica Mountains Overlay) Land Use Plan designation and corresponding Zoning Ordinance designations (8173-1 & 8173-13) which establishes a minimum lot size of 10 acres but also establishes the slope / density formula and other protective policies which could increase the minimum lot size significantly.

The County did not make findings or deferred its determination relative to the following policies:

LUP Policy 3 and Zoning Ordinance Policy 8178-4.1 which requires that "new development shall be sited and designed to avoid adverse impacts ...";

Policy 4 and corresponding Zoning Ordinance Policy 8177-4.2.3 which requires that accessways for subdivisions and undeveloped lots minimize grading and other potential impacts;

Policy 5 and Zoning Policies 8177-4.1 and 4.2 which requires a test well and evidence of potable water prior to approval, and;

Policy 6 and Zoning Policies 8177-4.2.4(a) & (b) which requires that land divisions in the Santa Monica Mountains assure that any future development is consistent with all applicable development policies, that environmental assessments (of the site) accompany tentative map applications, that all applications "shall identify future building envelopes ...", and that all identified environmentally sensitive habitat and / or slopes over 30% shall be permanently maintained in open space through a recorded easement.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as approved by the County, does not conform to the referenced applicable policies and provisions of the County's certified Local Coastal Program.

Relative to Hazards the County approval states that "the Public Works Agency has determined that there will be no adverse impacts ... as there are no known faults or landslides on the project site." The findings state that "the proposed project will be required to meet all Public Works Agency requirements to develop, prior to issuance of a building permit." The County did not require a site-specific geotechnical report, water well test or percolation test for on-site septic system and made no site specific finding other than to defer any determination to the building permit stage although the LUP, as discussed above, notes that the Santa Monica Mountains terrain "present considerable hazards and constraints to new development", the "potential for instability and erosion", and constraints to "proper functioning of water and septic systems."

The County failed to make site-specific findings other than to defer its determination relative to the following *Hazards* policies:

Policy 2 and corresponding Zoning Policy 8178-4.1 which requires that new development shall be designed to minimize risks to life and property in areas of high geologic, flood and fire hazards.

Policy 3 and Zoning Policy 8178-4.2, which requires that all new development, be evaluated for its impacts to, and from, geologic, flood and fire hazards.

Policy 7 and Zoning Policy 8175 which requires application of the slope / density formula to property proposed to be subdivided in order to determine the minimum lot size.

Therefore, for the reasons provided above, the Commission finds that the proposed development, as approved by the County, does not conform to the applicable Hazards policies and provisions of the County's certified LCP.

The County deferred final determination concerning consistency with *Public Works* policies to the building permit stage of development although the LUP recognizes the severe limitations of sewer, water and road capacities in the Santa Monica Mountains. Public Works Policy 3 requires that "new development in the Santa Monica Mountains should be self-sufficient" and that "the County shall make the finding for each individual development requiring sanitary facilities and potable water that said private services will be able to adequately serve the development over its normal lifespan."

The County deferred ultimate findings relative to grading and future development of a building pad and access road to serve the site. The County made general findings that the site is physically suitable for the type and density of development proposed although no site development plans were submitted by the applicant or analyzed by the County. The construction of a future access road and the associated grading are particularly important since the majority of the lot is very steep and the access road may have to traverse several hundred feet across two private properties and steep slopes to reach the flatter portions of the site. The County found that "the proposed 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." This easement is in dispute and is the subject of litigation, however.

An easement has been provided to the Commission staff that was recorded in 1961 and that is alleged to grant a right of access from Deer Creek Road to the applicant's proposed lot across property owned by Cohen/Astra Investments. This easement is attached as Exhibit 7. A recent map that shows the location of the proposed access road is attached as Exhibit 7 also. The proposed access route extends west from Deer Creek Road (a public road), across the Cohen/Astra Investments lot, to the 10-acre lot (#42) adjacent to the applicant's proposed 10-acre lot (#31). (This adjacent 10-acre lot was previously part of the same 40-acre lot as the applicant's proposed lot). The proposed access road must also cross the adjacent 10-acre lot (#42). Although Exhibit 7 shows a road across lot #42, no road currently exists. There is an existing narrow road extending west from Deer Creek Road onto the Cohen/Astra Investments property; however, this road does not continue all the way across the property to lot #42.

The 1961 easement that is alleged to grant access to the applicant's proposed lot from Deer Creek Road does not contain a metes and bounds description of the location of the easement. Generally, an easement contains a metes and bounds description, which fixes the exact location of the easement on the ground.

Furthermore, the language of the easement is confusing and unclear. The 1961 easement grants "a perpetual right of way from Pacific View Road ... thirty (30) feet wide over and along the present road and through above described property...." (Exhibit 7). Mr. Betouliere, who is in escrow and seeking to purchase the proposed lot from the applicant, alleges that the "present road" referred to in the easement is now Deer Creek Road, a public road. He also alleges that the easement grants a right to cross from Deer Creek Road "through" the property now owned by Cohen/Astra Investments, to access the 40 acre lot to the west that includes the applicant's proposed lot. The Commission staff has not received evidence to confirm this interpretation.

Cohen/Astra Investments have asserted that the 1961 easement does not create a valid right to cross their property to access the applicant's proposed lot. Due to the absence of a metes and bounds description, and the confusing language of the easement, there are questions regarding the validity of the easement. The Commission staff has been informed that a quiet title action was filed in state court in May 2000, seeking a determination of the easement's validity. Until this court action is resolved or settled, the Commission cannot find that there is legal access to the applicant's proposed lot. Until the question of legal access is resolved, the Commission cannot find that creating the proposed lot is consistent with the LCP.

Pacific View Road, which is also shown on Exhibit 7, is located north of and closest to the project site is the preferred alternative for access to the site, however it is a private road. Access from Pacific View Road would require considerably less grading and landform alteration than would be required if access were to be taken from Deer Creek Road. Pacific View Road crosses property adjacent to the applicant's proposed lot, however. The owner of this property has indicated that he is not willing to grant an easement allowing use of Pacific View Road for access to the applicant's proposed lot. It is possible, however, to take access across another property on Pacific View Road.

For all of the reasons discussed above, the Commission finds that the proposed development, as approved by the County, does not conform to the applicable Public Works policies and provisions of the County's certified LCP.

D. Certified Land Use Plan Policies

The preamble to the certified Coastal Area Plan (Land Use Plan) states that "all components ... are intended to be consistent with the provisions of the California Coastal Act of 1976. Any ambiguities in the General Plan, as they apply to the Coastal Zone, including the Coastal Area Plan, shall be resolved in favor of the interpretation most likely to implement the mandated goals, policies and programs of the Coastal Act."

The Introduction to the Coastal Area Plan provides a description of each land use designation and the principal permitted uses for each. The following description is provided for the *Open Space* land use designation, which is applicable to the proposed development:

Open Space: The purpose of this designation is to provide for the preservation and enhancement of valuable natural and environmental resources while allowing reasonable and compatible uses of the land. Also to protect public safety through the management of hazardous areas such as flood plains, fire prone areas, or landslide prone areas. *Principal Permitted uses are one dwelling unit per parcel, agricultural uses as listed as principal permitted uses in "Agricultural" designation, and passive recreational uses that do not alter physical features beyond a minimal degree and do not involve structures. Minimum lot size in the "Open Space" designation is 10 acres. (Emphasis added.)*

The Ventura County Coastal Area Plan is divided into three geographic sub-areas, the North Coast, the Central Coast, and the South Coast. Each sub-area contains a separate set of policies applicable to only that specific area. The location of the proposed development is within the South Coast sub-area. The South Coast encompasses some 18,600 acres along its 13-mile length, including approximately 7 miles of the coastal Santa Monica Mountains. The South Coast sub-area component of the LCP Coastal Area Plan is divided into several sections corresponding with specific (Coastal Act) issue topics that are relevant to that area.

The LCP Coastal Area Plan describes the South Coast sub-area as containing numerous environmentally sensitive habitat areas. Therefore, a special *Santa Monica Mountains (M) Overlay Zone* has been applied to most of the mountainous areas in recognition that the "Santa Monica Mountains are a coastal resource of statewide and national significance." The Coastal Area Plan notes that the mountains provide habitat for several unique, rare or endangered plant and animal species that may be easily damaged by human activities. The LCP requires a case-by-case consideration of potential habitat impacts for projects proposed in the Overlay Zone.

Section D of the Environmentally Sensitive Habitat section of the South Coast sub-area applies to the Santa Monica Mountains Overlay Zone. The LCP describes the Santa Monica Mountains in this area as follows:

The Santa Monica Mountains contains some of the most significant inland habitats in the County's coastal Zone. Many creeks and streams with their riparian corridors, coastal dunes, and rare native bunchgrass and giant coreopsis can be found in the mountains. In addition, grasslands, chaparral, and oak woodlands are found.

Some of these sensitive habitats are mapped, but others occur in several small areas throughout the mountains, making them impractical to accurately map.

The stated objective of this section of the LCP is "to preserve and protect the upland habitats of the Santa Monica Mountains." The following policies, contained in the ESH section, are applicable to the proposed development:

3. All new development shall be sited and designed to avoid adverse impacts on sensitive environmental habitats.
4. Where possible for subdivision and undeveloped contiguous lots, construction and / or improvements of driveways / accessways which would increase access to the subject area or adjacent areas 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 off public routes and to reduce grading. At stream crossings, driveway access for nearby residences shall be combined. Hillside roads and driveways shall be as narrow as feasible and follow natural contours.
5. Development dependent upon a water well shall be approved only if such well would not either individually or cumulatively cause adverse impacts on affected riparian areas or other coastal resources.
6. All proposals for land divisions in the Santa Monica Mountains shall be evaluated to assure that any future development will be consistent with the development policies contained in this plan. . .
 - All applications shall identify future building envelopes and shall be identified on the final map. . .

- All identified environmentally sensitive habitat areas and / or slopes over 30 % 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. Development shall not be permitted in areas over 30 % slope.

In order to find the proposed development consistent with the above referenced ESH policies special conditions for approval are necessary. Special Condition 1 requires the applicant to utilize the most environmentally feasible means of driveway access that is legally available and to submit evidence of a legally valid easement. The intent of this condition is to minimize landform alteration resulting from the construction of an access road to the maximum extent legally feasible. Special condition 3 requires the applicant to submit evidence of adequate availability of potable water to serve development on the site over its normal lifespan without adversely affecting the water source. Special condition five restricts development to the environmentally preferable flatter area of the site and requires that all slopes over 30 percent be permanently retained as open space. The Commission finds that, only as conditioned, is the proposed development consistent with the Environmentally Sensitive Habitat policies of the certified Land Use Plan.

The *Hazards* section of the certified Land Use Plan states that "the severe and rugged terrain of the Santa Monica Mountains present considerable hazards and constraints to new development. ... Severe slopes not only have the potential for instability and erosion, but may also serve as constraints to the proper functioning of water and septic systems. An additional concern in this area is access, especially emergency access in case of fire or other disasters."

This section also notes that the Santa Monica Mountains contain highly expansive soils, which, taken "together with the steep topography, tend to increase the frequency of slope failure and erosion." These potential erosion hazards are further impacted by "grading, increased irrigation or septic runoff." In recognizing the "Open Space" Land Use designation and the minimum lot size of 10 acres, the Hazards Section further provides that "in some areas ... 40-100 acre minimum lot sizes are justified based on water availability, access, slope, geologic and fire hazards."

The following policies are applicable to the proposed development:

2. New development shall be suited and designed to minimize risks to life and property in areas of high geologic, flood and fire hazards.

3. All new development will be evaluated for its impacts to, and from, geologic hazards ..., flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.

7. The South Coast portion of the Santa Monica Mountains requires special attention and the following formula and minimum lot sizes will be utilized as new land divisions are proposed in the "Open Space" ... designation.

Policy 7 goes on to provide the slope / density formula to compute the average slope of property proposed to be subdivided and a table used to determine the minimum lot size for new lots based on the average slope. For example, lots with an average slope of over 25 percent are subject to a minimum size of 40 acres. (See Section 8175 in the Coastal Zoning Ordinance discussed below.) Prior adjacent parcel legalizations prevent compliance with this standard, however.

Special conditions are necessary to bring the development into conformance with the Hazards policies. Special condition 2 requires the applicant to submit evidence, in the form of a site specific engineering geology report, demonstrating that the site is free of significant risk from geologic hazards and that development is feasible from an engineering geologic standpoint. Only as conditioned is the proposed development consistent with Hazards policies of the certified Land Use Plan.

The *Public Works* section of the certified LUP states that "public service capacities for sewer, water and roads are severely limited in the South Coast sub-area." The LUP notes that water to residents of the mountains is provided by individually owned well sites. The adequacy of water availability for mountain areas is determined by "on-site inspection by the Environmental Health Division of the County." Sewage disposal in the mountains is provided by individual septic tank systems permitted through the Environmental Health Division also.

Policy 3 in the Public Works section states:

3. New development in the Santa Monica Mountains should be self-sufficient with respect to sanitation and water and should not require the extension of growth inducing services. Development outside of the established "Existing Community" area shall not directly or indirectly cause the extension of public services (roads, sewer, water, etc.) into an Open Space area. The County shall make the finding for each individual development requiring sanitary facilities and potable water that said private services will be able to adequately serve the development over its normal lifespan.

Special conditions 3 and 4 require the applicant to submit evidence of the on-site availability of potable water and septic system capacity and operation in the absence of existing public service availability (without requiring the extension of such public services to the site. Only as conditioned is the proposed development consistent with the Public Works policies of the certified Land Use Plan.

E. Certified Coastal Zoning Ordinance Policies

The certified Coastal Zoning Ordinance contains standards and policies to implement the Land Use Plan. Article 3 of the Zoning Ordinance establishes the purpose of each zone designation. Zones, which are applicable to the proposed development, include:

Section 8173-1 - *Coastal Open Space (C-O-S) Zone* -The purpose of this zone is to provide for the preservation, maintenance, and enhancement of natural and recreational resources in the coastal areas of the County while allowing reasonable and compatible uses of the land.

Section 8173-13 - *Santa Monica Mountains (M) Overlay Zone* -The Santa Monica Mountains are a unique coastal resource of statewide and national significance. The mountains provide habitats for several unique, rare, or endangered plant and animal species. These habitats can be easily damaged by human activities; therefore, the mountains require specific protective measures. The purpose of this overlay zone is to provide these specific protective measures.

Article 4, Section 8174 provides a matrix to identify the permitted uses and type of permit required by specific zone and use. Among the permitted uses in the C-O-S Zone are single-family dwellings and land divisions. As previously indicated, single-family dwellings are considered a Principal Permitted Use in the LCP while land divisions are not. This section also references further restrictions on uses for properties located within the Santa Monica Mountains (M) Overlay Zone.

Article 5, Section 8175 provides development standards for specific zones. As previously discussed the minimum lot area in the C-O-S Zone is 10 acres, however, land divisions are subject to the slope / density formula for determining the minimum lot area

Section 8177-4 of the Coastal Zoning Ordinance establishes the Standards and Procedures for the Santa Monica Mountains (M) Overlay Zone. Relative to permit findings, Section 8177-4.1 states "no application for development in the Santa Monica Mountains overlay zone shall be approved unless all of the

following written findings, as applicable, are made by the approving authority." Those required findings, applicable to the proposed development, include:

8177-4.1.1 – Private services for each individual development requiring potable water will be able to serve the development adequately over its normal lifespan.

8177-4.1.2 – When a water well is necessary to serve the development, the applicant shall be required to do a test well and provide data relative to depth of water, geologic structure, production capacities, degree of drawdown etc. ...

As discussed above, Special Condition 3 requires the applicant to demonstrate the availability of potable water to serve the development over its normal lifespan.

8177-4.1.3 – All need for sewage disposal over the life span of the development will be satisfied by existing sewer service to the immediate area or by location of septic facilities on-site consistent with other applicable provisions of the LCP.

As previously discussed, Special Condition 4 requires the applicant to demonstrate the availability of either public sewer service or adequate septic system capability on-site to serve the development over its normal lifespan.

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.

As previously discussed, no roads, other than driveway access, sewer or water service extension will be required due to the use of on-site water and septic facilities or the prior existence of such service to the site.

Applicable development standards include the following:

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. ...

As previously discussed, Special Condition 1 requires the applicant to make a good faith effort to obtain an access easement from Pacific View Road

which would be the least environmentally damaging alternative means of driveway access.

