

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

MANTUA, CA 93001

(805) 641-0142

## RECORD PACKET COPY

Filed: 5/10/01  
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Staff: AAV  
Staff Report: 5/31/01  
Hearing Date: 6/12-15/01



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

**LOCAL GOVERNMENT:** City of Santa Barbara

**LOCAL DECISION:** Approval with Conditions

**APPEAL NO.:** A-4-SBC-01-097

**APPLICANT:** Capital Pacific Holdings, Inc.

**AGENT:** Brian Cearnal Architects, Inc.

**APPELLANTS:** Citizens Planning Association  
League of Women Voters of Santa Barbara

**PROJECT LOCATION:** 214 East Yanonali Street, Santa Barbara  
APN No. 017-021-005, -17, -18, -23, -30, -32

**PROJECT DESCRIPTION:** Merger of 6 existing parcels, and one lot subdivision of 2.2 acre site, demolition of 6 existing commercial/industrial buildings, construction of a corner market and ten, two- and three-story residential buildings consisting of forty two-bedroom condominium units, and street frontage improvements along Yanonali and Santa Barbara Street.

**SUBSTANTIVE FILE DOCUMENTS:** City of Santa Barbara Local Coastal Program; City of Santa Barbara Planning Commission Resolution No. 011-01 as Amended and Approved by City Council 4/17/01; City of Santa Barbara Planning Commission Staff Report 2/2/01; City of Santa Barbara Council Agenda Report 4/13/01; Appeal From Coastal Permit, Decision of Local Government, Environmental Defense Center, Grounds of Appeal, 5/10/01; Letter from Hatch and Parent, Regarding 214 Yanonali Street, Santa Barbara, California, 5/21/01; Letter from the EDC Regarding Citizens Planning Association and League of Women Voters of Santa Barbara Appeal, 5/29/01; Letter from Hatch and Parent, Regarding 214 Yanonali Street, Santa Barbara, California, 5/31/01.

**SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS**

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

The appeal contends that the approved project is not consistent with the visual resource protection policies and provisions of the certified Local Coastal Program.

**I. APPEAL PROCEDURES**

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

**A. Appeal Areas**

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

**B. Grounds for Appeal**

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

### **C. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission Staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

### **D. De Novo Permit Hearing**

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

If the Commission finds substantial issue, Staff will prepare the de novo permit consideration Staff report for the next available Commission meeting.

## **II. Appeal Jurisdiction**

The proposed project is located in the Central Redevelopment Project Area and just within the northern boundary of the Waterfront Area in the City of Santa Barbara. The project site consist of 6 existing parcels located seaward of U.S. Highway 101, bound by the 101/Garden Street off ramp on the north, East Yanonali Street on the south, Santa Barbara Street on the West, and a commercial property to the east (Exhibit1). The Post LCP Certification Permit and Appeal Jurisdiction Map certified for the City of Santa Barbara (Adopted May, 1981, Amended July, 1994) indicates that the project site is within the boundary marking the Commission's appeals jurisdiction (Coastal Act Section 30603[a][1] and [a][2]). The Appeal Jurisdiction Map indicates that the Commission has delegated original permit jurisdiction to the City for this area potentially subject to the public trust but which has been filled, developed and committed to urban uses. As such,

the subject project site is located within the appeals jurisdiction of the Commission and any development approved for this site is therefore appealable to the Commission.

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

The proposed project was review by the City of Santa Barbara Planning Commission on February 8, 2001, however the matter was continued to allow the applicant to address comments made by the Planning Commission with respect to size, scale, and massing of the proposed structures. On March 8, 2001 the proposed project was reviewed and approved with conditions by City of Santa Barbara Planning Commission. On March 16, 2001 an appeal of the project was filed by the Environmental Defense Center (EDC) representing the League of Women Voters of Santa Barbara and the Citizens Planning Association of Santa Barbara, Inc. The City Council of the City of Santa Barbara denied the appeal approving the project with amended conditions on April 17, 2001.

Staff received a first Notice of Final Action for the subject coastal permit on April 23, 2001, however, a Deficiency Notice was sent to the City on that same day requesting additional information regarding the proposed project. On April 24, 2001 the appellants phoned the Commission office and were informed that a Deficiency Notice had been issued for the proposed project and, therefore, the 10-day appeal period to the Commission had not yet started. The appellant's contacted the Commission office the following week and were again notified that Staff had not yet received adequate Notice of Final Action and the Commission's appeal period had not begun.

On April 27, 2001 Staff received a letter from the City indicating that City Staff disagreed with the determination of deficiency for the Notice of Final Action issued on April 23, but also indicating that the requested information on the Deficiency Notice was being sent to the Commission office. On May 2, 2001 Staff received a second Notice of Final Action for the proposed project with the additional information requested, and Commission Staff met with City Staff on May 8, 2001 to discuss the procedures and regulations for Notice of Final Action to the Commission. Commission Staff determined that the Coastal Commission 10-day appeal period did not formally begin until May 3, 2001, following receipt of a second Notice of Final Action on May 2, 2001. Notification of Appeal Period was issued by the Commission on May 8, 2001 indicating that the Notice of Final Action was received on April 23 and the appeal period would run until 5 p.m. on May 16, 2001, however, a corrected Notification of Appeal Period was issued on May 11 indicating the that Notice of Final Action was in fact received on May 2, 2001 and the appeal period had not changed and would run to 5 p.m. May 16, 2001. An appeal of the City's action was filed by the EDC representing the League of Women Voters of Santa Barbara and the Citizens Planning Association of Santa Barbara, Inc. during the 10-day appeal period, on May 10, 2001. Commission Staff notified the City and the applicant of the appeal and requested that the City provide its administrative record for the permit. The administrative record, including additional conditions of approval for the project as amended by the City Council, was received at the Commission office on May 17, 2001.

## B. Jurisdiction to Hear Appeal

The applicant has asserted that the Coastal Commission does not have jurisdiction to hear the appeal because it was not timely. (Exhibit 4, letter from Hatch & Parent dated May 21, 2001 and Exhibit 6, letter from Hatch & Parent dated May 31, 2001). Commission Staff has reviewed the applicant's position and determined that the appeal was timely and the Commission has jurisdiction to hear the appeal.

As explained above, after receiving the first Notice of Final Action on April 23, the Commission Staff issued a Deficiency Notice to the City, listing several reasons why the Notice of Final Action was deficient. The Deficiency Notice states: "The effective date of the local government action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office." The applicant asserts that the reasons given for deficiency of the notice were inappropriate and therefore the appeal period began running on April 23 and expired on May 7. Since the appeal was not filed until May 10, the applicant argues that it was untimely. Commission Staff disagrees with this for several reasons.

First, in fact, the Deficiency Notice was appropriate and the appeal period did not begin until the Commission issued the Notification of Appeal Period, setting the appeal deadline of May 16.

In the Deficiency Notice, the second reason listed for the deficiency states:

"2. Complete written findings for Approval not included. Submit written findings relative to visual, public access (parking), recreation and visitor-serving policies of City's Local Coastal Plan."