8177-4.2.4 – All proposals for land divisions in the Santa Monica Mountains shall be evaluated to assure that any future development will be consistent with the development policies contained in the LCP Land Use Plan. . . . In addition, the following shall apply:

- a. Future building envelopes shall be identified on all applications and on the final subdivision map.
- b. All identified environmentally sensitive habitat areas and / or slopes over 30 percent shall be permanently maintained in their natural state through an easement or deed restriction which shall be recorded on the final map, or on a grant deed as a deed restriction submitted with the final map. Development shall not be permitted in areas over 30 percent slope.

Special Condition 5 provides that no development shall be permitted in areas containing over 30 percent slopes and that all slopes over 30 percent shall be permanently deed restricted as open space in order to maintain these slopes in their natural state.

Section 8178-4 of the Zoning Ordinance provides for the mitigation of potential hazards associated with development. The following policies are applicable to the proposed development:

8178-4.1 – All new development shall be evaluated for potential impacts to, and from, geologic hazards (including seismic hazards, landslides, expansive soils, subsidence, etc.), flood hazards and fire hazards. New development shall be sited and designed to minimize risks to life and property in areas such as floodplains, bluffs, 20% or greater slopes, or shorelines, where such hazards may exist. . . . Feasible mitigation measures shall be required where necessary.

8178-4.2 – If the available data indicates that a new development as proposed will not assure stability and structural integrity and minimize risks to life and property in areas of potential hazards, or will create or contribute significantly to erosion or geologic instability, then the County shall require the preparation of an engineering geology report at the applicant's expense.

...

As previously discussed, Special Condition 2 requires the applicant to submit a site specific engineering geology report indicating that the site is

free of significant risk from geologic hazards and that development on the site is feasible from an engineering geologic standpoint.

Based on the findings presented above, the Commission finds that, only with compliance with Special Conditions 1 – 5, will the proposed development conform with the applicable policies of the certified Coastal Zoning Ordinance.

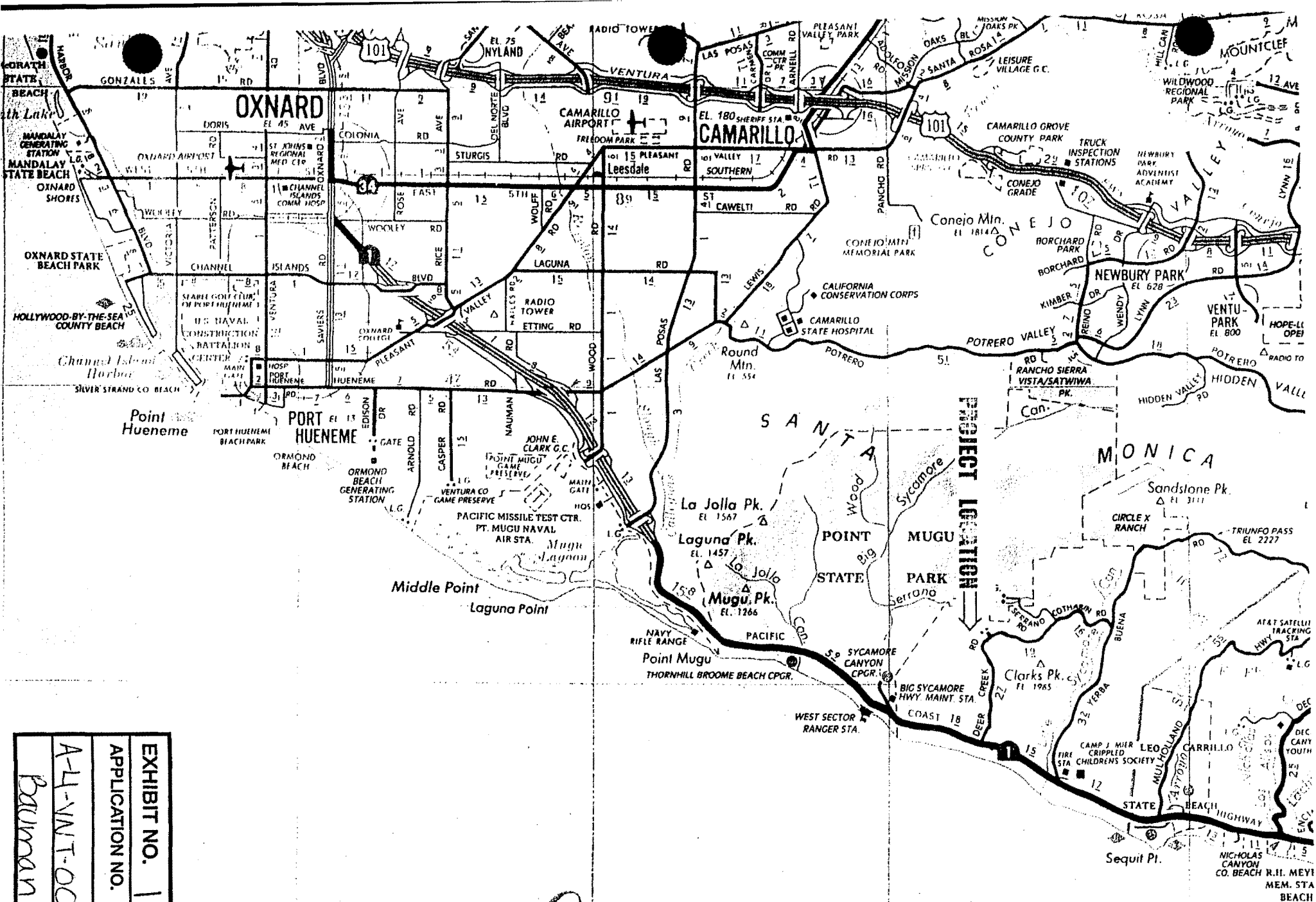


EXHIBIT NO. 1
APPLICATION NO.
A-4-VN-T-00078
Bauman

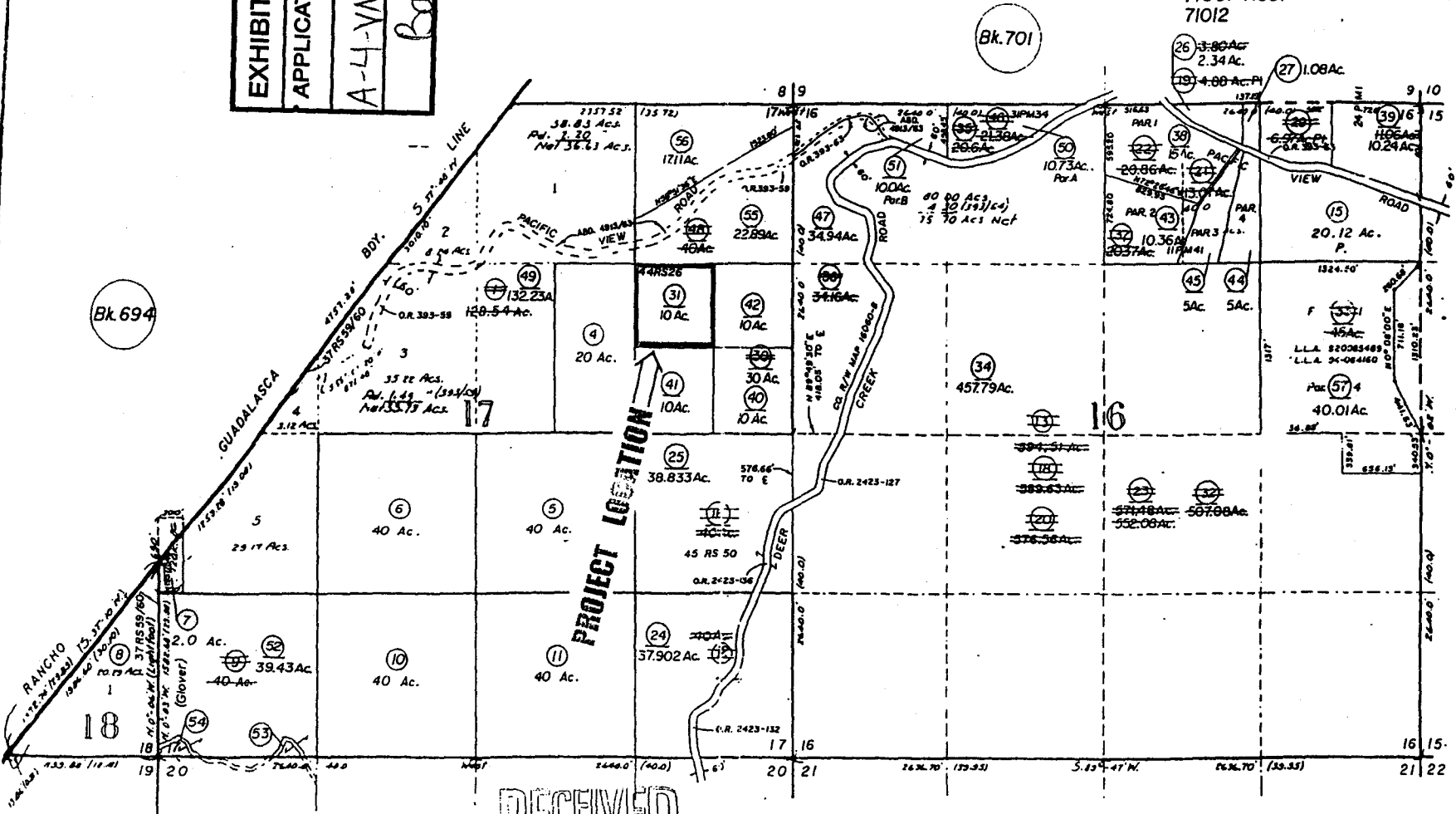
C E A

EXHIBIT NO. 2
 APPLICATION NO.
 A-4-VNT-00-078
 Bauman

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

Tax Rate Area
 71004 71037
 71012

700-01
 SEP 14 1999



Bk. 694

Bk. 701

12

15

RECEIVED
 MAR 24 2000

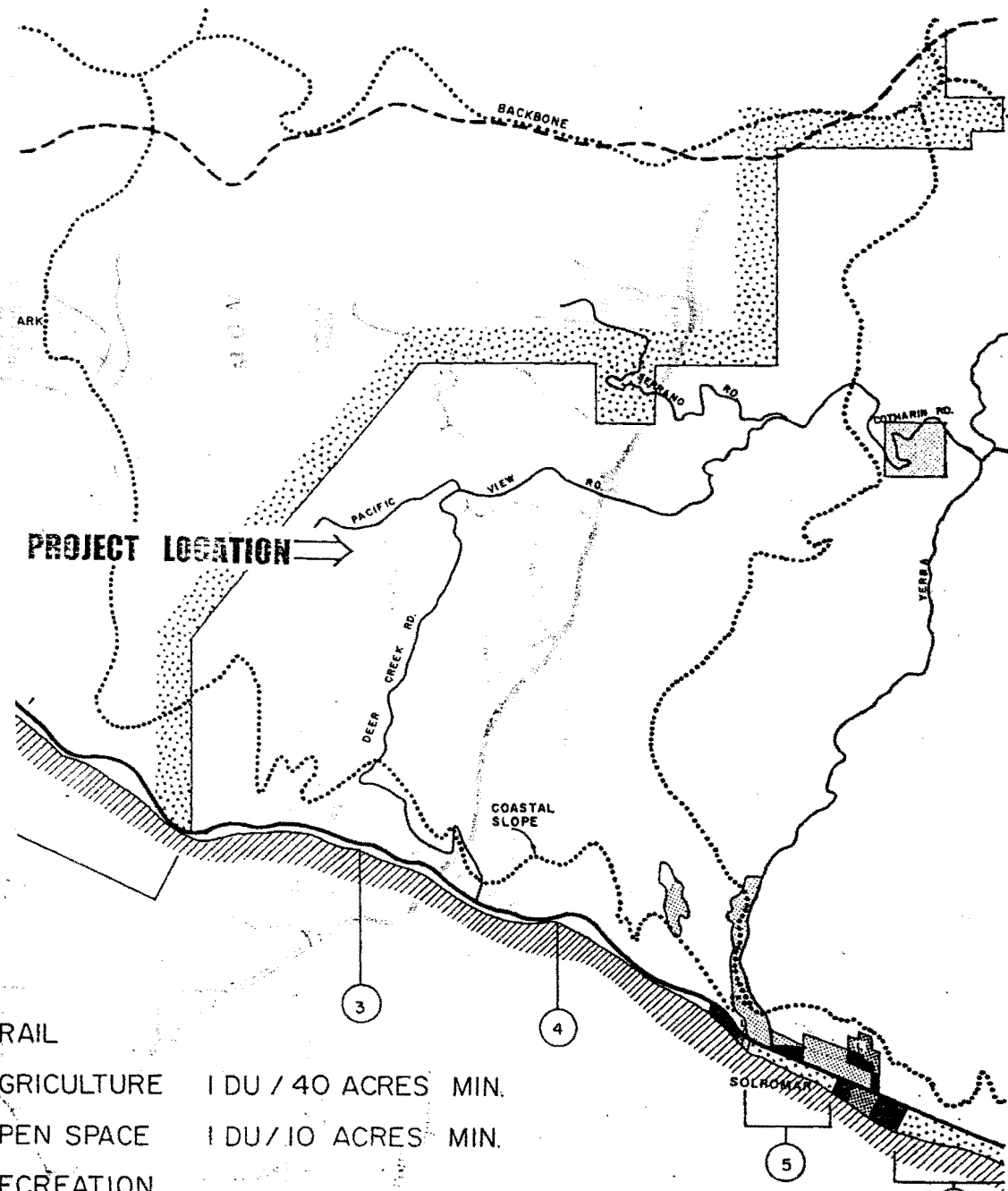
CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

NOTE: ASSESSOR PARCELS SHOWN ON THIS PAGE
 DO NOT NECESSARILY CONSTITUTE LEGAL LOTS.
 CHECK WITH COUNTY SURVEYOR'S OFFICE OR
 A MAPPING DIVISION TO VERIFY.

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

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

EXHIBIT "3"



- TRAIL
- [Stippled Box] AGRICULTURE 1 DU / 40 ACRES MIN.
- [White Box] OPEN SPACE 1 DU / 10 ACRES MIN.
- [Dotted Box] RECREATION
- [Horizontal Lines Box] RURAL 1 DU / 2 ACRE MIN.
- [Box with 'L'] LOW 1-2 DU / ACRE
- [Vertical Lines Box] MEDIUM 2.1-6 DU / ACRE
- [Dark Grey Box] HIGH 6.1- 36 DU / ACRE
- [Black Box] COMMERCIAL
- [Cross-hatched Box] INDUSTRIAL
- STABLE URBAN BOUNDARY
- CITY LIMIT LINE
- (4) ACCESS POINTS (see Area Plan text Fig. 29)

RESIDENTIAL

LAND USE PLAN

county of ventura local coastal program
 resource management agency planning division

EXHIBIT NO. 3
APPLICATION NO.
A-4-VNT-00-078
Bauman

Serrano Canyon

Mugu State Park

Pacific View Road

Boundary: Pt. Mugu
Significant
Ridgeline

PROJECT LOCATION

Stream

Corridor

Deer Creek Road

Deer Canyon

EXHIBIT NO. 4
APPLICATION NO.
A-4-VNT-00-078
Bauman

Deer Canyon

RECORDING REQUESTED BY

BOOK 3284 PAGE 283

16360

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 8:00 AM.
OFFICIAL RECORDS VENTURA COUNTY

CODE #. /

APR - 1 1968

BOOK 3284 PAGE 283

FEE
\$2.80
2

Mr. & Mrs. Robert T. Holbrook

1102-A Idaho Avenue

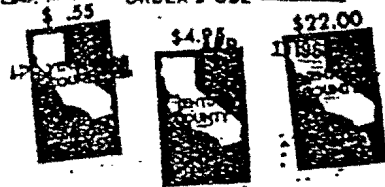
Santa Monica, California 90403

HOLBROOK, ROBERT T. & CAROLINE C.

1102-A Idaho Avenue

Santa Monica, California 90403

SPACE ABOVE THIS LINE FOR ORDER'S USE



Grant Deed

APPROX. L.R.S. \$27.50 ABOVE

TO THE PUBLIC

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
ORLANDO J. ALIBERTI and CATHERINE C. ALIBERTI, husband and wife, as to an undivided 1/2 interest, and KELLIE M. CONSTABLE, a widow, as to an undivided 1/2 interest hereby GRANT(S) to ROBERT T. HOLBROOK and CAROLINE C. HOLBROOK, husband and wife as community property

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

PER THE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AND MARKED AS KIELERIN "A" CONSISTING OF ONE PAGE:

Robert T. Holbrook and Caroline C. Holbrook, husband and wife, hereby accept the interest conveyed to them as community property.

Robert T. Holbrook
Robert T. Holbrook

Caroline C. Holbrook
Caroline C. Holbrook

UN RECORDED

RECORDED

APR 24 2000

OFFICIAL SEAL
SOUTH CENTRAL DISTRICT

Dated March 12, 1968

Catherine C. Aliberti
Catherine C. Aliberti
Orlando J. Aliberti
Orlando J. Aliberti

Kellie M. Constable
Kellie M. Constable

STATE OF CALIFORNIA
COUNTY OF Los Angeles
On March 14, 1968 before me, the undersigned, a Notary Public in and for said State, personally appeared Catherine C. Aliberti, Orlando J. Aliberti and Kellie M. Constable

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

My Commission Expires April 7, 1969
Adele P. Stricker
ADELE P. STRICKER, Notary Public
in and for said County and State

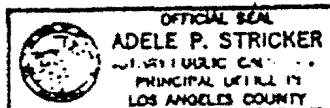


EXHIBIT NO. 5
APPLICATION NO.
A-4-VNT-00-078
Bauman

This Order No. 245164-ER Escrow or Loan No. 2-20686-A Parcel II

MAIL TAX STATEMENTS AS DIRECTED ABOVE

PARCEL I:

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 OF THE SURVEY OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900.

RESERVING UNTO THE GRANTORS HEREIN AN EASEMENT FOR INGRESS AND EGRESS, PIPE LINES AND POLE LINES OVER A 30 FOOT STRIP.

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, 1958 AS DOCUMENT NO. 9072 IN BOOK 1595 PAGE 222 OF OFFICIAL RECORDS.

PARCEL II:

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 OF THE SURVEY OF THE LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900.

PARCEL III:

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, AS PER PLAT OF THE SURVEY OF LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900 AND AS SAID 30 FOOT STRIP EXISTED ON OCTOBER 24, 1961.

Exhibit 'A'

APR 10 1900
SOUTH BERNARDINO COUNTY DISTRICT



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.

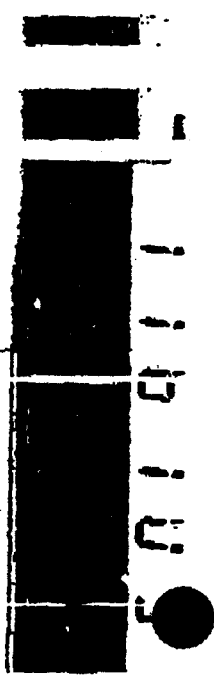
EXCEPT one-half of the oil, gas and mineral rights in, and to said land as reserved by Hall, Marquardt & Co., a Partnership, in deed recorded March 4, 1958 as Document No. 9072 in Book 1595 Page 222 of Official Records.

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.



RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

J. J. MAJORSACK
36999 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA

47775

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 8:00 A. M.
OFFICIAL RECORDER VENTURA COUNTY
NOV 1 - 1961

10012066 PAGE 378
Robert L. Thomson RECORDER

FEE
\$2.80
2

SPACE ABOVE THIS LINE FOR RECORDER'S USE

177391-1

EASEMENT

GENERAL

THIS AGREEMENT, made and entered into this twenty-fourth day of
October, 1961, by and between Monte Harrington
of Los Angeles, California
party of the first part, which expression shall include his, her or their heirs, executors, admini-
strators, agents or assigns where the context so requires, or admits, and
Joseph P. Cleary and Mary Ann Cleary, husband and wife and
Ralph H. Penner and Barbara G. Penner, husband and wife of
of
party of the second
part, which expression includes his, her or their heirs, executors, administrators, agents or
assigns where the context so requires or admits,

WITNESSETH:

WHEREAS, the party of the first part owns and has title to that real estate and real property
located in

County of VENTURA, State of California, described
as follows: West 1/4 of the Northwest 1/4 and Northwest 1/4 of the Southwest 1/4
of Section 16, Township 1 South, Range 20 West, S.B.B. & M.

APR 24 2000

AND WHEREAS, the party of the second part desires *
* (Insert here nature and type of easement, right-of-way or right desired by second party)
a perpetual right of way and easement for ingress and egress from
Pacific View Road into and for the benefit of the property located
in Ventura County, California described as follows: Southeast 1/4 of
Northeast 1/4 of Section 17, Township 1 South, Range 20 West, S.B.B.
& M. owned by Joseph P. Cleary and Mary Ann Cleary, husband and wife;
and Northeast 1/4 of Southeast 1/4 of Section 17, Township 1 South, Range
20 West, S.B.B. & M. owned by Ralph H. Penner and Barbara G. Penner,
husband and wife

Now, THEREFORE, it is hereby agreed as follows:
The said party of the first part does hereby grant, assign and set over to the said party of the
second part * a perpetual right of way from Pacific View Road for the
* (Insert here nature and type of easement, right-of-way or right granted to second party)
property located in Ventura County, California owned by Parties of the
Second Part hereinabove described, thirty (30) feet wide over and along
the present road and through above described property of First Party
with the right to lay and maintain a pipe line for the transportation
of water, sewage, oil and gas and erect, and maintain and operate a
telephone and/or electric power line on, over and through said land.

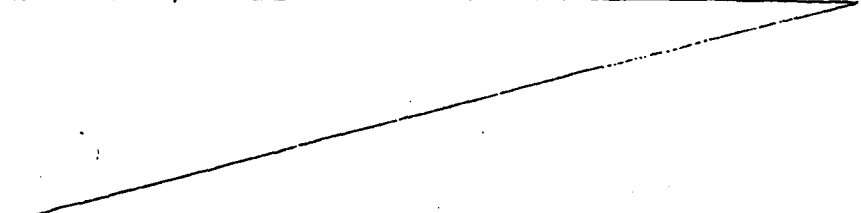
The said party of the first part shall fully use and enjoy the aforesaid premises, except as to
the rights herein granted; and the said party of the second part hereby agrees to hold and
save the said party of the first part harmless from any and all damage arising from his use

EXHIBIT NO. 7
APPLICATION NO.
A-4-VNT-00-078
Bauman

of the right, easement and right-of-way herein granted and agrees to pay any damage or damages which may arise to the property, premises, or rights of the said party of the first part through second party's use, occupation and possession of the rights herein granted.

TO HAVE AND TO HOLD the said easement, right and right-of-way unto the said party of the second part, his successors or assigns for a period of FOREVER

and under the specific conditions, restrictions and considerations as follows:



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this

~~day~~ 24th day of October, 19 61

Monte Harrington

APR 24 2000
NOTARY PUBLIC
SOUTHERN CALIFORNIA DISTRICT

STATE OF CALIFORNIA,

County of Los Angeles } ss.

On October 24th 1961 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Monte Harrington

known to me to be the person whose name has been subscribed to the within instrument, and acknowledged to me that he executed the same.

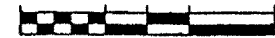
Witness my hand and official seal.

Melvin D. Fitch
Notary Public in and for said County and State
MELVIN D. FITCH, Notary Public
My Commission Expires July 15, 1969

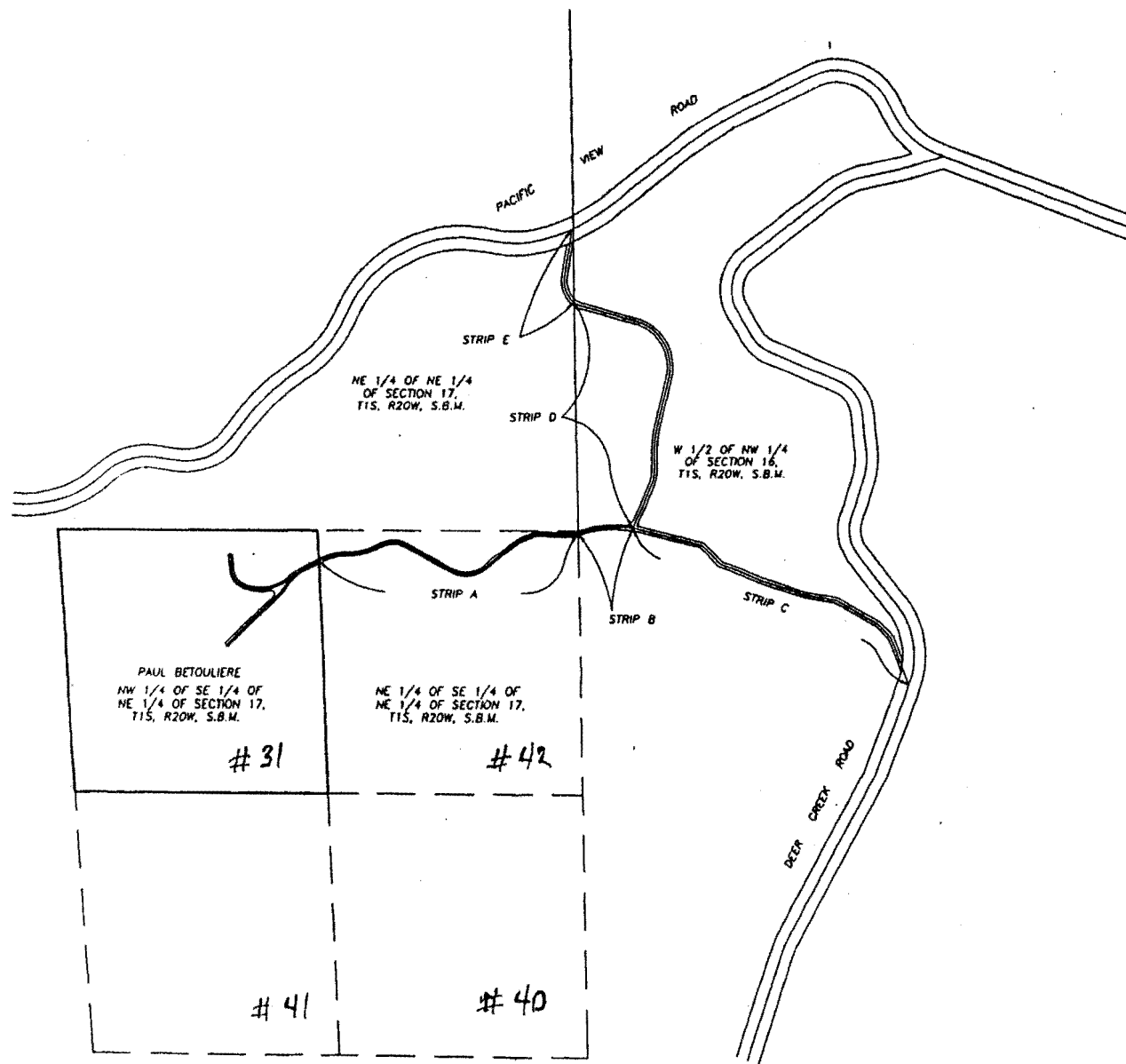
This standard form covers most usual problems in the field indicated. Before you sign, read it, fill in all blanks, and make changes proper to your transaction. Consult a lawyer if you doubt the form's fit for your purpose.

END OF RECORDED DOCUMENT

200 0 200 400



GRAPHIC SCALE 1" = 200'



Cary P. Salmen, PLS 5018
license expires 12/31/01

ACCESS TO THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER
OF THE NORTHEAST QUARTER OF SECTION 17,
TOWNSHIP 1 SOUTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN

IN THE UNINCORPORATED TERRITORY OF THE
COUNTY OF VENTURA STATE OF CALIFORNIA

FEBRUARY 14, 2000 SHEET 1 OF 1

P. SALMEN & ASSOCIATES
118 FIGUEROA ST.
VENTURA, CALIFORNIA 93001
(805) 653-7411

RESOURCE MANAGEMENT AGENCY
county of ventura

Planning Division

Keith A. Turner
Director

RECEIVED

JUL 18 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 8

APPLICATION NO.

A-4-VNT-00-078

Bauman

July 17, 2000

Charles Damm, Senior Deputy Director
South Central Coast Area Office
89 South California Street, Suite 200
Ventura, California 93001

Dear Mr. Damm:

Subject: Coastal Appeal No. A-4-VNT-00-078 (Bauman) Set for August
2000 Coastal Commission De Novo Hearing

Almost three months have passed since your meeting with County staff members on April 26, 2000, and I felt that a follow up letter would be appropriate as the above referenced appeal is scheduled for the Commission's August meeting in Huntington Beach. ***Please include this letter and the attached packet in the Staff Report being prepared for this appeal.***

The County of Ventura has previously sent you and the Commissioners a considerable amount of information concerning this appeal of a County approved Conditional Certificate of Compliance (CC of C No. 9904). My letter of April 26, 2000, referencing the Commission's and County's historical treatment of similar properties and property owners, supplied a detailed account of Land Division and Development and Historical Treatment with regard to the County's consistency in processing CC of Cs over the last 18 years. Additionally on May 16, 2000, County Counsel, through Assistant Counsel James Thonis, provided you with legal authorities supporting the position that a Conditional Certificate of Compliance was not "development" within the meaning of the Coastal Act or the County's Coastal Zoning Ordinance.

None of this information was included in the Commission's May 25, 2000 staff report, nor has the information we supplied generated any response to the County of Ventura from the local Coastal staff. On June 7, 2000, I wrote another letter to the Members of the California Coastal Commission, parts of which I will repeat here as well as attach:

A Conditional Certificate of Compliance merely "legalizes" for sale, lease or finance (not development) a parcel that was illegally created sometime in the past. Understanding that a Conditional Certificate of Compliance is not "development" causes all of the purported "substantial issues" mentioned in the Commission's Staff Report to fall away. The County has successfully processed

more than 40 Conditional Certificates of Compliance in the Santa Monica Mountains during the last 18 years and the County has not previously heard from the Coastal Commission staff prior to this case. Nothing in our process has changed. In fairness to this applicant, and others to follow, if the Commission believes our Certified Local Coastal Plan and Zoning Ordinance are somehow deficient, the Commission should notify the County directly and not place the burden of perceived procedural changes on the back of individual projects. This apparent changing of the rules at the end of the County's process jeopardizes the Commission's and County's credibility with local applicants.

Please review the following historical actions relevant to this project:

1. In 1982 the California Coastal Commission wrote two letters to Mr. Verne Bauman stating that his parcel was illegal and suggested that Mr. Bauman acquire a CC of C from the County of Ventura. No time limit was noted in the letters.
2. A precedent was established in 1994 when the County of Ventura issued CC of Cs and Coastal Planned Development Permits to the sister 10-acre parcels 41 and 42 that are contained within the same parent 40-acre unit that includes applicant Bauman's parcel 31. These were approved without the application of the slope density formula or appeal from the Coastal Commission.
3. The fact that the Coastal staff's original site visit was to the wrong property caused numerous inaccuracies in the May 25, 2000 Staff Report. Mr. Timm, Mr. Ainsworth and Mr. Betz visited the correct property on June 28, 2000. I understand that they found the property was not surrounded by "open space" and that, indeed, the area has numerous single-family homes within view.
4. The rare and endangered flower *dudleya marcescens* was not found on the subject property in a biologic review conducted by the eminent Dr. Collins on June 20, 2000.
5. The Coastal staff report of May 25, 2000, states that the project area is characterized as containing existing landslide zones and high landslide/mudslide hazard zones. The geology report of the contiguous neighbor parcel to the north of applicant Bauman's parcel, states that "this area is grossly stable, containing no landslide or mudslide danger."
6. The Commission staff is creating issues and requesting elements of development such as road design, geology reports, and water quantity and quality reports and sanitary capability in order to support its appeal. All of

Charles Damm
July 17, 2000
Page 3

these important requests and issues would be appropriately resolved during a subsequent Coastal Planned Development permit process.

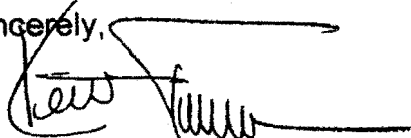
7. Applicant Bauman has not initiated the process of acquiring a Coastal Planned Development permit with the County of Ventura. The original purpose of Mr. Bauman's acquiring a CC of C was to facilitate the sale of his property by following whatever procedures were necessary to accomplish that goal of selling a "legal" parcel.