The City's LCP indicates that the City's decision is final when "the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program . . . ." (emphasis added). The City's Notice of Final Action does not contain specific factual findings supporting the legal conclusion that the project is consistent with the provisions of the LCP regarding protection of public views of scenic coastal areas. The Notice of Final Action incorporates Planning Commission Resolution No. 011-01. With respect to consistency with the LCP provisions regarding public views, the Resolution states only: "The project would not affect visual resources as the proposed development does not adversely affect the public's view of the ocean or mountains . . . ." This finding is entirely conclusory and does not include any factual findings to support the conclusions. The finding does not even state what the applicable LUP policy requires. The findings do not indicate why there is no adverse affect on public views. They do not state whether there are no public views of the ocean or the mountains from this location; or whether there are views of the ocean or mountains but the proposed structures do not intrude into those views; or whether there are "view corridors" that preserve existing views of

the ocean or mountains to a certain extent, so the impact on public views is not significant and therefore does not constitute an "adverse affect." Therefore, the Deficiency Notice correctly asserted that the Notice of Final Action was deficient. Accordingly, as stated in the Deficiency Notice, the effective date of the local action was suspended and the appeal period **had** did not yet commenced.

Second, the Commission properly relied on the second Notice of Final Action submitted by the City in setting the deadline for appeals. After receiving the Deficiency Notice, the City submitted a second Notice of Final Action dated April 27, along with additional information that the Commission Staff requested in the Deficiency Notice. The first reason for deficiency listed in the Deficiency Notice states: "1. . . . Please submit a reduced copy of project location and site plan." The second Notice of Final Action, with this additional information, was received by the Commission on May 2. The City also submitted a letter dated April 27, 2001, that disagreed with the Commission's determination that the Notice of Final Action was deficient. As the City's letter indicates, there was a disagreement between the City and the Commission Staff regarding whether the April 19 Notice of Final Action was adequate. However, prior to resolving this disagreement, the Deficiency Notice remained in effect and the appeal period had not commenced. Although the City's letter objected to the Deficiency Notice, the City also submitted a new Notice of Final Action that complied in part with the Commission's request for additional information. The Commission Staff made a decision at this time to accept the second Notice of Final Action received on May 2 as adequate. Accordingly, the Commission properly issued a Notification of Appeal Period setting May 16 (10 working days after receipt of the second Notice) as the deadline for filing of an appeal. Therefore, the appeal filed on May 10 was timely.

The final reason that the Commission has jurisdiction to hear the appeal is that, even if the reasons given in the Deficiency Notice were incorrect, the public's right to appeal a project to the Coastal Commission cannot be destroyed by the Coastal Commission's mistake. (See Exhibit 5, letter from EDC). The public reasonably relied on the statement in the Deficiency Notice that the 10 working day appeal period had not commenced. In addition, Commission Staff informed appellants' counsel on or about April 24 and again on May 1 that the appeal period had not yet commenced. Subsequently, the Commission issued the Notification of Appeal Period stating that the deadline for filing an appeal was May 16. The public was also entitled to rely on the appeal deadline set forth in this Notification. Had the Commission set an appeal deadline of May 7 the appellants would have filed a timely appeal. After issuing a Notification of Appeal Period setting an appeal deadline, the Commission cannot retroactively change the date after the public has relied on it, even if the Commission has made a mistake, because this would unfairly eliminate the public's right to appeal.

In this case, the applicant argues that the appeal period should have started on the date of receipt of the first Notice of Final Action and would have ended on May 7. This is only three days before May 10, when the appeal was filed with the Commission. In this case, it is necessary for the Commission to provide the public three extra days to file an

appeal, because the public relied on written notice from the Coastal Commission indicating that the appeal period did not end until May 16.

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

**MOTION:** *I move that the Commission determine that Appeal No. A-4-SBC-01-097 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

#### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-4-SBC-01-097 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **IV. Findings and Declarations for Substantial Issue.**

The Commission hereby finds and declares:

#### **A. Project Description and Background.**

The City's coastal development permit approved the merger of 6 existing parcels to create a one lot subdivision of a 2.2 acre site, demolition of 6 existing commercial/industrial buildings, and construction of a one-story commercial neighborhood market and ten, two- and three-story residential buildings consisting of forty two-bedroom condominium units (Exhibit 2). The proposed condominium units range in size from 1,687 sq. ft. to 1,187 sq. ft. and will be constructed on top of a private garage ranging from 594 sq. ft. to 705 sq. ft. in size. The proposed project also includes street improvements along Yanonali Street consisting of a sidewalk, parkway, a

concrete curb, and tree plantings up to 30 ft. in height. An existing right turn lane on Yanonali Street would be converted to new on-street parallel parking and a bicycle lane while existing street parking along Santa Barbara Street will remain as-is. Finally, the proposed project includes approximately 12,000 cu. yds. of fill grading which will obtain positive site drainage into the City's storm drain system.

The project site is located in the Central Redevelopment Project Area and just within the northern boundary of the Waterfront Area in the City of Santa Barbara (Exhibit 1). The project site consists of 6 existing parcels located seaward of U.S. Highway 101, (approximately three blocks inland of the first public road parallel to sea), and is bound by the 101/Garden Street off ramp on the north, East Yanonali Street on the south, Santa Barbara Street on the West, and a commercial property to the east. The Post LCP Certification Permit and Appeal Jurisdiction Map certified for the City of Santa Barbara indicates that the project site is just within the northern boundary marking the Commission's appeals jurisdiction.

The project area is contained in the Hotel and Related Commerce (HRC-2) land use designation which permits a mix of development including motels, hotels, visitor serving uses, commercial uses related to hotel/motel operations, commercial recreation establishments, and conditional use permits for car rental and gas station developments. Residential use is permitted under the HRC-2 designation consistent with R-3 zoning standards which allow 12 units/acre or implementation of a variable density standard. The HRC-2 zone allows for three-story structures with a maximum height of 45 ft. and requires front, interior, and rear yard building setbacks between 6 ft. and 20 ft. depending on building type and height. The proposed project involves demolition of 6 existing commercial/industrial type structures which predominantly support industrial type uses that are non-conforming in the HRC-2 zone. The proposed project involves construction of a one-story commercial market and 40 condominium units ranging from two- to three-stories and 24 ft. to 36 ft. in height. As such, the proposed project is consistent with the HRC-2 land use designation and with the three-story and 45 ft. height restrictions. The City has approved modifications for the front, interior, and rear yard setback requirements of the proposed structures.

Land uses existing adjacent to the subject site including single family residences, various commercial and office buildings, a market/restaurant, furniture store, and art gallery. A vacant lot exists at the corner of Yanonali and Garden Streets. Due to the fact that the project site is already developed, no environmentally sensitive habitat or significant vegetation exists at the site.

The proposed project has undergone extensive review by City Planning Staff and the Planning Commission. Prior to formal review of the subject application by the Planning Commission the proposed project was reviewed in concept by the Architectural Board of Review (ABR) and the Planning Commission on November 5, 1999 and again on April 6, 2000. The applicant revised the proposed site plan and architectural design in response to the comments provided by the Planning Commission and ABR. The project

was further reviewed by City Staff by a Pre-application Review Team and a Development Application Review Team. Subsequently, the proposed project was formally reviewed by the Planning Commission on February 8, 2001 and again on March 8, 2001. Throughout the formal review process the proposed project was further revised to reduce unit sizes, reorient buildings toward Yanonali Street, setback third story building elements, inclusion of a view corridor along Santa Barbara Street, and to provide a large open space area off Yanonali Street.

### **B. Appellant's Contentions**

The appeal filed by the appellants is attached as Exhibit 3. The appeal contends that the proposed project is inconsistent with the visual resource protection policies of the Coastal Act.

Section 30251 of the Coastal Act states:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

The City of Santa Barbara LCP contains specific visual resource protection policies which have been reviewed and certified by the Coastal Commission to carry out the requirements of Section 30251 of the Coastal Act. The appeal contends that the approved project is not consistent with policies of the certified LCP with regard to visual resource protection (Policies 9.1, 9.8, and 12.2).

### **C. Analysis of Substantial Issue.**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as ground for appeal. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access policies of the Coastal Act would be addressed in the de novo review of the project.

The Commission finds that substantial issue does not exist with respect to the grounds on which the appeal has been filed. The approved project is consistent with the visual resource protection policies of the City of Santa Barbara Local Coastal Program for the specific reasons discussed below.

## **1. Visual Resources**

The appellants allege that the City approved the project in a manner inconsistent with the visual resource protection standards of the City's certified Local Coastal Program. The appellants specifically state that the proposed development fails to protect, preserve, and enhance mountain and foothill views by blocking such views, and that the project will impact the "openness" of the project area.

LCP Policy 9.1 provides, in relevant part, that:

***Existing views to, from, and along the ocean and scenic coastal areas shall be protected, preserved and enhanced. This may be accomplished by one or more of the following:***

- (a) Acquisition of land for parks and open space;***
- (b) Requiring view easements or corridors in new developments;***
- (c) Specific development restrictions such as additional height limits, building orientation, and setback requirements for new development;***
- (d) Developing a system to evaluate view impairment of new development in the review process.***

LCP Policy 9.8 provides in part:

***The City shall seek to preserve the unique scenic and aesthetic quality of Highway 101.***

LCP Policy 12.2 provides that:

***New development within the City's Waterfront Area shall be evaluated as to a project's impact upon the area's:***

***Openness  
Lack of Congestion  
Naturalness  
Rhythm***

The proposed project involves demolition of 6 existing one- and two-story structures and construction of a one-story commercial market and ten residential structures consisting of 40 condominium units ranging from two- to three-stories and 24 ft. to 36 ft. in height.

LCP Policy 9.1 states that views to, from, and along the ocean and scenic coastal areas shall be protected, preserved and enhanced through such relative means as requiring view easements or corridors in new development, applying specific development restrictions such as additional height limits, building orientation, and setback requirements for new development, and developing a system to evaluate view impairment of new development in the review process. The appellants contend that the proposed project fails to protect, preserve and enhance views, and that the project will block views of the foothills and surrounding mountains.

As previously mentioned, the proposed project is consistent with the HRC-2 land use designation for the project site, with the three-story building limit, and will result in structures up to 36 ft. in height, well below the maximum 45 ft. height restrictions. The proposed project was extensively reviewed by City Staff, the Planning Commission, and the City Council and the project was revised several times in response to comments addressing potential impacts of visual resources. The proposed project as approved has been reduced in height, mass, and scale from that originally proposed. The proposed project provides for additional building setbacks than previously proposed, requires that two-story building elements front the public streets with three-story elements located at the interior of the site, provides for a view corridor of the mountains from Santa Barbara Street, and includes an open space area off of Yanonali Street.

In addition, City Staff conducted a thorough analysis of impacts on mountain views from the public streets adjacent to the project site. It should be noted that the public streets adjacent to the project site are not identified as significant public viewing areas such as those public streets (Cabrillo Boulevard, State Street, Castillo Street, and Garden Street) that are identified as significant public scenic viewing areas in the Waterfront Area Design Guidelines (certified by the Coastal Commission on November 12, 1986). Nonetheless, the proposed project has been revised and designed to minimize potential impacts on mountain views from the city streets adjacent to the project site by providing for height and massing reductions of the proposed buildings, providing for additional building setbacks than previously proposed, locating two-story building elements at street frontages, and providing for a view corridor and large (approximately 5,000 sq. ft.) open space area. A review of the Comparative Visual Analysis prepared for the proposed project indicates that some views of the mountains will be obstructed at certain vantage points due to the new location and overall height increase of development at the project site. However, the proposed view corridor provides a new view of the mountains from Santa Barbara Street and the project revisions described above, (specifically a reduction in building height, massing and orientation, and open space), that were incorporated throughout the City's planning process will aid in retaining a significant amount of mountain and ridgeline views from numerous vantage points in the project area. As such, the proposed project has been designed to minimize significant impacts on visual resources and to protect scenic mountain views, and the project is therefore consistent with LCP policy 9.1.

LCP Policy 9.8 requires the City to preserve the unique scenic and aesthetic quality of Highway 101. The appellants contend that the proposed project will block scenic views of the Mesa from Highway 101. The City's Local Coastal Plan identifies Highway 101 as a "visual gateway" within the Coastal Zone and describes its unique appearance as it relates to the City's overall character including landscaping, views of the mountains and ocean, and human-scale of the highway's bridges, walls, and interchanges. Policy 9.8 does not specifically state that particular mountain views shall not be obstructed by new development, but requires that the design of new structures and sound walls along the highway consider views of the ocean and mountains. Highway 101 is predominantly elevated above the project site such that development at the project site will minimally, if at all, impact views of the surrounding mountains. When traveling northbound on Highway 101 views of the Mesa are continually visible from the highway. As such, the proposed project will not significantly impact views of the Mesa from Highway 101, therefore the project is consistent with LCP Policy 9.8.