It is for these reasons and on the principle of fairness that the County of Ventura feels that this is an excellent opportunity for the local Coastal staff to recommend to the Commission that it deny its appeal of applicant Bauman's CC of C.

The County of Ventura believes that applicants already involved in the CC of C process or who have approved but unrecorded projects should be allowed to reach legal lot status without obstruction. If the future holds a possibility of recommended procedural changes by the Commission for the Local Coastal Program, the County of Ventura and its future applicants deserve advanced notice.

If you have questions concerning the above information, please feel free to contact Nancy Butler Francis, Coastal Administrative Officer and Manager, Land Use Permits Section, at 805.654.2461.

Sincerely,



Keith Turner, Planning Director

Attachment

C (w/o attachment): James W. Thonis
Vern Bauman
Merle Betz
Paul Betouliere

June 7, 2000

Item TU 20a (Tuesday, June 13, 2000)
Permit No.: A-4-VNT-00-078
KEITH TURNER, PLANNING DIRECTOR,
COUNTY OF VENTURA

Members, California Coastal Commission

Subject: Information Omitted from Coastal Commission Staff Report

After reviewing the staff report prepared by the Commission's staff for the above referenced appeal, I was incredulous to discover that a letter I prepared, and had hand-delivered to the district office staff well in advance of the preparation of the report, had not been included in the information provided you for review. The attached letter to Chair Sara Wan, dated April 26, 2000, outlines two major points critical to evaluating the appeal.

1. The issuance of a **Conditional Certificate of Compliance** is not "development" within the meaning of the Coastal Act, nor is it a subdivision "creating" a new developable parcel. A Conditional Certificate of Compliance merely "legalizes" for sale, lease or finance a parcel that was illegally created sometime in the past. Understanding that a Conditional Certificate of Compliance is not "development" causes all the purported "substantial issues" to fall away. At the time that development is actually requested, all the "substantial issues": will be addressed as part of the County's review under our certified Local Coastal Plan and Coastal Zoning Ordinance.
2. The County has successfully processed more than 40 Conditional Certificates of Compliance in the Santa Monica Mountains during the last 18 years and the County has not previously heard from Coastal Commission staff prior to this case. Nothing in our process has changed. In fairness to this applicant, and others to follow, if the Commission believes our Certified Coastal Plan and Zoning Ordinance are somehow deficient, the Commission should notify the County directly and not place the burden of perceived procedural changes on the back of individual projects. This apparent changing of the rules at the end of the County's process jeopardizes the Commission's and County's credibility with local applicants.

If you have any questions, please feel free to contact Nancy Butler Francis, Manager, Land Use Permits Section, at 805.654.2461.

Sincerely,



Keith Turner, Planning Director

Enclosures: Letter to Chair, Sara Wan (4/26/00)
Ventura County Coastal Staff Report for CCC-9904
C: Coastal Commission Staff, South Central Coast District Office

Attachment

RESOURCE MANAGEMENT AGENCY
county of ventura

Planning Division
Keith A. Turner
Director

April 26, 2000

Sara Wan, Chair
California Coastal Commission
1045 Fremont Street, #2000
San Francisco, CA 94105-2219

Hand Delivered to South Central District

Subject: Appeal No. A-4-VNT-00-037, filed April 7, 2000, South Central District;
Unnumbered Appeal by Raffi Cohen, filed April 7, 2000
APN 700-0-010-315
CCC-9904, PD 1811

Dear Commissioners:

Preliminarily, this letter is written to object to the manner in which this appeal has been filed. The appeal relates to property in the area designated by the Ventura County Zoning Ordinance for the Coastal Zone (hereafter the "Coastal Zoning Ordinance") as a "non-appealable area". Moreover, it is impossible to decipher which appellants relate to which appeal file. There are two handwritten appeal forms, one signed by the Chair of the Commission, and one signed by "Raffi Cohen." Raffi Cohen has no standing to appeal to the Commission, not having raised any appealable issues at the county level, and not having appealed to the appropriate county Commissions or Board. His name appears on the formal Commission Notification of Appeal, but his handwritten form indicates no assigned number, decision appealed from or other critical information necessary to perfect the appeal. The handwritten form signed by Chair Wan and Commissioner Nava indicates the appeal number utilized above, while the formal notice (mailed to the "County of Ventura" and not received until April 25, 2000) bears Appeal No. A-4-00-78.

On a substantive level, the appeal misapplies the term "land division" and "development", errs in the critical focus dates, and is inconsistent with the Commission's and the County's historical treatment of similar properties and property owners.

Land Divisions/Development

California Coastal Commission
April 26, 2000
page 2

Apparently, the appeal is primarily based on the concept arising out of Coastal Zoning Ordinance Sec.8177-4.2.4 that "land divisions" (the actual Code language is "proposed land divisions) shall be evaluated for consistency with other policies of the Local Coastal Program-Land Use Plan. The appeal observes that 30% slopes must be left in natural state and an easement imposed to ensure the restriction is maintained. New development is to ensure the preservation of unique vegetation; is to maintain minimum lot size; is to have sanitary facilities reasonably available; and must have potable water, all possible problems for this property.

The County does not disagree with the Appeal's proposition. It must be confined, however, to "land divisions" or "new development." This project is neither.

The illegal lot in question was created by conveyance long before the passage of the Coastal Act, by deed recorded April 1, 1968 in Book 3284, Page 283 of Official Records, rather than 1978 as stated in the appeal (see enclosed parent deed and creating deed). The subject parcel met the minimum lot size in effect at the time it was created (see County's Coastal Staff Report, C, Background). The zoning in effect at the time was the "Rural Agricultural, 5 acre" ("R-A 5Ac") Zone. The applicant, Verne Bauman, owned the property at the time prior to the adoption of the County's LCP when the General Plan designated the site as "Open Space" and the zoning was "R-A 5Ac".

The issuance of a Conditional Certificate of Compliance (CC of C) clearly does not effect or permit a division of land, it merely legalizes a procedurally faulty division which has already occurred. The mere issuance of an appropriately conditioned certificate is not "development". To construe the term "development" differently would result in a conflict between the Subdivision Map Act and the Coastal Act. Government Code Sec. 66499.35 *mandates* issuance of the certificate under the circumstances presented in this case.

It is the County's duty to issue CC of Cs based on the requirements established in the Subdivision Map Act and local subdivision ordinance. The legislature saw fit to give relief to "innocent purchasers" of illegal lots through the CC of C process and discretion to the local agency regarding conditions of development. The concerns raised in the appeal are more properly raised at the time the permit or other grant of approval for development of such property is issued by the local agency (Government Code Section 66499.35(b), last sentence). It is precisely for that reason that the Conditions imposed by the County with this CC of C are addressed to that issue.

The instances where the County imposes a lot size requirement (including slope density) on an illegal lot in the Coastal Zone B Santa Monica Mountains, as

California Coastal Commission
April 26, 2000
page 3

excerpted from our Policy and Procedures Manual, P/P 4.1, Permit Processing Procedure, Conditional Certificates of Compliance, are:

1. Where the illegal lot did not meet the lot size requirement of the Zoning Ordinance and General Plan designation at the time the lot was created.
2. Where the illegal subdivider is the current owner of record of the lot in question.
3. Where the innocent purchaser has been advised of the lot's illegality as well as the imposition of the lot size requirement if the lot is resold without a remedy.

None of these instances are met in the subject case.

Historical Treatment

The subjects raised by the appeal and this response are not new to our respective agencies. Although it is difficult to track with precision all of the similar cases in which these issues were raised and resolved, a letter was sent to this very applicant, Verne W. Bauman, by the Coastal Commission, South Central Coast District, Violations Coordinator, dated March 30, 1982, which incorrectly stated that he was in violation of the Coastal Act for owning an illegal lot (the subject lot) without a coastal permit, citing (again) a lot creation date that is incorrect. The Commission staff responded they would wait for more information from the County, and the matter was dropped once the facts were known (copies of letters attached).

The County has been consistently processing CC of Cs over the last 18 years, at least, without impediment until now. The illegal lots to the east, southeast and south of the subject lot were created from the same parent parcel, years after Mr. Bauman's lot was created. They all have been remedied and two of them have approved Coastal Plan development permits. It is discriminatory to treat the subject case in a different manner for no reason unique to this property. In preparing this response, staff counted over two dozen CC of Cs approved by the County in the Coastal Zone, Santa Monica Mountains, sent to your staff with no comment and no appeals filed.

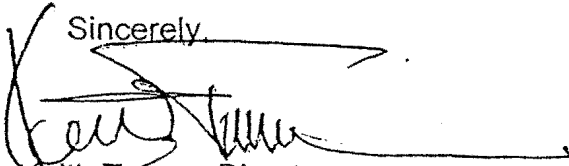
Finally, while at the true development stage on this parcel is when these important issues should be raised, it should be observed that once a CC of C B Parcel Map records, if there is no lot size condition, it shall not be imposed by the County at a later time. Coastal Zoning Ordinance (Section 8182-9) allows permitted uses on a non-conforming size lot if the lot is a legal lot. Once the lot is "legalized" the

California Coastal Commission
April 26, 2000
page 4

discretionary permit processing proceeds as it would on any single legal lot in the Coastal Zone.

Because the appeal is predicated on a misunderstanding of the terms "division" and "development" as applied to this application, relies upon an erroneous date of subdivision post-dating the Coastal Act, and is inconsistent with the Commission's and the County's historical treatment of similar properties and property owners, it is strongly recommended that the appeal be denied. Should the appealing Commissioners be persuaded by this letter, it would be more expeditious for the appeal to be withdrawn.

Sincerely,



Keith Turner, Director
Planning Division

Enclosures.

C: Robert R. Orellana, Assistant County Counsel
James W. Thonis, Assistant County Counsel
Gary Timm, Assistant District Director, CCC, So. Central Coast Area Office
Nancy Francis, Manager, Residential Land Use Permits Section
Debbie Morrisset, Case Planner, CCC-9904
Verne Bauman, Applicant for CCC-9904
Distribution List for CCC-9904 (County reviewing agencies)

700-010-17

61220

BOOK 2848 PAGE 235

Recording Requested By

Recording Requested by
TITLE INSURANCE & TRUST CO. (TI)

When Recorded Mail To

Mr. and Mrs. O. J. Aliberti
307-25th St.
Santa Monica, California

Escrow No. 106-123 Order No. 219748 (Orland)

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 8:00 A.M.
OFFICIAL RECORDS VENTURA COUNTY

AUG 23 1965

BOOK 2848 PAGE 235 FEE \$2.80
Robert L. Thomas RECORDER 2

Space above this line for Recorder's use

PLACE INTERNAL REVENUE STAMPS HERE

I.R.S. \$66.00

Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CHARLES R. SIEVERS AND CAROL J. SIEVERS, husband and wife, and JOSEPH P. CLEARY AND MARY ANN CLEARY, husband and wife, do hereby grant to ORLANDO J. ALIBERTI AND CATHERINE C. ALIBERTI, husband and wife, as COMMUNITY PROPERTY

the said property in the County of VENTURA

State of California, described as:

PER LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF:

PARCEL I: = 700-010-31

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 of the survey of said land filed in the District Land Office on April 10, 1900.

EXCEPT one-half the oil, gas and mineral rights in, and to said land as reserved by Hall, Marquardt & Co., a partnership, in deed recorded March 4, 1958, as Document No. 9072 in Book 1595 page 222 of Official Records.

PARCEL II: = 700-010-41

The Southwest 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 of the survey of the land filed in the District Land Office on April 10, 1900.

EXCEPT one-half the oil, gas and mineral rights in and to said land as reserved by Hall, Marquardt & Co., a partnership, in deed recorded March 4, 1958, as Document No. 9072 in Book 1595 page 222 of Official Records.

PARCEL III: 700-010-42

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 of the survey of said land filed in the District Land Office on April 10, 1900.

EXCEPT one-half the oil, gas and mineral rights in and to said land as reserved by Hall, Marquardt & Co., a partnership, in deed recorded March 4, 1958, as Document No. 9072 in Book 1595 page 222 of Official Records.

PARCEL IV:

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 of the northwest quarter of the southwest quarter of Section 16, Township 1 South, Range 20 West, San Bernardino meridian, as per plat of the survey of land filed in the District Land Office on April 10, 1900, and as said 30 foot strip existed on October 24, 1961.

PARCEL V: 700-010-40

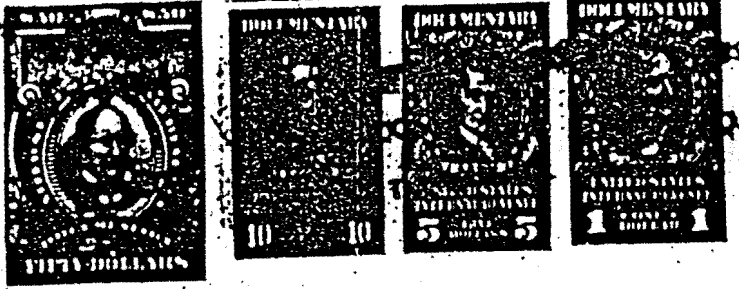
The Southeast quarter of the Southeast quarter of the Northeast quarter of Section 17, Township 1 South, Range 20 West, San Bernardino meridian, according to the official plat of the survey of said land filed in the District Land Office on April 10, 1900.

EXCEPT one-half the oil, gas and mineral rights in and to said land as reserved by Hall, Marquardt & Co., a partnership, in deed recorded March 4, 1958, as Document No. 9072 in Book 1595 page 222 of Official Records.

PARCEL VI:

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 of the northwest quarter of the southwest quarter of Section 16, Township 1 South, Range 20 West, San Bernardino meridian as per plat of the survey of land filed in the District Land Office on April 10, 1900, and as said 30 foot strip existed on October 24, 1961.

x G.R.
x C.P.
x G.B.
x M.A.E.



Date: August 5, 1965

Charles R. Sievers
Charles R. Sievers
Carol J. Sievers
Carol J. Sievers

Joseph P. Cleary
Joseph P. Cleary
Mary Ann Cleary
Mary Ann Cleary

STATE OF CALIFORNIA
County of LOS ANGELES } ss.

(INDIVIDUAL ACKNOWLEDGMENT)

On August 18, 1965, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles R. Sievers and Carol J. Sievers; Joseph P. Cleary and Mary Ann Cleary,

known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL
(Notarial Seal)
MARGARET C. CURTIS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

Margaret C. Curtis
(Notary's Signature)
MARGARET C. CURTIS
(Print or type Notary's name)
My Commission Expires March 9, 1968

END OF RECORDED DOCUMENT

RECORDING REQUESTED BY

16360

BOOK 3284 PAGE 283

700-010-31

CODE #-1

AND WHEN RECORDING MAIL TO

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 8:00 A.M.
OFFICIAL RECORDS VENTURA COUNTY

APR - 1 1968

BOOK 3284 PAGE 283

FEE
\$2.80
2

Mr. & Mrs. Robert T. Holbrook
1102-A Idaho Avenue
Santa Monica, California 90403

RECORDED

SPACE ABOVE THIS LINE FOR ORDER'S USE

HOLBROOK, ROBERT T. & CAROLINE C.
1102-A Idaho Avenue
Santa Monica, California 90403

\$.55
\$4.85
\$22.00

Grant Deed

ATTACH I.R.S. 427.50

Above

TO 400 C (10-67)

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
ORLANDO J. ALIBERTI and CATHERINE C. ALIBERTI, husband and wife, as to an undivided 1/2 interest, and WELLYE M. CONSTABLE, a widow, as to an undivided 1/2 interest hereby GRANT(S) to ROBERT T. HOLBROOK and CAROLINE C. HOLBROOK, husband and wife as community property

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

PER THE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AND MARKED AS EXHIBIT "A" CONSISTING OF ONE PAGE:

Robert T. Holbrook and Caroline C. Holbrook, husband and wife, hereby accept the interest conveyed to them as community property.

Robert T. Holbrook
Robert T. Holbrook

Caroline C. Holbrook
Caroline C. Holbrook

Dated March 12, 1968

Catherine C. Aliberti
Catherine C. Aliberti
Orlando J. Aliberti
Orlando J. Aliberti

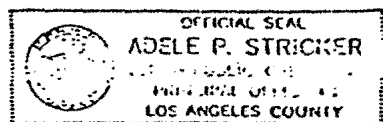
STATE OF CALIFORNIA }
COUNTY OF Los Angeles } ss.