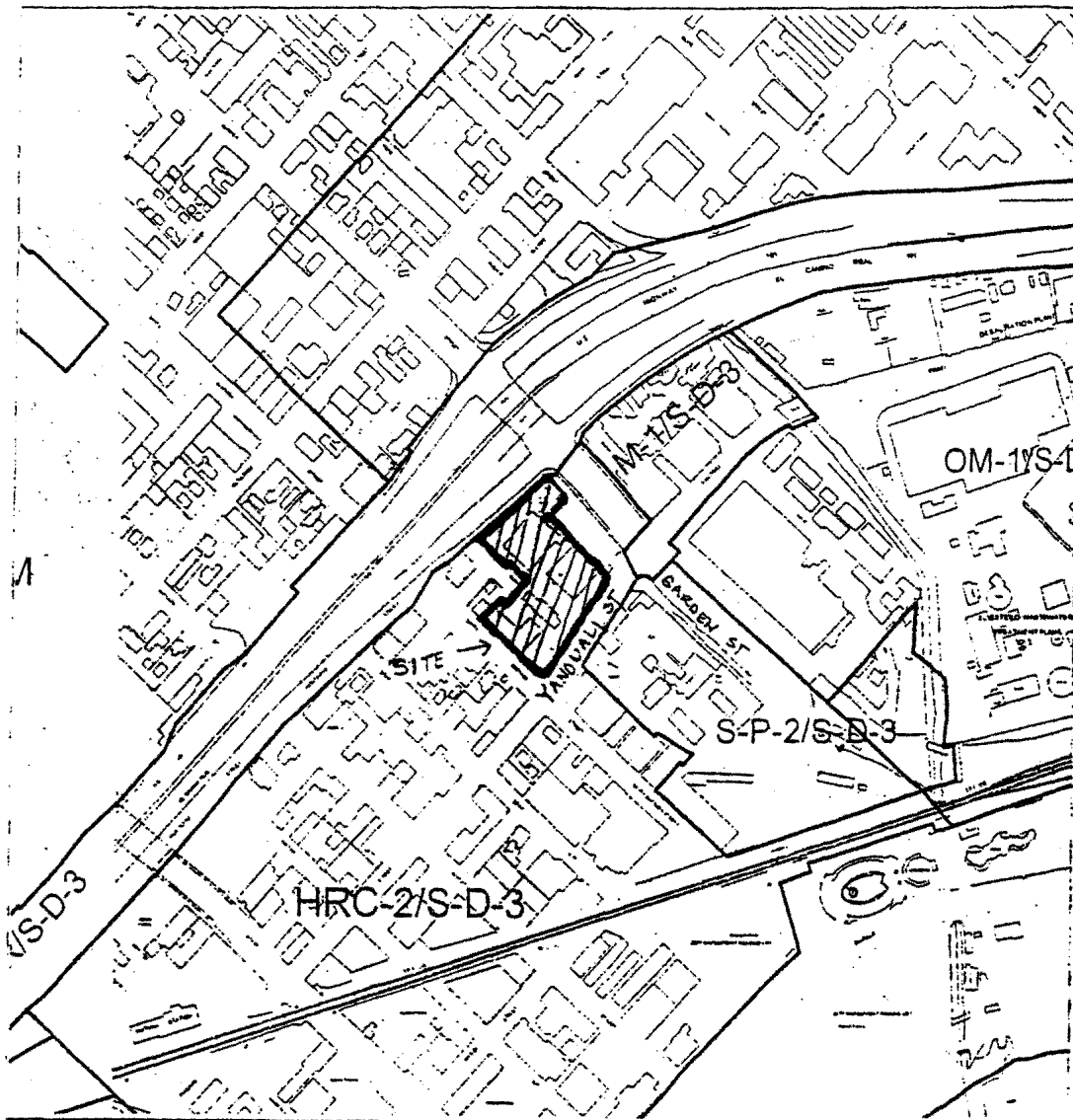
LCP Policy 12.2 requires that new development within the City's Waterfront Area be evaluated as to a project's impact upon the area's openness, lack of congestion, naturalness, and rhythm. The appellants allege that the proposed project is inconsistent with LCP Policy 12.2 because it impacts the area's openness, lack of congestion, naturalness, and rhythm and state that "openness", as defined in the City's LCP, is described as "minimizing visual impacts of building density, scale, mass, and height" and state that "the most important component of naturalness is views". As described in detail in previous sections, the proposed project underwent substantial review and revisions in consideration of minimizing potential visual impacts of the project. The proposed project, as approved, meets the density and building height requirements designated for the project site and has been designed with a reduction in height, mass, and scale from that originally proposed. The proposed project provides for additional building setbacks than previously proposed, requires that two-story building elements front the public streets, provides for separation structures, a view corridor of the mountains from Santa Barbara Street, and includes an open space area off of Yanonali Street. As mentioned above the proposed project will maintain significant mountain and ridgeline views from several vantage points in the project area. Therefore, the proposed project will not significantly impact the openness, views or naturalness of the project area. Furthermore, the proposed project will not adversely contribute to congestion as it relates to free travel along the Waterfront's beaches, bikeways, and Cabrillo Boulevard, nor will the project impact the rhythm of the area as the new development will not affect the variety and diversity of established uses. Therefore, the proposed project is consistent with LCP Policy 12.2.

The Commission finds that the proposed project, as conditioned, is consistent with the visual resource protection policies of the City's certified Local Coastal Program. Therefore, the Commission finds that the appellants' contention raises no substantial issue with regard to the consistency of the approved project with the visual resource provisions of the certified Local Coastal Program.

## 214 E. Yanonali Street

## Vicinity Map

APN: 017-021-032  
Zone: HRC-2/S-D-3  
Approx. Lot Area: 72186 sq.ft.



0 200 400 Feet

Date printed:  
Thu Feb 01 11:50:25 2001

All topographic features are based on aerial photographs which were taken in April of 1995.  
DISCLAIMER: This map is for reference only and should not be used for planning information.

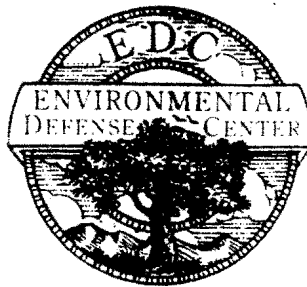
LEGEND	
	Land Use Zone Lines
	Parcel Lines
	Building Rooflines
	Retaining Wall
	Fence

**EXHIBIT 1**  
**A-4-SBC-01-097**  
**Location Map**

APR 17 2001 #3 4



May 10, 2001



California Coastal Commission  
South Central Coast Area  
89 South California Street, Suite 200  
San Buenaventura, CA 93001  
Fax (805) 641-1732

Re: Grounds for Appeal

Dear Coastal Commissioners,

Citizens Planning Association (CPA) and the League of Women Voters of Santa Barbara (LWVSB) hereby file the attached appeal on the following grounds:

The City of Santa Barbara's approval of the Capital Condo Project at 214 E. Yanonali Street is inconsistent with the visual resource protection policies of the California Coastal Act and the City of Santa Barbara Local Coastal Plan. Under the Coastal Act, the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Public Resources Code Section 30251. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas to be visually compatible with the character of surrounding areas. Public Resources Code Section 30251.

Local Coastal Plan (LCP) Policy 9.1 provides that existing views to, from, and along the ocean and scenic coastal areas shall be protected, preserved, and enhanced by requiring view easements or corridors in new developments and/or specific development restrictions such as additional height limits, building orientation, and setback requirements for new development. The Capital Condo Project, as approved by the City of Santa Barbara, fails to protect, preserve and enhance views, and instead blocks views of the foothills, Santa Ynez Mountains and the Mesa.

LCP Policy 9.8 requires that the City "shall seek to preserve the unique scenic and aesthetic quality of Highway 101." Significant elements of the scenic quality of Highway 101 near the project site are the views of the steep, oak tree-studded north and northeast facing slopes of the Mesa visible from Highway 101. As noted above, the project, as approved, blocks views of the Mesa from Highway 101.

LCP Policy 12.2 states that new developments within the City's Waterfront Area shall be evaluated as to a project's impact on the area's openness, lack of congestion, naturalness, and rhythm. The Waterfront Area Aesthetic Criteria for New Development are also "based on the visual resources which presently exist: openness, lack of congestion, naturalness, and rhythm." Specifically, "openness" is described as "minimizing visual impacts of building density, scale, mass, and height." LCP page 192.

906 Garden Street  
Santa Barbara, CA 93101  
Phone (805) 963-1622  
FAX (805) 962-3152  
cdc@rain.org

2021 Sperry Avenue, Suite 18

**EXHIBIT 3**

**A-4-SBC-01-097**

**Grounds For Appeal, EDC, 5/10/01**

864 Osos Street, Suite A  
San Luis Obispo, CA 93401  
Phone (805) 781-9932  
FAX (805) 781-9384  
edcmal@west.net

CPA and LWVSB Appeal to the CCC

May 10, 2001

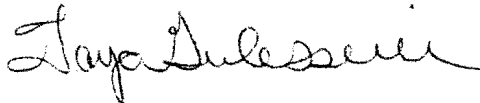
Page 2

The most important component of naturalness is views. The project, as approved, is inconsistent with LCP Policy 12.2 and the Waterfront Area Aesthetic Criteria, because it impacts the area's openness, lack of congestion, naturalness and rhythm.

Although CPA and the LWVSB will supplement this notice of appeal, the evidence in this case includes the following: 1) According to the March 2, 2001 staff memorandum for the proposed Capital Condo project, "a large view of the Mesa would be lost as a result of the development;" 2) the City's **response to comments** acknowledges that some mountain views will be blocked; 3) the story **poles indicate blockage** of La Cumbre Peak, the south coast's largest mountain and a well-known natural land feature; 4) Substantial evidence shows that other well-known natural features which may be blocked include Arroyo Burro Road and Painted Cave areas, Cathedral Peak, the Santa Ynez Mountain ridgeline, and the foothills/Riviera.

Again, please note, that CPA and LWVSB will supplement this appeal with additional detail. Thank you for your consideration of this appeal.

Sincerely,



Tanya Gulesserian  
Staff Attorney

Enc

cc: Citizens Planning Association  
League of Women Voters of Santa Barbara

STANLEY C. HATCH  
GERALD B. PARENT  
S. TIMOTHY BUYNAK  
SUSAN F. PETROVICH  
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May 21, 2001

**Via Overnight Mail**

Mr. Ralph Faust  
General Counsel  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: 214 Yanonali Street, Santa Barbara, California (MST2001-00637)

Dear Mr. Faust:

This letter is submitted on behalf of Capital Pacific Holdings, Inc., the applicant for the above-referenced project.

The purpose of this letter is to request your prompt review and analysis of the timeliness and adequacy of a purported appeal to the California Coastal Commission of a Coastal Development Permit issued by the City of Santa Barbara. If you conclude that the purported appeal is untimely or inadequate, I request that you so advise Commission staff and interested parties so that no further proceedings before the Coastal Commission are held. Since time is of the essence, I ask that your analysis and determination be made as expeditiously as possible.

As explained below, it is my conclusion that the purported appeal filed by the Citizens Planning Association and the League of Women Voters is untimely and inadequate and, accordingly, the decision of the Santa Barbara City Council is now final. Therefore, the Coastal Commission is without jurisdiction to hear the matter.

**Background Facts**

The project is a 40-unit condominium development on an in-fill lot in Santa Barbara's commercial core. The property is adjacent to Interstate 101, and currently developed with dilapidated industrial buildings and illegal commercial uses. The project is consistent with the use and density provisions of the LCP and zoning. None of these facts are disputed.

SB 266484 v1: 008721.0001

**EXHIBIT 4**

**A-4-SBC-01-097**

**Letter from Hatch and Parent, 5/21/01**

On April 17, 2001, the Santa Barbara City Council heard an appeal brought by Citizens Planning Association and the League of Women Voters (represented by the Santa Barbara Environmental Defense Center - "EDC") from the Planning Commission's approval of a condominium subdivision map, a CDP, and a number of "modifications" for the project. EDC had appeared before the Planning Commission on the project and presented a vigorous argument urging denial. The Planning Commission considered EDC's facts and arguments, and decided to approve the project.

EDC appeared at the April 17 City Council hearing, and presented both legal arguments and testimony in support of its appeal. After a three hour hearing, the City Council unanimously voted to uphold the Planning Commission decision. (Tab A)

On April 19, 2001, City staff mailed a Notice of Final Action to the California Coastal Commission's Ventura Office. It was apparently received on Monday, April 23, 2001. (Tab B)

On April 23, 2001, staff of the Coastal Commission mailed a "Deficiency Notice" to the City Planning Department. It apparently arrived on April 25, 2001 (Tab C).

On April 27, 2001, City staff sent a second Notice of Final Action (Tab D) to the California Coastal Commission's Ventura office with a cover letter (Tab E) stating that the original Notice of Final Action was legally adequate. The second Notice of Final Action was apparently received on May 2, 2001. (Tab F)

On May 7, staff of the Commission's Ventura office determined that the second Notice of Final Action was adequate.

On May 14, 2001, a document purporting to be an appeal from EDC was received in the Commission's Ventura office (Tab G). It consists of the Commission's appeal form and an attached letter from Citizens Planning Association dated May 10, 2001. On May 15, 2001, a letter from EDC was received by the Commission transmitting a list of names. (Tab H)

On May 15, 2001, a letter from EDC was received by Capital Pacific Holdings, Inc. informing it that an appeal had been filed (Tab I). The enclosed appeal documents were incomplete, in that they did not include the CPA appeal letter.

None of the facts stated above are reasonably subject to dispute.

**Analysis: The Purported Appeal is Untimely**

The Coastal Act establishes a 10 working day appeal period from the decision of the Santa Barbara City Council on this project:

"Any action described in subdivision (a) shall become final at the close of business on the 10<sup>th</sup> working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time." Cal. Pub. Res. Code Sec. 30603(c).

In this case, the original Notice of Final Action was received by the Commission on April 23, 2001. The 10<sup>th</sup> working day after April 23 was May 7. No appeal was filed prior to that date.

This conclusion is not changed as a result of the issuance of the unwarranted "Deficiency Notice" by a Coastal Program Analyst. An examination of the "Deficiency Notice" shows that it was issued in error. It cites as a "deficiency" the following:

"Complete written findings for Approval not included. Submit written findings relative to visual, public access (parking), recreation and visitor-serving policies of City's Local Coastal Plan."

In fact, the "complete written findings" were included in the original Notice of Final Action (Tab B), and apparently were simply overlooked by the Coastal Program Analyst.

The "Deficiency Notice" also requested a "reduced copy of project location and site plan." However, this request was apparently done on the staff's own initiative, and is not a requirement of the Commission's own regulations or the City's adopted Coastal ordinance (Tab J). Indeed, the request is not even on the Commission's standard form Deficiency Notice, but was specially typed in by staff.