On March 14, 1968 before me, the undersigned, a Notary Public in and for said State, personally appeared
Catherine C. Aliberti,
Orlando J. Aliberti and
Wellye K. Constable

Wellye M. Constable
Wellye K. Constable

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.
Signature Adele P. Stricker
ADELE P. STRICKER, Notary Public
In and for said County and State
My Commission Expires June 17, 1969



UN RECORDED

PARCEL I: = 700-010-31

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, ACCORDING THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900.

RESERVING UNTO THE GRANTORS HEREIN AN EASEMENT FOR INGRESS AND EGRESS, PIPE LINES AND POLE LINES OVER A 30 FOOT STRIP.

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, 1958 AS DOCUMENT NO. 9072 IN BOOK 1595 PAGE 222 OF OFFICIAL RECORDS.

PARCEL II:

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 OF THE SURVEY OF THE LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900.

PARCEL III:

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, AS PER PLAT OF THE SURVEY OF LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 10, 1900 AND AS SAID 30 FOOT STRIP EXISTED ON OCTOBER 24, 1961.

Exhibit 'A'

MG

State of California, Edmund G. Brown Jr., Governor

California Coastal Commission
SOUTH CENTRAL COAST DISTRICT
735 State Street, (805) 963-6871
Balboa Building, Suite 612
Santa Barbara, CA 93101

April 16, 1982

APR 21 9 43 AM '82

RESOURCE
MANAGEMENT
AGENCY

Mr. & Mrs. Verne Bauman
887 Conestoga Circle
Newberry Park, CA 91320

Dear Mr. & Mrs. Bauman:

Thank you for supplying the information we requested about your property at Deer Creek Road. I have talked to Myrna Garrison today to reaffirm my understanding of the County's position in this matter. Myrna told me that the County Counsel is investigating this matter to determine the legality of your parcel. Until this information is available, we will defer from further comment. We will keep you informed of their decision.

Sincerely,

Cheri Kantor

Cheri Kantor
Violations Coordinator

CK/rt

cc: Myrna Garrison



State of California, Edmund G. Brown Jr., Governor

California Coastal Commission
SOUTH CENTRAL COAST DISTRICT
745 State Street, (805) 963-6871
Ballboa Building, Suite 612
Santa Barbara, CA 93101

March 30, 1982

Verne W. Bauman
887 Conestogo Circle
Newbury Park, CA

Re: Property at Deer Creek Road (APN: 700-010-315)

Dear Mr. Bauman:

It has come to our attention that you are the owner of parcel #700-010-315 that was illegally subdivided and sold to you on July 5, 1977. The Coastal Act of 1976 defines "development" activity to include the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code). All development activity requires a Coastal Development Permit after local approvals have been obtained.

Please be advised that without an approved Coastal Development Permit you are in violation of the Coastal Act. Those in violation of this requirement are subject to court action and/or a fine of \$10,000, plus an additional fine of not less than \$50 nor more than \$5,000 for each day a violation occurs. (PRC Section 30820-23).

We are aware that the County of Ventura is requesting that you apply for a conditional certificate of compliance for your illegal subdivision. Once you have obtained this approval you will need to submit the enclosed application form to this office.

We would like to resolve this matter with as little legal involvement as possible. If you have any questions, please call this office at 963-6871.

Very truly yours,

Cheri Kantor

Cheri Kantor
Violations Coordinator

CK/rt
Enclosure

cc: Myrna Garrison, Planning Division
Joe Hanna, Public Works
Steve Brown, Legal Staff



NOTICE OF FINAL DECISION

California Coastal Commission
89 South California St., Suite- 200
San Buenaventura, CA 93001

On March 6, 2000, Planning Director approved Planned Development Permit 1811 for CCC-9904 (PM-5203). That decision is now final, and will be effective at the end of the appeal period if no appeals are filed. The permit is described as follows:

Applicant Name and Address: Vern Bauman, 2930 Fall River Circle, Thousand Oaks, Ca 91362

Project Location: Pacific View Road off Deer Creek Road southwest of the intersection, Santa Monica Mountains, Ventura County

Date Filed: August 3, 1999

Description of Request: To legalize a 10-acre illegal lot within the Coastal Zone by the recording of the Conditional Certificate of Compliance 9904 Parcel Map 5203 and the imposition of conditions (Exhibit "A") prior to development, PD 1811 is assigned for purposes of processing this permit within the Coastal Zone.

Findings: The findings specified by Section 8181-3.5 of the County Coastal Zoning Ordinance have been made for the proposed project it is consistent with the Ordinance and with the Land Use Element of the Local Coastal Program, see the attached staff report.

Conditions: See Attached Exhibit "2".

Appeal Period: March 6, 2000 through March 16, 2000

County Appeals: If you disagree with the Planning Director regarding the outcome of this application, you may appeal the decision to the Planning Commission. This project is not appealable to the California Coastal Commission; therefore, a County fee will be charged to process an appeal of the decision on this project.

Any inquiries regarding this Notice of Final Decision should be directed to Debbie Morrisset at (805) 654-3635.

Date: March 8, 2000

Nancy Butler Francis
Nancy Butler Francis
Coastal Administrative Officer

VENTURA COUNTY
COASTAL ADMINISTRATIVE HEARING
STAFF REPORT AND RECOMMENDATIONS
Hearing date March 2, 2000

SUBJECT:

Conditional Certificate of Compliance No.9904 (Tentative PM-5203) and
Coastal Planned Development Permit-1811

APPLICANT /PROPERTY OWNER:

Verne W. Bauman
2930 Fall River Circle
Thousand Oaks, Ca 91362

A. REQUEST:

The applicant is requesting a Conditional Certificate of Compliance (CCC-9904) to remedy an illegal subdivision. To do so requires concurrent approval of the CCC application and accompanying Parcel Map (PM-5203). Because the project is located in the Coastal Zone, A Planned Development Permit (PD-1811) is required for purposes of processing.

B. LOCATION AND PARCEL NUMBER:

The project site is southwest of the intersection of Pacific View Road and Deer Creek Road in the Santa Monica Mountains area of Ventura County. The Assessor's parcel number is 700-0-010-310, (see Exhibit "3").

C. BACKGROUND:

The present owners acquired the 10-acre illegal parcel in July of 1998 through a foreclosure sale, and are now requesting a permit to legalize that parcel. The lot appears to have been created when the parcel was conveyed with only a grant deed in April 1968. Because a Parcel Map was required to subdivide property at that time, the conveyance of the parcel by grant deed created an "illegally" subdivided parcel. The current property owner submitted the applications necessary to remedy the situation and legalize the lot (CCC-9904, PM-5203, and PD-1811). Since the applicants are "innocent purchasers", and the lot met the minimum lot area requirement in 1968, the lot is not required to meet the minimum lot area of the current zoning category, which requires parcels of "10 acres or greater".

D. GENERAL PLAN AND ZONING:

General Plan Land Use Map Designation: OPEN SPACE

Coastal Area Plan Land Use Map Designation: OPEN SPACE

Coastal Zoning Classification: "C-O-S-M" (COASTAL OPEN SPACE, SANTA MONICA MOUNTAINS OVERLAY) ZONE.

E. EVIDENCE AND PROPOSED PERMIT FINDINGS:

Certain findings specified by Section 8181-3.5 of the County Coastal Zoning Ordinance must be made to determine that the proposed project is consistent with the Ordinance and with the Land Use Element of the Local Coastal Program. The proposed findings and the project information and evidence to either support or reject them are presented below:

1. Proposed Finding: The project is consistent with the intent and provisions of the County Local Coastal Program.

Evidence:

- (a) General Plan and Zoning: The proposed project is compatible with the current General Plan, Local Coastal Plan and Zoning Ordinance. The existing 10-acre lot met the zoning requirements for lot size at the time of the illegal subdivision. Therefore, the lot is exempt from the requirements for meeting current lot size requirements which requires parcels of "10 acres or greater".

- (b) Protection of Environmentally Sensitive Habitats: The project site occurs on a steep, south facing slope in a highland area of the Santa Monica Mountains. The current vegetation consists of Chamise-Laurel Sumac Chaparral with Coastal Sage Scrub, intermixed with annual grasses and forbs as ground cover. The current application does not include any development of the parcel therefore no impacts are expected as a result of this project. However, any future development will require additional review as stated in the conditions of approval (Exhibit "2").
- (c) Protection of Archaeological and Paleontological Resources: A preliminary Cultural Resources Search of Records was performed by the UCLA Institute of Archaeology. Their report states that the parcel was partially surveyed in 1985 and 1992 and that there are four recorded sites within $\frac{1}{4}$ to $\frac{1}{2}$ mile of the subject parcel. Due to the presence of the recorded sites, cultural resources are considered likely in the vicinity. Therefore, this office will require that a Phase I archaeological survey be conducted prior to any earth moving (construction) activities on site.
- The project site is not in a location known for paleontological resources, therefore no impacts to paleontological resources is expected.
- (d) Recreation and Access: The proposed project site is not adjacent to any Federal, State, or County parkland. However, the project description was sent to the parks for review. As of the date of this staff report no comments have been received. Therefore, there will be no impact from the proposed project on recreation or access thereto.
- (e) Preservation of Agricultural Lands: The proposed project site is not located on or near an agriculture preserve or prime soils area. The project will not have an impact on the preservation of agriculture lands or land use plan policies relating to agricultural uses.
- (f) Protection of Public and Property from Naturally-Occurring and Human-Induced Hazards: The Public Works Agency has determined that there will be no adverse impacts relative to the proposed project from naturally-occurring and/or human-induced hazards as there are no known faults or landslides on the project site.
- (g) Protection of Property from Beach Erosion: The project site is not located in an area of beach erosion. The project site is approximately five miles inland at an average elevation of 1,400 feet; therefore no protection from beach erosion is required.
- (h) Consistency with Public Works Policies: The proposed project will be required to meet all Public Works Agency requirements to develop, prior to issuance of a building permit. In addition, no Public Works facilities will be affected by the proposed project.

2. Proposed Finding: The project is compatible with the character of surrounding development.

Evidence: The surrounding parcels range in size from 10 to 457 acres. Some of the lots are developed with single family residences. As the proposed project is to legalize a single parcel for future residential development, it will be compatible with the surrounding development.

3. Proposed Finding: The project will not be obnoxious or harmful, or impair the utility of neighboring property or uses:

Evidence: The proposed legalization of a 10 acre lot will not be obnoxious or harmful, or impair the utility of neighboring property or uses. No development is associated with this permit, and any future development would be residential in nature and therefore compatible with surrounding development.

4. Proposed Finding: The project will not be detrimental to the public interest, health, safety, convenience or welfare.

Evidence: The proposed project to legalize a 10 acre lot will not be detrimental to the public interest, health, safety, convenience or welfare. No development is associated with this permit. However, any future development would be residential in nature and therefore compatible with surrounding development.

F. COUNTY ORDINANCE CODE COMPLIANCE:

Based upon the information and evidence presented above, this application with the attached conditions, meets the requirements of Section 8181-3.5 of the County Coastal Zoning Ordinance and County Coastal Plan. The proposed Conditional Certificate of Compliance is consistent with the intent and provisions of the County's Local Coastal Program. The legalized lot will not have an impact upon environmentally sensitive habitats, coastal recreation or access, nor will it have an impact upon neighboring property or uses. The lot met the zoning standards for lot size at the time of the subdivision and is therefore allowed in the C-O-S(M) zone. In addition, any future development of the parcel will require modification of Pd-1811 or approval of a new Planned Development Permit from the County.

G. EVIDENCE AND PROPOSED FINDINGS REGARDING SUBDIVISION MAP ACT AND COUNTY SUBDIVISION ORDINANCE:

Certain findings must be made in order to determine that the proposed project is consistent with the State Subdivision Map Act and the County Ordinance Code. These findings, the project information and evidence to support them, are presented below.

I. Proposed Findings: The Tentative Map design and improvements are consistent with applicable zoning and general plan.

Evidence:

(a) Zoning Consistence: Existing zoning on the subject property is Coastal Open Space "Santa Monica Mountains Overlay Zone ("C-O-S-(M)"). This zoning is consistent with the Ventura County General Plan and with the Local Coastal Plan. The design of the proposed subdivision (to legalize a single 10 acre parcel) is similarly consistent with the Ventura County General Plan and Ventura County Ordinance Code. The "C-O-S-(M)" zone allows lots as small as 10 acres per single family dwelling, (with the implementation of the slope density formula). The proposed lot is comparable in size to existing lots in the area supports a finding that the proposed density was appropriate. Therefore, the proposed (single lot) subdivision is consistent with the Local Coastal Plan and with "R-B" zone.

(b) Consistency With General Plan Policies:

(1) Fire Protection: The Ventura County Fire Department has reviewed the proposed project. The project site is in a high fire hazard area. The site will be conditioned to meet all of the Fire Department requirements prior to development of the parcel. Therefore, adequate fire protection services will be available in the project area.

(2) Law Enforcement: The Sheriff's Department has reviewed the proposed project and has concluded that it can serve the project. Therefore, adequate police protection is available in the project area.

(3) Education: The project is located within the Ventura Unified School District. The developer may be required to pay fees for temporary school facilities prior to the issuance of building permits. Therefore, adequate educational facilities are available to satisfy education needs of children from the project area.

(4) Grading (Cuts and Fills): No grading is proposed for this project. Any future grading will have to be reviewed and approved by the

Planning division and Public Works Department to ensure compliance with County ordinances.

2. Proposed Finding: The site is physically suitable for the proposed type and density of development.

Evidence:

- (a) Existing Natural Features and Land Use: The property is a site with varied topography. However, there are no natural features or land use constraints that would preclude development of the site.
- (b) Drainage: The area is not known to have drainage problems of a regional significance. Therefore the ability to provide adequate drainage facilities makes this site suitable for the type and density of development being proposed.
- (c) Traffic Circulation: The proposed project may increase the average daily traffic on the area's roads. Therefore, the amount of traffic produced by the project is compatible with the type of development and density.

3. Proposed Finding: The project will not cause substantial environmental damage.

Evidence: The proposed project legalizes a previously subdivided undeveloped property. Such projects are generally small in scale, and even though located in and environmentally sensitive area (Santa Monica Mountains) any development of this legalized parcel will require a Planned Development Permit. Such permits are discretionary and insure that any development will have a less than significant environmental impact.

4. Proposed Finding: The project will not cause serious public health problems.

Water and Sanitation: The proposed project, to legalize an illegally subdivided parcel, proposes no "development" of the parcel at this time. However, this project will have conditions placed on it to advise future applicants that any development must meet all requirements for water and sanitation. Therefore, this project will not cause serious health problems.

5. Proposed Finding: The project will not conflict with public easements or waterways.

Evidence: The proposed project does not front on the shoreline. Therefore, the proposed subdivision would not conflict with established public easements or waterways, nor in any way impede public use of, or access to, the beach.

6. Proposed Finding: The project will not discharge waste into an existing community sewer system in violation of law.

Evidence: The proposed project does not include development or any waste discharge.

Based upon the information and findings presented above, this application, with the attached Conditions, meets the requirements of the County Subdivision Map Act.

- H. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE: State law requires that an Initial Study (environmental evaluation) be conducted to determine if this project could significantly affect the environment. Based on the findings contained in the attached Initial Study, it has been determined that this project could have a significant effect on the environment but mitigation measures are available which would reduce the impacts to less than significant levels. Therefore, a Mitigated Negative Declaration (MND) has been prepared and the applicant has agreed to implement the mitigation measures. A Mitigated Negative Declaration (Exhibit "5") was prepared and posted for review from January 25, 2000 to February 14, 2000. No comments or responses were received.

- I. JURISDICTIONAL COMMENTS: The project was distributed to the appropriate and concerned agencies with jurisdiction in the Santa Monica Mountains, as of the date of this document none of the agencies have responded.

- J. PUBLIC COMMENTS: All property owners within 300' of the proposed project parcel and all residents within 100' of the subject parcel were notified by US Mail of the proposed project. As of the date of this document no comments have been received.