It is worth noting that the Coastal Program Analyst's request for a "reduced copy of project location and site plan" was an apparent departure from past practice. The Commission staff has typically accepted Notices of Final Action from the City of Santa Barbara that did not include any such site plan. See, e.g., Tabs K and L.

Finally, the legal adequacy of the original Notice of Final Action is conclusively established by the fact that the Coastal Program Analyst accepted as adequate the City's second Notice of Final Action for this project, which was identical in all material respects to the original one. (Compare Tabs B and D).

Thus, since the original Notice of Final Action was legally adequate, the City's decision became final on May 7, 2001. No appeal was filed by that date.

There is one additional point. Even if we assume, for the sake of argument only, that the City's original Notice of Final Action was deficient, the appeal period ended with no legally adequate appeal on file. The second Notice of Final Action was received on May 2. The 10<sup>th</sup> working day after May 2 was May 16, 2001.

The documents filed by EDC on May 14 were incomplete and inadequate, and thus could not constitute a valid and effective appeal. The documents were inadequate in the following ways:

1. The purported appeal does not include the names and mailing addresses of all persons who testified at the City Council hearing, as required by Commission regulations. 14 Code Cal. Reg. § 13111 (a) (5). Enclosed (Tab A) is a copy of the minutes of the April 17, 2001 meeting of the Santa Barbara City Council showing the persons who testified at the hearing. The following names appear on the minutes as having either submitted written comments or appeared to speak to the Council, yet do not appear on the list of names submitted by EDC with the purported appeal documents: Nancy Davies; Jon Martin (Coastal Housing Partnership); Mike McCammon; Steve Cushman (Santa Barbara Region Chamber of Commerce); Keith Coffman-Grey; Jack Maxwell; Russ Spencer; Chris Keet; Larn Yater; Don Van Buren; Detlev Peikert.
2. The purported appeal documents do not include any facts in support of the appeal, but merely recite the bare opinions of the appellant. The Commission's regulations require that an appeal include "a statement of facts on which the appeal is based." (14 Cal. Code Reg. § 13111(a)(8)).
3. The purported appeal documents do not include a statement as to the "significant question" which the appeal purportedly presents. Nothing appears in the purported appeal documents on this issue.

### **Conclusion**

For the reasons stated above, we respectfully request that you review and analyze the timeliness and adequacy of the purported appeal filed in this matter.

If you conclude that we are correct – and that no legally adequate appeal was timely filed – then we ask that you promptly inform the Commission staff and all involved parties.

Mr. Ralph Faust  
May 21, 2001  
Page 5

Thank you for your prompt attention to this request.

Sincerely,



Steven A. Amerikaner  
For HATCH AND PARENT

Enclosures (12)

cc: Jarrett Gorin, Capital Pacific Homes  
Brian Cearnal, Cearnal Architects  
Daniel Wallace, Santa Barbara City Attorney (by hand)  
Dave Davis, Santa Barbara Community Development Director  
April Verbanac, Coastal Program Analyst (by overnight mail)  
Tanya Gulesserian, Esq., Environmental Defense Center (by hand)

May 29, 2001



RECEIVED

MAY 30 2001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Mr. Ralph Faust  
General Counsel  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Via Facsimile and By  
First Class Mail

Re: Citizens Planning Association and League of Women Voters of Santa Barbara  
Appeal of Condominium and Market Project at 214 East Yanonali Street, Santa  
Barbara (Appeal No. A-4-SBC-01-097)

Dear Mr. Faust,

This letter responds to the May 21, 2001 letter to you from Mr. Amerikaner, counsel for Capital Pacific Holdings, Inc., the applicant for a forty-unit condominium and market project at 214 East Yanonali Street ("the proposed project") in Santa Barbara's Waterfront Area. The Environmental Defense Center ("EDC") represents the Citizens Planning Association of Santa Barbara County, Inc. ("CPA") and League of Women Voters of Santa Barbara, Inc. (LWVSB) (collectively "Appellants") in this matter.

The California Coastal Commission ("Coastal Commission") properly retains jurisdiction to hear Appellants' May 10, 2001 appeal of the City of Santa Barbara's ("City") approval of a Coastal Development Permit ("CDP") for the above-referenced project.

**I. The Proposed Forty Unit Condominium Project and Waterfront Project Area**

Mr. Amerikaner improperly describes the proposed project and project area and then, alleges that the facts are not disputed. The proposed project area is not the "commercial core" of Santa Barbara, nor are the existing commercial and industrial buildings "dilapidated." Instead, the proposed project site is located in the coastal zone in Santa Barbara's Waterfront and is described as a diverse mix of service-oriented, manufacturing and light industrial businesses. Although these uses are currently non-conforming, some of these uses, such as a surfboard manufacturer, may be allowed if the proposed Ocean Oriented Commercial Zoning is certified by the Coastal Commission. The proposed project is ten two- and three-story structures, comprising forty (40) condominium units, with an estimated value of \$700,000 each, a commercial market, landscaping, sidewalk and street improvements and sound walls on 2.2 acres in Santa Barbara's unique Waterfront Area.

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Phone (805) 963-1622  
FAX (805) 962-3152  
edc@rain.org

<b>EXHIBIT 5</b>
<b>A-4-SBC-01-097</b>
<b>Letter from EDC, 5/29/01</b>

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edcmail@west.net



II. The Coastal Commission's May 2, 2001 Receipt of the City's Notice of Final Action and Appellants May 10, 2001 Appeal

With respect to the timing of the Coastal Commission's receipt of the City's Notice of Final Action and Appellant's filing of an appeal, Mr. Amerikaner improperly mischaracterizes the facts and omits relevant information.

On March 8, 2001, the City Planning Commission approved the proposed project and an exemption from environmental review under the California **Environmental Quality Act** (CEQA). On March 16, 2001, EDC, on behalf of CPA and LWVSB, appealed the Planning Commission's approval of the project to the City Council. On April 13, 2001, EDC submitted a subsequent letter regarding the appeal to the City. Thereafter, on April 17, 2001, the City Council upheld the City Planning Commission's decision to approve the proposed project and an exemption from environmental review under CEQA and denied the appeal.

As of April 23, 2001, EDC did not receive any Notice of Final Action or Notice of Exemption, pursuant to CEQA, for the proposed project from the City. The City's April 6, 2001 Affidavit of Mailing Notice confirms that EDC, CPA and LWVSB are on the list of interested persons with respect to the proposed project. (Exhibit A)

On April 24, 2001, EDC called Beatrice Ramirez, Associate Planner at the City, to confirm that the City had not yet issued a Notice of Final Action or a Notice of Exemption for the proposed project. Beatrice Ramirez alleged that the City issued a Notice of Final Action and a Notice of Exemption on April 19, 2001. On April 24, 2001, EDC received, via facsimile, a purported one (1) page Notice of Final Action and a purported one (1) page Notice of Exemption, each dated April 19, 2001, from the City. (Exhibit B)

On or about April 24, 2001, Mr. Trautwein, EDC's Environmental Analyst, telephoned the Coastal Commission's Ventura office to determine the date upon which the Coastal Commission received a Notice of Final Action from the City and to determine whether the Commission's appeal period had begun. Mr. Trautwein spoke with Barbara Rodriguez, who stated that she conferred with April Verbanac, the analyst who is handling the case, and that the City's purported April 19, 2001 Notice of Final Action was deficient, that the Commission did not receive an adequate Notice of Final Action from the City, and that the appeal period had not started.

On April 30, 2001, EDC received, via facsimile, a purported fifteen (15) page Notice of Final Action dated April 27, 2001 from the City. (Exhibit C)

On or about May 1, 2001, Mr. Trautwein telephoned the Coastal Commission's Ventura office to determine the date upon which the Commission received an adequate Notice of Final Action from the City and to determine whether the Commission's appeal period had begun. Mr. Trautwein spoke with Barbara Rodriguez, who again stated that she conferred with April Verbanac, that the City's purported April 19, 2001 Notice of Final Action was deficient and that the Commission did not receive an adequate Notice of Final Action from the City. Ms.

Rodriguez also stated that the appeal period had not started, that the appeal period would start the day after the Coastal Commission's receipt of an adequate Notice of Final Action, and that the Commission would notify EDC by mail upon receiving an adequate Notice of Final Action.

On or about, May 7, 2001, Mr. Trautwein telephoned the Coastal Commission's Ventura office to confirm that the Commission had **not yet** received an adequate Notice of Final Action from the City and that the Commission's appeal period had not begun. Mr. Trautwein spoke with April Verbanac, who stated that the Coastal Commission had not yet accepted the City's Notice of Final Action as complete and that the appeal period had **not yet begun**.

On May 9, 2001, EDC received a Notification of Appeal Period dated May 8, 2001 from the Coastal Commission. The notice advises EDC that on April 23, 2001, the Commission received a notice of local action on the CDP for the proposed project and that the appeal period would end on May 16, 2001. (Exhibit D)

On May 10, 2001, EDC, on behalf of CPA and LWVSB, filed an appeal of the CDP for the proposed project to the California Coastal Commission. (Exhibit E) EDC filed said appeal via facsimile and U.S. mail.

On May 11, 2001, EDC requested **and** received from the City Clerk's office the City's complete list of persons interested in the proposed project. (Exhibit A)

On May 11, 2001, EDC, on behalf of CPA and LWVSB, supplemented the May 10, 2001 appeal of the CDP for the proposed project to the Coastal Commission by sending the Commission the City's list of interested persons. (Exhibit F) EDC submitted said documents via facsimile and U.S. mail.

On May 14, 2001, EDC notified all persons on the City's list of interested persons of the filing of an appeal of the CDP for the proposed project to the Coastal Commission. EDC notified each person of said appeal by mailing a notice letter, the May 10, 2001 appeal, including the attached document stating the grounds for the appeal, and the City's list of interested persons. (See Exhibit G; see also Mr. Amerikaner's May 21, 2001 letter, Tab I.<sup>1</sup>)

On May 14, 2001, EDC received a Corrected Notification of Appeal Period dated May 11, 2001 from the Coastal Commission. The corrected notice of appeal period advised EDC that on May 2, 2001 the Commission received a notice of local action on the CDP for the proposed project and that the appeal period would end on May 16, 2001. (Exhibit H)

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<sup>1</sup> Mr. Amerikaner alleges that the appeal documents, which were received by Capital Pacific Holdings, Inc., were incomplete, in that the documents did not include a purported CPA appeal letter. However, Tab I, referred to by Mr. Amerikaner, contains all appeal documents, including the appeal letter, which was submitted by EDC, on behalf of CPA and LWVSB.

On May 14, 2001, EDC received a Commission Notification of Appeal dated May 11, 2001. The notice of appeal confirmed that Appellants' appeal was filed on May 10, 2001 and that the City's decision is stayed pending Commission action on the appeal. (Exhibit I)

### **III. Appellants' May 10, 2001 Appeal Is Timely**

Appellants' May 10, 2001 appeal of the CDP for the proposed project to the Coastal Commission is timely. Contrary to Mr. Amerikaner's suggestion that an appeal period is triggered by the City's decision on a project, section 30603(c) of the Coastal Act establishes a ten (10) working day appeal period *from the date of receipt by the commission* of an adequate notice of final action.

In this case, the City's purported April 19, 2001 Notice of Final Action, which was received by EDC on April 24, 2001, is only a one-page notice and clearly fails to provide complete and adequate notice to interested persons and the Coastal Commission. (Exhibit B) As such, the Coastal Commission properly notified the City that the City's April 19, 2001 notice was deficient. Mr. Amerikaner's suggestion that the completed written findings were included in the original notice is not supported by the evidence. First, EDC received a one-page notice from the City. Second, the document referred to by Mr. Amerikaner does not show that the Commission received anything other than a one-page notice, as well. (See Mr. Amerikaner's May 21, 2001 letter, Tab B.) Therefore, the Coastal Commission properly issued a Deficiency Notice to the City on April 23, 2001.

In addition, Mr. Amerikaner does not cite to the Coastal Act or any Commission regulation to support the allegations complaining about the Coastal Commission's Deficiency Notice.

The City's purported April 27, 2001 Notice of Final Action, which was received by EDC on April 30, 2001, is materially different than the City's April 19, 2001 Notice of Final Action. (Exhibit C) The purported April 27, 2001 notice contains Resolution No. 011-01, as amended and approved by the City Council on April 17, 2001, a Vicinity Map for 214 East Yanonali Street, and the site plan for the proposed project. Therefore, the Coastal Commission has sufficient grounds for finding the City's April 27, 2001 Notice of Final Action materially different than the City's first purported one-page notice.

Finally, the Coastal Commission provided notice to Appellants that the appeal period would end on May 16, 2001. (Exhibit D and H.) Since the statutory timeline for filing an appeal of a CDP to the Coastal Commission is only triggered *from the date of receipt* of an adequate notice of final action by the Commission, pursuant to section 30603(c) of the Coastal Act, EDC relied on the Commission's notice of such date and notice that the appeal period would end on May 16, 2001. EDC, on behalf of Appellants, filed an appeal of the CDP for the proposed project on May 10, 2001, which is well within the appeal period provided by the Commission. Therefore, the appeal was timely and the City's decision is properly stayed pending Commission action on the appeal.

**IV. Appellants' Appeal is Complete and Adequate**

The May 10, 2001 appeal filed by EDC, on behalf of Appellants CPA and LWVSB, is complete and adequate. Specifically, the appeal includes 1) the names and mailing addresses of persons interested in the proposed project, where such information was available, 2) a statement of facts upon which the appeal is based, and 3) the specific inconsistencies with the City's Local Coastal Plan upon which the appeal is based.