RECOMMENDED ACTION:

1. CERTIFY that you have read and considered the information contained in the MND, and that it reflects the independent judgement and analysis of the County; and
2. FIND that on the basis of the entire record (including the initial study and comments received) that there is no substantial evidence that the project will have a significant effect on the environment; and
3. APPROVE the attached MND (Exhibit "5"); and
4. ADOPT the proposed findings and approve Conditional Certificate of Compliance 9904, and Tentative PM-5203, along with PD-1811, subject to the conditions in Exhibit "2".

Prepared by: Debbie Morrisset

Debbie Morrisset
Case Planner

Attachments:

- Exhibit "2" - Conditions of Approval
- Exhibit "3" - Location Map (Assessor Parcel Map)
- Exhibit "4" - Parcel Map
- Exhibit "5" - Mitigated Negative Declaration

Project and conditions X approved or _____ denied on
March 6, 2000

NB Francis
Nancy Butler Francis, Manager
Land Use Permits Section
Coastal Administrative Officer
_____ ka nf

CAPITOL OFFICE:
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0037
(916) 319-2037
FAX: (916) 319-2137

STRICT OFFICE:
221 E. DAILY DRIVE #7
CAMARILLO, CA 93010
(805) 987-5195
FAX: (805) 484-0853

EMAIL: assemblymember.strickland@asm.ca.gov

Assembly
California Legislature



TONY STRICKLAND
ASSEMBLYMAN, THIRTY-SEVENTH DISTRICT

COMMITTEES:
CO-CHAIRMAN
LEGISLATIVE ETHICS
VICE-CHAIRMAN
HEALTH

MEMBER
BUDGET
INSURANCE

June 8, 2000

Sara Wan, Chairwoman
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001-2801

Dear Chairwoman Wan:

I am writing on behalf of Mr. Verne Bauman regarding your appeal to his Conditional Certificate of Compliance No: 9904, which has been approved by the County of Ventura.

The information Mr. Bauman has provided my office indicates that he received the property in question prior to the instation of the Coastal Act of 1976, qualifying him for immunity similar to that granted to adjacent Parcels 41 and 42 in 1994. Mr. Bauman claims his rights are endowed by the provisions of the Subdivision Map Act, and he cites Government Code Section 66499.35b, because it states, "A local agency may, as a condition to granting a certificate of compliance, impose any conditions which would have been applicable to the division of the property at the time [the] applicant acquired his or her interest therein."

It is for these reasons that I urge you to reconsider your opposition to Conditional Certificate of Compliance No: 9904, joining the County of Ventura in identifying Mr. Bauman with "innocent purchaser status."

Thank you for your consideration. If you have any questions, please feel free to contact Chris Wangsaporn in my District Office at (805) 987-5195.

Sincerely,

TONY STRICKLAND
Assemblyman, 37th District

TS: rc

EXHIBIT NO. 9
APPLICATION NO.
A-4-VNT-00-078
Bauman

October 26, 2000

Sara Wan, Chair, and Commissioners of the California Coastal Commission (see attached list)

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal of County of Ventura's Issuance of Conditional Certificate of Compliance (Appeal No. A-4-VNT-00-078) for Assessor's Parcel No. 700-0-010-310 (Bauman Parcel)

Dear Honorable Chairperson and Commissioners of the California Coastal Commission:

In light of the position taken by Commissioners Wan and Nava as administrative appellants in the above appeal, the County of Ventura wishes to clarify, for the record, its own position with respect to: (1) the legal nature and effect of the Conditional Certificate of Compliance ("CCC") it issued for the 10-acre Bauman parcel (APN 700-0-010-310) in the above matter; and (2) the California Coastal Commission's ("Commission") assertion of jurisdiction in general over Certificates of Compliance ("CC") issued under the Subdivision Map Act ("Map Act"; Gov. Code §§ 66410, et seq.) The parcel at issue is a 10-acre lot created without compliance with the Map Act by deed in 1968 and currently owned by Vern Bauman, and is located in the Santa Monica Mountains in Ventura County, south of Pacific View Road and west of Deer Creek Road.

As the Commission is aware, under the California Coastal Act of 1976 ("Coastal Act"; Pub. Resources Code, §§ 30000 et seq.) anyone who wishes to develop in the coastal zone is generally required to obtain a Coastal Development Permit ("CDP"), in addition to obtaining other lawfully required permits. (Pub. Resources Code, § 30600(a).) The Coastal Act defines "development" for purposes of the Commission's permitting jurisdiction, in relevant part, as a "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...and any other division of land, including lot splits...." (Pub. Resources Code, § 30106.)

It is the County's position that conditional and unconditional CCs as defined by the Map Act and as issued by the County, do not constitute, in and of themselves, "development"



October 26, 2000

Page 2

as defined by the Coastal Act, and therefore do not fall within the Commission's jurisdiction. CCs are certificates issued by local agencies at the request of landowners or vendees and subsequently recorded in the chain of title of a parcel which merely signify that a parcel of land may subsequently be sold, leased, or financed without violating the Map Act. (Gov. Code, § 66499(f)(1)(E).) CCs are not issued to authorize a division of land, but to remove the Map Act's legal prohibitions on sale, leasing, or financing of an existing parcel resulting from a past division. CCs do not authorize any physical development, but only indicate whether or not the existing parcel at issue complies with the Map Act and local ordinances enacted pursuant to it, for purposes of transfer, and provide record notice of conditions necessary to satisfy prior to development. (Gov. Code, § 66499(f)(1)(E).) Only when a CC is followed or accompanied by a separate and distinct approval - - i.e., a CDP authorizing actual development - - does the Commission have jurisdiction. Since there has been no such authorization issued by the County here, there has been no approval of "development" within the meaning of the Map Act, the Coastal Act, or in any commonly understood sense of the term.

The appeal and the Commission's apparent position with respect to it are premised on the belief that CCs can be denied, based on the parcel's alleged failure to satisfy development policies which would be applicable only to a CDP application seeking approval of actual development. The County believes this premise is contrary to the Map Act. The Map Act governs the issuance of CCs, which issuance is considered ministerial in nature to the extent it provides that the local agency "shall" issue either an unconditional or conditional Certificate. (Gov. Code, § 66499(a),(b); see 74 Cal. Aps. Atty. Gen 149, 154 (1991); Findleton v. Board of Supervisors (1993) 12 Cal.App.4th 709, 714.) Upon the request of the real property owner or vendee, the appropriate local agency is required to determine whether the parcel at issue complies with the Map Act and local ordinances enacted pursuant to it. (Gov. Code, § 66499.35(a).) Whether or not the property complies with the Map Act, either a CC or CCC "shall" be issued. (Gov. Code, § 66499.35(b).) While the local agency has discretion regarding whether to issue a CC with or without conditions (i.e., a CC or a CCC) where the parcel has been found not to comply, the agency has no discretion to refuse to issue some type of CC. (Gov. Code, § 66499.35(a),(b).) In issuing the CCC in this case, the County has not approved or authorized any development of the Bauman parcel, but has performed an act otherwise required by law. It has reserved all of its legal discretion to consider subsequent development applications under the applicable Local Coastal Plan ("LCP") policies, as reflected by the numerous conditions precedent to future development expressly incorporated into the CCC. Any purchaser of the parcel now has constructive notice of these recorded conditions.

The language of the CCC in this case contains 4 pages of conditions specifying that all applicable governmental requirements shall be met as a condition to any future development approvals, and also that compliance with such requirements may be "physically impossible or prohibitively expensive". (CCC Conditions, p. 1-4.)

October 26, 2000

Page 3

Furthermore, the last provision of the CCC states Ventura County's position, in all capital letters: "THE APPROVAL OF THE CCC SHALL NOT BE CONSTRUED TO BE THE APPROVAL FOR THE DEVELOPMENT OF THE PROPERTY." (CCC Conditions, p. 4.) Therefore, the Certificate itself properly indicates in its list of conditions that it does not authorize any type of development on the parcel, but rather simply confirms that the parcel may now be transferred without a violation of the Map Act.

The CCC issued by the County with respect to the Bauman parcel is in accordance with the plain language and purpose of the Map Act, which states, in pertinent part as to CCCs, that: "The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property. [¶] *Compliance with these conditions shall not be required until the time which a permit or other grant of approval for development of the property is issued by the local agency.*" (Gov. Code, § 66499.35(b), emphasis added.) The governing law thus prohibits either the County or the Commission from requiring a showing of compliance with or ability to satisfy the conditions imposed in a CCC prior to the time of actual development approval.

These Map Act provisions make sense because not every transfer of property is for the purpose of development and even if development is eventually contemplated an application can still be delayed or deferred for various reasons for a considerable period of time. If CCs and CCCs could, contrary to Map Act, be conditioned upon a showing by the applicant that the property was developable, transfers for open space, recreational use or conservation easement purposes would be precluded without a violation of the Act.

If the basis of the Commissioners' appeal in this case is a fear, based on the Planned Development Permit ("PDP") processing number given the Bauman Parcel CCC, that actual development has been authorized, the County of Ventura again assures the Commission that *it has not approved of any development in its issuance of the CCC* and that this is just a procedural/tracking designation. If the County's method and practice of administrative processing of CCs and CCCs in the Coastal Zone by using a PDP number has created or contributed to a misimpression as to whether a development permit was actually issued here, the County is certainly willing to take reasonable steps to further clarify the matter in this case and for the future, including consideration of revising its procedures for processing CC applications which, like this one, are unaccompanied by PDP /CDP development applications.

Should the ultimate owner of the parcel, whether the Baumans or their vendees, the Betoulieres (whom I understand are currently in litigation over their right to acquire the parcel), eventually wish to develop the Bauman parcel with a structure, they will need to apply in the future for a PDP/CDP to do so, and receive the requisite development

October 26, 2000

Page 4

approvals subject to review by the Commission. (Pub. Resources Code, § 30600(a).) No one has yet done so. In the event that an application for such a CDP is ever made, the County may lawfully require compliance with the CCC conditions as a condition of development approval (Gov. Code, § 66499.35(b)), and the Commission will have ultimate jurisdiction over that development approval request. The Commission will have the opportunity to pass on the propriety of any proposed development as it sees fit at that point, in compliance with the California Coastal Act and LCP policies, and all applicable law. However, that development approval stage has not been - - and may never be - - reached, since no application for development has yet been made.

In summary, the County of Ventura respectfully concurs with the Betoulieres' position that the Commission should dismiss the pending appeals because it does not have jurisdiction over CCs and CCCs, which are governed strictly by the Map Act and do not constitute or authorize "development". We appreciate the opportunity to clarify the County's position as to these issues, and would be happy to answer any further questions you may have on this matter.

~~Respectfully submitted,~~



Keith Turner
Planning Director

cc: (attached list)
Vern Bauman
Paul Betouliere
James W. Thonis, Esq.
Alejandro Gutierrez, Esq.
Arthur F. Coon, Esq.
Charles Damm

California Coastal Commissioners

Sara Wan, Chair
Edward L. Albert, Alternate
Dave Potter, Vice Chair
Troy S. Fletcher, Alternate
Paula Daniels
Constance Rice, Alternate
Christina L. Desser
Tom Soto, Alternate
Shirley Dettloff
Fran Pavley, Alternate
Cecilia Estolano
David Allgood, Alternate
Gregg Hart
Christine Kehoe
Patrick Kruer, Alternate
Cynthia McClain-Hill
Pedro Nava
Trent Orr, Alternate
Mike Reilly
Annette Rose, Alternate
John Woolley

CALIFORNIA COASTAL COMMISSION

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



July 13, 2000

Mr. Verne W. Bauman
 2930 Fall River Circle
 Thousand Oaks, CA. 91362

EXHIBIT NO. 10
APPLICATION NO.
A-4-VNT-00-078
Bauman

Re: A-4-VNT-00-078, appeal of permit to legalize 10 acre parcel by issuance of conditional Certificate of Compliance.

Dear Mr. Bauman:

On June 13, 2000 the Coastal Commission found that the above referenced appeal of a permit issued by the County of Ventura raised Substantial Issue with respect to the project's conformance to the applicable policies of the County's certified Local Coastal Program (LCP). Once substantial issue is found the Commission is required to hold a *denovo* public hearing on the merits of the project. Commission staff has tentatively scheduled this matter for the Commission's agenda at the August 8-11 hearing in Huntington Beach.

A primary issue which the Commission must consider concerns the developability of the subject 10 acre parcel. In order to find that a parcel is consistent with the Coastal Act or, in this case, the certified LCP, the Commission must have evidence that it is geologically stable, that adequate water, sewage treatment, and access is available to serve future development of the parcel. In addition, it is necessary to know the extent and quantity of grading that will be required to create a building pad and road access to the pad. This information has not been provided to Commission staff.

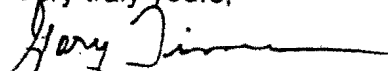
Specifically, we are requesting that you submit any information which addresses geologic stability, percolation rates, water availability and legal access to the subject site. Such information includes site specific geotechnical reports, percolation tests, water well tests, evidence of a legal road or driveway easement to the parcel, and grading plans for the road and building pad.

Should you wish to provide this information we also request that you waive any applicable deadlines relative to the scheduling of a hearing before the Commission. In order for this matter to be heard by the Commission at the August 8-11 meeting it would be necessary to complete a staff recommendation by July 21. So that staff would have adequate time to analyze any information you submit it would be preferable to schedule this matter for the Commission's October 10-13 meeting in Oceanside at the earliest.

Verne Bauman
July 13, 2000

Please let us know whether you intend to provide the requested additional information and to waive the applicable time limits. We would appreciate your response at your earliest convenience. You may call me at 805-641-0142 if you have any questions or wish to discuss this matter further.

Very truly yours,



Gary Pimm
District Manager

CC. County of Ventura
Paul Betouliere

NEWTON KALMAN
Attorney at Law

EXHIBIT NO. 11
APPLICATION NO.
A4-VNT-00-078
Bauman

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)

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.

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



California Lutheran University

60 West Olsen Road
Thousand Oaks, California 91360-2700
805/492-2411

Department of Biology

June 21, 2000

Bill Gorham
ENSR
1220 Avenida Acaso
Camarillo, CA 93012

Dear Bill,

Upon request, I visited Parcel no. 5293, located southwest of the intersection of Deer Creek Road and Pacific View Road on June 20, 2000. There was some concern that the marcescent dudleya (*Dudleya cymosa* ssp. *marcescens*) which is federally threatened and listed by the State as rare might be on the property. There is a small rock outcrop on the property which was thought to be a possible habitat.

No *Dudleya cymosa* ssp. *marcescens* was found on the rock outcrop or anywhere on the property. Because this is the blooming time for the marcescent dudleya, if it had been present on the property, it would have been visible and in bloom. A related species, *Dudleya lanceolata*, was observed on neighboring property, but not the federally threatened *Dudleya cymosa* ssp. *marcescens*. Because not even *Dudleya lanceolata* was on the property in question, it is likely that the southern exposure is not appropriate for the growth of dudleya.

In conclusion, because the marcescent dudleya was not observed during the most recent survey, it can be reliably stated that it does not occur on Parcel no. 5293.

Sincerely,

Barbara J. Collins, Ph.D.
Professor of Biology

EXHIBIT NO. 12
APPLICATION NO.
A4-VNT-00-078
Bauman

EXHIBIT NO. 13
APPLICATION NO.
A4-VNT-00-078
Bauman

RECEIVED

JUL 10 2000

BETOULIERE

P.O. Box 806
TOPANGA, CA. 90290

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PHONE: (310) 204-2049 ~ E-MAIL: betouliere@dellnet.com

June 30, 2000

Re: A-4-VNT-00-078
APN: 700-010-315

Mr. Gary Timm
California Coastal Commission
South Central Coast Area
89 South California St., 2nd. Floor
Ventura, CA. 93001

SUMMARY of SITE VISIT

Dear Mr. Timm,

It was a pleasure meeting with you, Mr. Betz and Mr. Ainsworth at the property on June 28th. I thought that before I forget, I should write down the elements of our meeting and request that you respond if anything is not accurate.

We drove west from Deer Creek Road along the vacated Pacific View Road up to the area of our meeting. Walking along the ridge we reached a spot where looking south we observed, below the ridge, the north-west corner mark of the subject 10-acre Parcel 31. Standing in this area, situated along the ridge and westward, is an area of open space. Looking west and south, from this spot, we saw meadows and steep valleys. Looking to the east we saw a mountain, about 200 feet above the ridge, which contains the buildable area of the subject property and Mr. Dick Clark's single family home.