The appeal and supporting documents include interested persons and addresses reasonably known to Appellants, where such information was available. 14 Cal. Code Reg. § 1311(a)(5). The list of interested persons was obtained from City Resolution No. 011-01, as amended and approved by the City Council on April 17, 2001, for the proposed project. (Exhibit C) EDC, on behalf of Appellants, also specifically requested that the City Clerk provide EDC with the complete list of persons interested in the proposed project. On May 11, 2001, EDC submitted the City's list of interested persons to the Coastal Commission. (Exhibit F) Thereafter, EDC notified each person of the appeal, pursuant to section 13111 of the Coastal Act. Therefore, the appeal adequately provides the names and addresses of persons interested in the proposed project.

Appellants note that if the project applicant desires to submit an additional list of names and addresses of interested persons to Appellants, Appellants will review such list and provide notice to such persons, if appropriate.

The appeal and supporting documents also provide the facts and specific citations to the proposed project's inconsistencies with the visual resource protection policies of the City's Local Coastal Plan, upon which the appeal is based. (Exhibit E) 14 Cal. Code Reg. § 1311(a). Mr. Amerikaner's allegations that the appeal is inadequate are without merit. Therefore, based on the evidence in the record, the May 10, 2001 appeal filed by EDC, on behalf of Appellants CPA and LWVSB, is complete and adequate.

**V. Conclusion**

In sum, the Coastal Commission properly provided notice of its May 2, 2001 receipt of the City's notice of final action to the public. Based on the Coastal Commission's notice, EDC, on behalf of Appellants filed an appeal of the CDP for the proposed 40-unit condominium and market project in Santa Barbara's Waterfront Area to the Coastal Commission on May 10, 2001. The appeal was complete and adequate, pursuant to the Coastal Act and the implementing regulations. Therefore, the Coastal Commission retains jurisdiction to decide Appellants' appeal, and the City's decision is properly stayed pending Commission action on the appeal.

Mr. Ralph Faust  
May 29, 2001  
Page 6

Thank you for your consideration of this matter.

Very truly yours,



Tanya Gulesserian  
Staff Attorney

Enclosures (9)

cc: Catherine McCammon, President, Citizens Planning Association  
Beverly King, President, League of Women Voters of Santa Barbara  
Daniel Wallace, Santa Barbara City Attorney  
Steven Amerikaner, Attorney for Capital Pacific Holdings, Inc.  
April Verbanac, Coastal Program Analyst

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May 31, 2001

Via Fax and Overnight Mail

Mr. Ralph Faust  
 General Counsel  
 California Coastal Commission  
 45 Fremont Street, Suite 2000  
 San Francisco, CA 94105

Re: 214 Yanonali Street, Santa Barbara, California (MST2001-00637)  
 Appeal No. A-4-SBC-01-097

Dear Mr. Faust:

This letter is submitted on behalf of Capital Pacific Holdings, Inc., the applicant for the above-referenced project, and is written in response to the letter to you dated May 29, 2001 from the Environmental Defense Center of Santa Barbara ("EDC").

The purpose of this letter is to respond to two points, one factual and one legal, which are made in the EDC letter.

1. EDC's Factual Error.

EDC's argument rests entirely on one factual claim, and that claim is plainly erroneous.

EDC asserts that the City's Notice of Final Action sent to the Coastal Commission on April 19, 2001 consisted of a one-page notice. EDC further asserts that the written findings made by the City Council were not attached. Thus, EDC concludes, the Notice was deficient.

EDC is wrong. Attached to this letter is a declaration under penalty of perjury by Beatriz Ramirez, Associate City Planner, who personally sent the Notice of Final Action to the Coastal Commission. Ms. Ramirez attached to her declaration a copy of the document sent to the Coastal

SB 267485 v1: 008721.0001

<b>EXHIBIT 6</b>
<b>A-4-SBC-01-097</b>
<b>Letter from Hatch and Parent, 5/31/01</b>

Mr. Ralph Faust  
May 31, 2001  
Page 2

Commission on April 19, 2001. That document consisted of 13 pages, including all of the findings made by the City Council. That Notice was complete, and adequate.

EDC's error was apparently self-inflicted. EDC states that it received only one page of the Notice of Final Action on April 24, 2001. EDC apparently assumed that this single page was the only document submitted to the Coastal Commission. This assumption, however, would have been quickly dispelled if EDC had actually read the single page which states, in two separate places: "See attached PC Resolution No. 011-01." Likewise, EDC could have requested from the Coastal Commission a copy of the complete Notice of Final Action, or visited the Coastal Commission office to examine the document.

Thus, if EDC mistakenly believed that the City filed a single page Notice of Final Action, it was a mistake of EDC's own making. As such, it cannot form a basis for an extension of the statutory appeal period.

2. EDC's Legal Argument.

EDC seeks to excuse its untimely appeal by stating that it relied on inaccurate information from Coastal Commission staff.

That explanation may be understandable, but it is not legally adequate. The Coastal Commission's procedures are established by statute and Commission regulation. Those procedures are designed to protect the rights of all participants, including both appellants and applicants. It is well established by a long line of California cases that no appeal deadline may be extended by the acts or advice of a public employee, even if erroneous. The rights of the participants cannot be compromised or waived by any staff-level acts or advice.

The EDC is a group of skilled and experienced attorneys. They regularly appear before the Coastal Commission and are well-versed in the Commission's procedures. They have the ability to visit the Commission's offices, secure relevant Commission documents, and calculate the last day to appeal. Indeed, they probably have more experience in doing these things than any other group in Santa Barbara County. If EDC did not correctly calculate the last day for the appeal of this project, and thus filed their appeal documents untimely, that is not an error which the Commission is legally authorized to ignore.

Thus, we respectfully submit that the Commission has no jurisdiction to excuse EDC's late appeal and, therefore, is not in a position to consider the purported appeal filed by EDC.

Mr. Ralph Faust  
May 31, 2001  
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Thank you for considering these thoughts.

Sincerely,



Steven A. Amerikaner  
For HATCH AND PARENT

Enclosure (1)

cc: Jarrett Gorin, Capital Pacific Homes  
Brian Cearnal, Cearnal Architects  
Daniel Wallace, Santa Barbara City Attorney (by hand)  
Dave Davis, Santa Barbara Community Development Director  
April Verbanac, Coastal Program Analyst (by overnight mail)  
Tanya Gulesserian, Esq., Environmental Defense Center (by hand)

**DECLARATION OF BEATRIZ RAMIREZ**

I, BEATRIZ RAMIREZ declare:

- Attachment for  
Court letter*
1. If called as a witness, I would testify to the matters being within my own personal knowledge.
  2. I am currently employed as an Associate Planner by the Santa Barbara.
  3. I have been assigned to work on Permit Application No. MST2001-00637, otherwise known as 214 Yanonali Street in Santa Barbara, California.
  4. On April 17, 2001 the Santa Barbara City Council unanimously approved the 214 Yanonali Street permit application.
  5. On April 19, 2001 I personally prepared a Notice of Final Action and mailed it to the California Coastal Commission's office in Ventura, California. A true and correct copy of my April 19, 2001 Notice of Final Action is attached hereto as Exhibit 1.

This declaration is made under penalty of perjury of the laws of the State of California. It was executed in Santa Barbara, California on May 31, 2001.

Beatriz Ramirez  
Beatriz Ramirez, Declarant