Mr. Betz explained that his previous site visit was to this lower area of open space with no visible houses. Specifically, the area of the 132-acre Parcel 49 and the 20-acre Parcel 4.

Our meeting began at this north west corner of the subject property. I explained by looking at the Assessors Parcel Map, that the 22-acres of land north and east of this point belongs to Dick Clark's Parcel 55 and that all lands for several miles to the west, both north and south belongs to Lee Mansdorf.

Maps were shown of the easement from Deer Creek Road into the subject property. Historical information regarding the 1961 easement, Harrington to Cleary, burdening the Raffi Cohen property was reviewed.

A brief summary was given of the possible intentions of developers Raffi Cohen and Lee Mansdorf. It is my understanding that Lee Mansdorf's properties are land locked and do not have access through the vacated section of Pacific View Road. This would explain Mr. Mansdorf's need to connect his land to Raffi Cohen's land that borders Deer Creek Road. Parcel 31 may be the key to developing the 1300-acres of open space that is west of the subject property. This would also be a reasonable motive for Mr. Bauman's attempt to cancel our escrow and sell to Mr. Cohen and Mr. Mansdorf for a higher price.

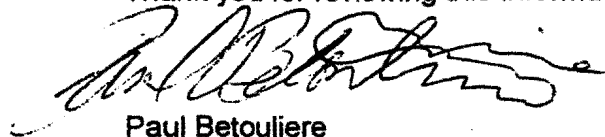
We walked to the top of the subject property Parcel 31, onto an area that is flat to gently sloping and about 1/3 -acre in size. The selected site by the County of Ventura Planning Department for a possible single family home could be on the west side of this area to protect our neighbors view corridor. A building site could be created so that a single story, possible future home, would not be or only be barely visible from any public road. We then walked along the trail of the possible driveway alignment, down and around towards the east and through Parcel 42, the Michael Howard easement. The area of our March 22, 2000 geologic and soils study was observed, as was the backhoe's scraped route up to the geotechnical site.

We arrived at the north-east survey point of Parcel 42 and crossed onto the land of Raffi Cohen. We walked 104 feet through the mustard weeds of the previously scraped area of Raffi Cohen's Parcel 47. We then walked east along Raffi Cohen's dirt and chip seal driveway, past the two-story barn/residence, which leads to Deer Creek Road. Returning in reverse along the above described driveway alignment, Mr. Ainsworth commented and agreed that a reasonable amount of material was moved in our effort to safely bring a backhoe to the study site. We then veered along the trail to the southwest at the fork and curved around the mountain to a lower area of about 1/8-acre of the subject property, also gently sloping. This is an area, about 100 feet below the possible single family home site where a guest unit/garage could be located, also without being seen or barely being seen from Deer Creek Road.

The following was requested of me in order for the Coastal staff to provide a report, which could recommend the removal of the appeal to the Commissioners of the Coastal Commission.

1. Aerial photos 12-6-99 and 11-21-89 showing subject area.
 2. A geologic report addressing the driveway, the slope stability for the driveway and suitability of the subject site for the possible future building.
 3. The civil engineers design of the driveway alignment with the cubic yardage of material to be removed for the driveway.
 4. A satisfactory percolation test performed on the subject property.
 5. Percolation reports from contiguous properties: Parcel 41, Parcel 42 and Parcel 50.
 6. Water well reports from contiguous properties: Parcel 41, Parcel 42 and Parcel 50.
 7. Letters to and from Mr. Dick Clark requesting and being denied an easement to use the Dick Clark driveway to access the subject property.
 8. The 1991 easement, Rinaldi to Howard, granting access to the lower three sister 10-acre parcels on the lower dirt road.
- Notice: Mrs. Sandy Goldberg Esq. requested items 9, 10 and 11 on 6-30-00.
9. Map from Civil Engineer showing the proposed driveway alignment.
 10. Legal description of easements along the proposed driveway alignments, prepared by Gary Salmen Land Survey.
 11. Topo map of subject property, compiled by photogrametric methods, dated 12-6-99.

Thank you for reviewing this information, it is as accurate as I can remember.



Paul Betouliere

PS. See page 3 for printed information submitted at the site visit.

Note: The following items were given to Mr. Betz at the site visit.

1. Biology report dated June 21, 2000, no *Dudleya* found on subject property.
- 2. Easement deed, Harrington to Cleary, recorded Nov. 1, 1961
3. Ventura County 1970 Topo Map, showing the old road as described in the 1961-easement granted by Monte Harrington.
4. Grant Deed, Aliberti to Holbrook (Bauman's in-laws) Note: Exhibit "A" Parcel 2 is for easement over Parcel 42.
5. Geoplan geology memo March 9, 2000 for study on Parcel 42.
6. County of Ventura permission for geologic testing not to exceed 50 cu. yds. of material moved, dated March 15, 2000.
7. Consent to off-site Construction, for grading on Parcel 42, dated 10-13-99
- 8. Salmen Land Survey map showing driveway alignment, dated February 14, 2000.
9. Assessors Parcel Maps 1961, 1963, 1968 and the present map.

June 30, 2000

Dear Mr. Timm,

Attached please find my letter to Mr. Dick Clark and his response back to me.

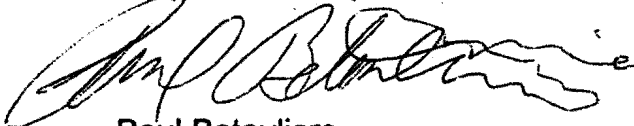
Mr. Clark and I spoke by phone prior to my letter, dated March 26, 1998. In this phone conversation on March 25, 1998 I asked Mr. Clark if he would grant an easement to me to drive part way up his private driveway in order to access the 10-acre APN 700-010-315.

Mr. Clark refused saying that he did not want to share his driveway and wanted his total and exclusive privacy.

Please request of applicant Bauman his letters to and from Mr. Clark that I understand also express a similar request and response.

These four letters together should provide ample proof that an alternate entrance into the Bauman property is not available through the property of Mr. Dick Clark. The recorded easement from 1961 of Harrington for the benefit of the Bauman property is the correct and natural choice of connecting the Bauman property to the public right of way now known as Deer Creek Road.

I hope this is helpful,



Paul Betouliere

cc. Mrs. Sandy Goldberg Esq.

EXHIBIT NO. 14
APPLICATION NO.
A-4-VNT-00-078
Bauman

RECEIVED

JUL 10 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

3003 W Olive Ave
Beverly Hills 91505
818-841-3003

Karl

March 26, 1998

Dear Mr. Clark,

It was a pleasure speaking with you yesterday about Pacific View. Having grown up in the Santa Monica Mountains I am well aware of the pain and joy of having neighbors. As an artist, I, like you, yearn for solitude and appreciate your position of wanting 100,000 acres to wrap around your home.

If you would only meet me sometime on the front 10 acre parcel you might realize that my goal is to build a very humble single story home for my family. I would be willing to work with you and position my home so that your privacy and view would not be sacrificed in any way.

I'm sure that you would find my family and I to be kind and respectful neighbors. With good planning we could both share the same inspiring views.

Thank you again for your time.

Sincerely,



Paul Betouliere
P.O.Box 806
Topanga, CA 90290
(310) 455-4033

RECEIVED

JUL 10 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

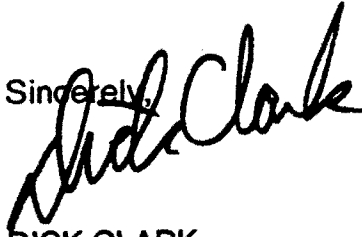
March 31, 1998

I just received your nice note, Paul, regarding your Pacific View property.

I'm sure you would be good neighbors; however, as I said to you earlier, the reason we put our house in this isolated spot, was because we wanted to be surrounded by thousands of acres of wilderness. We're not anti-social, but do need to "get away from it all" on occasion.

I hope you understand.

Sincerely,



DICK CLARK

DC:kc

Mr. Paul Betouliere
P. O. Box 806
Topanga, Calif. 90290

RECEIVED

JUL 10 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

productions, inc.

3005 WEST CHIVE AVE. BERGAMOTTA CA 94915-4200
PHONE: 415 343-1100 FAX: 415 343-1100



dick clark

(818) 881-2063

GEOPLAN, Inc.
consulting engineering geologists
 18432 OXNARD STREET
 TARZANA, CALIF. 91356
 John D. Merrill, President

July 24, 2000

Gary Timm
 California Coastal Commission
 89 S. California Street, Suite 200
 Ventura, California 93001

re: Coastal Appeal A4-VNT-0-078
 Parcels 42 and 31, N $\frac{1}{2}$, SE $\frac{1}{4}$,
 NE $\frac{1}{4}$, S17, T1S, R20W, SBBM

Dear Mr. Timm:

Geoplan has been hired by Mr. Paul Betouliere to conduct a preliminary analysis of the ability of Parcel 31 to support a single family home to be served by a private sewage disposal system and a domestic water well. Sites for these facilities have been identified and are known to meet County standards.

In is the opinion of Geoplan that Parcel 31 contains several sites suitable for development and that each site is grossly stable.

A preliminary geotechnical study was conducted on adjacent Parcel 42 on March 22, 2000 to determine the steepness of safe slopes along the proposed driveway. The purpose being that a steeper roadcut would create the least environmental disruption.

Geotechnical and geologic data from that study and from observations of historical roadcuts in this area support the

EXHIBIT NO. 15
APPLICATION NO.
A4-VNT-00-078
Bauman

GEOPLAN, Inc.
CONSULTING ENGINEERING GEOLOGISTS

Page 2
July 24, 2000
California Coastal Commission

opinion that a road to subject Parcel 31 could be engineered with minimal environmental impact.

Thank you for your attention.

Most sincerely,

John D. Merrill
Engineering Geologist 83

REGISTERED ENGINEERING GEOLOGIST
No. 83
STATE OF CALIFORNIA

JDM/b

**MILLER
STARR
&
REGALIA**

A PROFESSIONAL
LAW CORPORATION

1331 NORTH CALIFORNIA BLVD.
FIFTH FLOOR
P.O. BOX 8177
WALNUT CREEK, CALIFORNIA 94596
FACSIMILE (925) 933-4126
TELEPHONE (925) 935-9400

Received at Commission
Meeting

AUG - 8 2000

From: _____

ARTHUR F. COON

AFC@MSANDR.COM
(925) 941-3233

August 4, 2000

**VIA HAND DELIVERY (with exhibits on or before August 8, 2000) and
VIA FACSIMILE TO COMMISSION STAFF (without exhibits on August 4, 2000)**

Sara Wan, Chair
Edward L. Albert, Alternate
Dave Potter, Vice Chair
Troy S. Fletcher, Alternate
Paula Daniels
Constance Rice, Alternate
Christina L. Desser
Tom Soto, Alternate
Shirley Dettloff
Fran Pavley, Alternate
Cecilia Estolano
David Allgood, Alternate
Gregg Hart
Christine Kehoe
Patrick Kruer, Alternate
Cynthia McClain-Hill
Pedro Nava
Trent Orr, Alternate
Mike Reilly
Annette Rose, Alternate
John Woolley
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Agenda Item No.: Tul3h

Appeal No.: A-4-VNT-00-078

Hearing Date: August 8, 2000

Name: Arthur F. Coon, Esq. And
Alejandro P. Gutierrez, Esq. Representing Paul and
Susan Betouliere

Position: In favor of "project"; appeal must be
dismissed for lack of jurisdiction

Re: Appeal of County of Ventura's Issuance of Conditional Certificate of
Compliance (A-4-VNT-00-078) for Vern Bauman's 10-acre Parcel

Honorable Chairperson and Commissioners of the California Coastal Commission:

This office, with co-counsel Alejandro P. Gutierrez, Esq., of Hathaway, Perrett, Webster, Powers & Chrisman, represents the interests of Paul and Susan Betouliere, vendees of Vern Bauman under a purchase agreement for the 10-acre lot which is the subject of the Conditional Certificate of Compliance ("CCC") at issue in the above-referenced appeal. As shall appear, the Betoulieres support the County of Ventura's issuance of the CCC and oppose the appeals of the same on the grounds that, *inter alia*, the California Coastal Commission lacks legal jurisdiction over Certificates of Compliance ("CCs") issued under the Subdivision Map Act ("SMA"; Gov. Code, §§ 66410, et seq.) since such certificates **do not divide land** or authorize development and, hence, are not "development" as defined in the California Coastal Act of 1976 ("CCA"; Pub. Resources Code, §§ 30000 et seq.; see id. at § 30106.) CCs are ministerial approvals which must be granted, either unconditionally or conditionally, by the local agency having jurisdiction (here Ventura County) on the request of the parcel owner or vendee. (Gov. Code, § 66499.35(a),(b); Findleton v. Board of Supervisors (1993) 12 Cal.App.4th 709, 714.)

For at least 18 years and literally scores of recorded CCs in Ventura County, the Coastal Commission has not purported to exercise jurisdiction over such approvals, which expressly authorize no development and merely legalize already existing unlawfully subdivided lots so that they may be transferred, leased, sold or financed without violating the legal prohibitions of the SMA. (See Gov. Code, §66499.35 (f).) Should the Commission follow its staff's recommendation to decide and grant the appeal in this case, this action would not only be unjust and procedurally defective, but would constitute an unlawful and untenable assertion of jurisdiction in clear violation of both the SMA and CCA. For all the seasons set forth herein, the appeal must be dismissed for lack of jurisdiction.¹

I. RELEVANT FACTS AND PROCEDURAL HISTORY.

Paul and Susan Betouliere are currently in contract to purchase a 10-acre lot, currently owned by Vern Bauman, and located south of Pacific View Road and west of Deer Creek Road in the Santa Monica Mountains in Ventura County. The property is designated as Assessor's Parcel No. 700-0-010-310, and consists of the northwest quarter of the southeast quarter of the northwest quarter of Section 17, Township 1 South, Range 20 West, San Bernardino Meridian, along with appurtenant access and utility easements, as described in the creating deed recorded April 1, 1968 (at Book 3284, page 233 of the Official Records of Ventura County) from Orlando and Catherine Aliberti, as grantors, to Robert and Caroline Holbrook, as grantees. (See Exhibit B hereto, 7/26/00 Staff Report: Appeal (re: No. A-4-VNT-00-078), at Exhibits 2 [Assessors Map Bk. 700, p. 01], and 5 [Grant Deed].) This lot was listed as a separate legal parcel in the Grant Deed recorded August 23, 1965, from the Sievers and Clearys to the Alibertis (see id., at Grant Deed attached as the second enclosure to Staff Report Exhibit 8, a July 17, 2000 letter from Ventura County Planning Director Keith Turner to Charles Damm), and it was subsequently conveyed on July 5, 1977 by the Holbrooks to Mr. and Mrs. Vern Bauman. (See Exhibit B hereto, Staff Report, Exhibit 11, 4/17/2000 letter to Commissioners

¹ Due to counsel's recent involvement, the uncertain state of the record herein, the minimal notice provided of this hearing, and logistical factors in this limited time frame, it was simply not possible to provide a copy of this letter and all its enclosures (Exhibits A through J) to each Commission Member or its Staff three working days in advance of the August 8 hearing date. A copy of this letter is being faxed to the relevant staffer, Gary Timm, on the August 4, 2000 date it bears, however.

from Attorney Kalman, p. 2.) There is no evidence anywhere in the record that the Baumans had either actual or constructive notice of the allegedly illegal 1968 subdivision, and the existing evidence is to the contrary. (*Id.*; see Exhibit C hereto, April 13, 1982, letter from Baumans to Cheri Kantor.)²

Accordingly, the 10-acre parcel at issue here was *created* by deed transfer *at the latest* in 1968, well prior to the 1976 enactment of the CCA or the 1983 certification of Ventura County's Local Coastal Plan ("LCP") thereunder. (See Exhibit B, Staff Report, p.2.)

In order to remedy the allegedly illegal subdivision by deed which apparently occurred at least 32 years ago, and to legalize any future transfers of the property under the SMA, the Baumans applied for and obtained a Conditional Certificate of Compliance ("CCC") (CCC-9904) from the County, and the Parcel Map constituting the CCC (see Gov. Code, §66499.35(d)) was duly recorded in the Official Records on April 12, 2000. (See Exhibit G.) While the County processed the CCC application pursuant to its longstanding procedures for processing Coastal Development Permits ("CDP"), which are typically (but not mandatorily) applied for and processed simultaneously with CCs in the Coastal Zone when development approvals are sought, *only* a CCC was applied for in this case by the Baumans, who desired solely to legalize the parcel to facilitate a pending sale.³ **No CDP application has been made for the subject parcel.**

The County granted the CCC (as it was required to do under the SMA) subject to 4 pages of conditions including, but not limited to:

1. All applicable requirements of any law or agency of the State, Ventura County and any other governmental entity shall be met, and all such requirements and enactments shall, by reference, become conditions of this entitlement.

(Exhibit D, CCC Conditions, p. 1)

The CCC conditions state numerous times -- in all capital letters and underlined -- that compliance with the same "MAY BE PHYSICALLY IMPOSSIBLE OR PROHIBITIVELY EXPENSIVE." They also prominently state:

21. **THE REVIEW AND APPROVAL OF THE
CONDITIONAL CERTIFICATE OF COMPLIANCE
(CCC) WAS FOR LEGALIZING THE PARCEL. THE
APPROVAL OF THE CCC SHALL NOT BE**

² It is the position of the Betoulieres that the title history of the parcel at issue shows that it was **legally** subdivided as part of a lot split in 1968, and that it is presently a legal parcel entitled to an unconditional certificate of compliance. The legal bases for the Commission's lack of jurisdiction set forth herein, however, in no way depend on this position.

³ The County's March 8, 2000 Notice of Final Decision indicates that the designation of "PD 1811" was assigned only for purposes of processing the CCC "permit" in the Coastal Zone (see Exhibit E), and this understanding was confirmed by my own 8/3/00 telephone conversation with Assistant County Counsel James W. Thonis, who confirmed County's longstanding procedural practices in this regard.

CONSTRUED TO BE THE APPROVAL FOR THE
DEVELOPMENT OF THE PROPERTY.

(Exhibit D, p. 4.)

The County Planning Director's March 6, 2000, approval of the CCC was memorialized in a March 8, 2000 Notice of Final Decision, which provided notice of a 10-day administrative appeal period ending March 16, 2000, to the County's Planning Commission, pursuant to its local code. (Exhibit E.) This Notice also correctly noted that "[t]his project is not appealable to the California Coastal Commission [.]" (Id.) No administrative appeal to County's Planning Commission was ever filed.

On March 24, 2000, the period for administrative appeal of the County's CCC decision having already run, the Coastal Commission issued a document entitled "Notification of Appeal Period" purporting to recognize a right to appeal the CCC (procedurally identified as PDP 1811 to "[l]egalize a 10-acre illegal lot") directly to the Coastal Commission until April 7, 2000. (Exhibit F.) On April 7, 2000, an "Appeal from Coastal Permit Decision of Local Government" form was filed with the Commission by Raffi Cohen/Astra Investment Capital, LLC on the grounds that an access easement to the 10-acre lot across appellants' property allegedly did not exist. (Exhibit I.)

A joint appeal form was also filed by Commissioners Sara Wan and Pedro Nava, *materially misdescribing* the matter as a "10 acre illegal lot created by conveyance of grant deed in 1978." (Exhibit J.) These Commissioners' appeal also attached a typewritten list of "supporting reasons" consisting of recitation of a number of LCP Zoning Ordinance policies concerning building envelope identification, slope, sensitive habitat and vegetation preservation, minimum lot size, utilities and water provision, and development density which they claimed the proposed "land division" and "development" -- in reality only a CCC and not a CDP -- did not comply with. (Id.)

Subsequent to these purported appeals of a "development" approval to this Commission, the County Counsel of Ventura and the Planning Director of Ventura County met and extensively corresponded with Coastal Commission staff and officials. By May 16, 2000 letter, and its attachments (all attached and incorporated as Exhibit A hereto), Assistant County Counsel James W. Thonis asserted and provided extensive and detailed legal support for the County's correct position that a CCC was not "development" under either the CCA or County's Coastal Zoning Ordinance. As succinctly stated in Mr. Thonis' letter:

[A] conditional certificate of compliance does not create lots but rather applies a statutory remedy to a lot previously created. The effect of the issuance of the certificate is not to create a lot or allow development but rather to allow the further conveyance of the lot without fear of violating the prohibitions in the [SMA]. This mere allowance to convey does not constitute a "change in the density of[r] intensity of use of Land" or "any other division of land" under Public Resources Code section 30106.

(Exhibit A, p. 2.)

Ventura County Planning Director Keith Turner's April 26, 2000 letter to Chairperson Wan outlines in detail the appeal's factual errors – and inconsistency with both governing law and historical County practices for processing CCCs, including approved CCCs for three illegal lots contiguous to and to the immediate east, southeast and south of the subject lot created from the same parent parcel years after the lot at issue. (Exhibit B, p. 3; see also Exhibit H [12/10/81 CCC for immediately adjacent parcel].)

The reasoned comments of Mssrs. Thonis and Turner apparently fell on deaf ears. Mr. Turner followed with a June 7, 2000 letter, expressing his dismay that his earlier letter had not been included (or apparently even considered) in the Staff's earlier report on this matter, and a July 17, 2000 letter providing as attachments and summarizing prior relevant correspondence and relevant information. (Exhibit B Staff Report, Ex. 8, thereto.) **These and other relevant documents are attached hereto as Exhibits "A" through "J", incorporated herein by reference, and are expressly requested hereby to be placed in and made part of the official Administrative Record on the instant appeal.**

II. LEGAL ANALYSIS

A. The Coastal Commission Lacks Jurisdiction Over the Issuance of Certificates of Compliance Under the SMA And CCA Because They Are Not "Development" Approvals But, Rather, Ministerial Acts Within The Jurisdiction of Ventura County; This Appeal Is Therefore An Unlawful And Void Act And Must Be Dismissed.

For purposes of the California Coastal Commission's permitting jurisdiction, "development" falling within that jurisdiction is defined as "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act . . . and any other division of land, including lot splits . . ." (LeFe, Inc. v. County of Los Angeles (1999) 73 Cal.App.4th 231, 235.) Unlike the lot line **changes** at issue in La Fe (see id. at 240) – a case itself dealing with the extreme fringes of the concept of "development" under the CCA – a CCC does **not** constitute a "division of land." Rather, in this very different context, the division of land has by definition already occurred, and the local agency has a ministerial duty to determine whether or not the resulting parcel is in compliance with the SMA and then to issue either a certificate of compliance or conditional certificate of compliance to effectuate the

mandatory legislative remedy of parcel legalization. (Gov. Code, §66499.35(a), (b); Hunt v. County of Shasta (1990) 225 Cal.App.3d 432, 442.)

A certificate of compliance is not a “development” approval, and relates only to SMA compliance for purposes of sale, lease or finance. (See, e.g., 5/16/2000 Thonis to Damm letter and attached legal authorities.) As stated in the statutorily required language of section 66499.35(f)(1)(E):

This certificate relates only to issues of compliance or noncompliance with the [SMA] and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the [SMA] or any local ordinances enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

(Gov. Code, §66499.35(f)(1).)

Without a Certificate of Compliance, the owners of an existing but illegally created historical parcel could not convey, sell, lease or finance it for *any* purpose – whether for future development, an access easement, conveyance of the parcel by fee or means of a conservation easement to a land trust for open space/preservation purposes, or conveyance to an adjoining owner to augment and enlarge another existing parcel – without committing a **criminal violation** of the SMA. (See Gov. Code, §66499.30 [listing prohibited transactions]; 66499.31 [providing punishments for violation].) As is clear from the SMA itself and other authorities, certificates of compliance are ministerial approvals which merely legalize an existing parcel for purposes of the SMA, and do *not* approve or authorize development of the parcel in question. (74 Cal. Ops. Atty. Gen. 149, 154 (1991); see Findleton v. Board of Supervisors (1993) 12 Cal.App.4th 709, 714 [holding certificate of compliance is ministerial in nature and **not** a “development project” subject to the automatic approval provisions of the Permit Streamlining Act].) As summarized in a well-respected legal treatise on the subject: “Issuance of a certificate of compliance is a **ministerial act** and thus is not subject to the Permit Streamlining Act.” (California Subdivision Map Act Practice (CEB, March 2000 Update), § 8.9, p. 111, *emph. added.*)

The Staff Report’s contrary assertion that a CCC is approval of “development” or a “land division” within the Commission’s jurisdiction ignores the law and defies reality. The Staff Report attached as part of Exhibit B hereto, cites no legal authority for the unprecedented assertion of jurisdiction over CCs that it urges. The Staff Report itself acknowledges, correctly but inconsistently with its own main premise, at page 4, that: “**No development of the site is proposed by this application . . .**” Yet it nonetheless insists on mischaracterizing the CCC as a “proposed land division [which] does constitute development[.]” (Exhibit B, Staff Report at p. 5). The suggested exercise of jurisdiction here is mistaken and premature, at best, and at worst a cynical jurisdictional grab in defiance of existing law. To accept the Staff’s position that CCs are “development” and consequently assert jurisdiction over this appeal would result in a conflict between the CCA and the SMA since the provisions of Government Code section 66499.35

mandating issue of CCs would directly conflict with any assertion of alleged jurisdiction to deny such CCs as "development" permits or approvals under the CCA's provisions.

B. The Appellants Have Failed To Exhaust Administrative Remedies And The Commission Is Without Legal Power To Either Hear the Appeal or Affect The Validity of the Recorded CCC.

Exhaustion of administrative remedies is a well-established jurisdictional prerequisite to seeking judicial relief of administrative agency decisions. (Pub. Resources Code, § 30801; e.g., Walter H. Leimert Co. v. California Coastal Com. (1983) 149 Cal.App.3d 222, 233.) The Commission's own regulations provide that an appeal may be filed by "any aggrieved person **who exhausted local appeals[.]**" (14 Cal. Code Regs, §13111(a), *emph. added.*) This provision alone eliminates that Raffi Cohen/Astra Investment "appeal" from consideration since it is undisputed that no one pursued the available administrative appeal of County's CCC approval to its Planning Commission. To the extent that the Commission's regulation purports to exempt Commissioner appellants from the exhaustion requirement, it is unauthorized by and in conflict with governing statutory and case law, as well as a violation of substantive and procedural due process, and equal protection, *inter alia*, and is therefore void and of no effect. Failure of *all* appellants to exhaust their administrative remedies before the County is fatal to this appeal.

Moreover, the Commission is without jurisdiction over the appeal or power to affect the duly recorded CCC for the additional reasons that since the 90-day statute of limitations for judicial review of the County's CCC decision has already run (*see* Gov. Code, §66499.37) --a statute on which parties have reasonably relied -- and no actual development permit is involved, the Commission has no power to invalidate already-legally recorded documents such as the CCC here (*see* Exhibit G), particularly when it has endorsed similar approvals through past action and inaction, as is the case here. (*See* Landgate, Inc. v. California Coastal Com. (1998) 17 Cal.4th 1006, 1014-15.) The Commission's unlawful exercise of jurisdiction and purported denial of a non-existent, fictitious "development" application would be a legal nullity with no effect whatsoever on the legal validity of the recorded CCC, which can no longer be challenged. The Commission simply cannot "create" a "development approval" over which to assert purported "jurisdiction" out of whole cloth in defiance of law, proper legal procedures for challenging entitlements, and reality.

C. Even Assuming Solely, Arguendo, That It Could Legally Assert Jurisdiction, The Commission is Estopped To Deny or Modify The CCC.

Even if the CC were "development" over which the Commission could assert jurisdiction -- which is emphatically not the case -- the Commission would be legally required to approve it and *estopped* to deny it under the circumstances present here. As explained above, the CCC's issuance is a *ministerial act* compelled by the SMA -- the Commission, like County, simply has no legal authority to deny it. Moreover, the Commission is estopped by, *inter alia*, at least 18 years of action and acquiescence in approving the practice of Ventura County's issuance of at least 40 CCs in the Coastal Zone, including CCs for the three adjacent illegally subdivided 10-acre parcels created from the very same parent parcel as the lot at issue here. (Exhibit B, p. 3;

Exhibit G.) It would also be a violation of equal protection, substantive and procedural due process, and constitutionally protected property interests (i.e., inverse condemnation) to assert jurisdiction and purport to deny the CCC.

D. The Coastal Commission Lacks Jurisdiction Because The Lot At Issue Is In A Nonappealable Area.

After a local agency's Local Coastal Plan ("LCP") is approved, the local agency has the right to approve development in the Coastal Zone within its jurisdiction (Pub. Resources Code § 30519(a)), subject to limited and defined rights of appeal of final decisions to the Commission. (§ 30603.) County Planning Director Turner's April 26, 2000 letter to Chairman Wan states that the County's Coastal Zoning Ordinances (which is part of its duly-approved LCP) designates the property at issue as falling within a "non-appealable area." (Exhibit B, Staff Report, Ex. 8, thereto, 3rd letter, p. 1.) For this additional, separate and independent reason, there is no significant issue, and the Commission lacks jurisdiction of this appeal. (Pub. Resources Code, §30625(b)(2); 14 Cal. Code Regs. §13115(b).)

E. The Commission Has Failed To Set The Public Hearing Or Act On This Appeal Within Its 49-Day Time Limit.

The CCA requires the "de novo public hearing" to be set on appeals within 49 days after the date the appeal was filed. (Pub. Resources Code, § 30621(a).) The appeals here were filed on April 7, 2000. This "de novo public hearing" is set for August 8, 2000 -- 4 months later --and the staff's own report reflects no "substantial issue" was found by the Commission in connection with the appeal until its June 13, 2000 meeting (Exhibit B, Staff Report, p. 2), which date itself falls well outside the Commission's 49-day deadline. Moreover, more than 49 days have elapsed between the June 3 determination and the August 8 hearing date. Gary Timm of Staff confirmed to me in our telephone conversation on August 3, 2000, that the applicant, Mr. Bauman, had not consented to any waiver or an extension of time, and none is reflected in the Staff Report or other record documents available for my review, despite the Commission Staff's request for a waiver of time limits. (Exhibit B, Staff Report, Ex. 10, [Timm letter].)

F. The Commission's Lack of Jurisdiction Excuses Exhaustion of Administrative Remedies On The Part Of the Betoulieres.

The appeal purports to raise a number of issues relating only to whether a non-existent CDP application complies with numerous LCP policies and requirements. Since the CCC was the only approval sought and obtained by Bauman, and no one has yet applied for an actual development permit (most assuredly not the Betoulieres), these policies are wholly irrelevant at this point in time. Since the Commission would be acting in excess of its lawful jurisdiction under the CCA and SMA to act on an appeal of the CCC as purported "development," any conceivable obligation to exhaust administrative remedies on the part of the Betoulieres on these or any other issues herein is vitiated for this reason, *inter alia* (See, e.g., Walter H. Leimert Co. v. California Coastal Com. supra, 149 Cal.App.3d at 233, n. 4.)

III. CONCLUSION.

If the Staff's extreme, unprecedented and untenable position in this matter were to be upheld, illegally-created historical lots literally many decades old could **never** be legalized and transferred by subsequent innocent purchasers for **any** purpose without violating the SMA, even to a land preservation trust for conservation purposes. The illegality and absurdity of this position should be manifest to the Commission. Certificates designed solely to effectuate SMA compliance -- and which expressly do not authorize "development" -- are simply not within the Commission's permitting jurisdiction under the Coastal Act since, unlike subdivisions or lot line adjustments, they neither divide land nor increase its density or intensity of use. The issuance of these certificates is not subject to denial in any event, since it is a mandatory and ministerial act under the well-established governing law recited above.

The Staff Report's analysis in this matter is incorrect and legally indefensible. The Commission should take heed of the law, recognize that a CCC is not the approval of "development" over which it has jurisdiction, and dismiss the pending appeals forthwith for all the reasons stated above.

Respectfully submitted,

MILLER, STARR & REGALIA



Arthur F. Coon

Attorneys for Paul and Susan Betouliere

AFC:kw

W/Attachments (Exhibits "A" through "J"/by hand delivery)

cc: Alex Gutierrez, Esq. (by fax on August 4, 2000 w/out encls.)
James W. Thonis, Esq. (by fax on August 4, 2000 w/out encls.)
Paul and Susan Betouliere (by fax on August 4, 2000 w/out encls.)
Robin Rivett, Esq., Pacific Legal Foundation (by fax on August 4, 2000 w/out encls.)
Gary Timm (by fax on August 4, 2000 w/out encls.)

