

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(2) 590-5071



Filed 4/27/01
Staff: AM-LB AM
Staff Report: May 24, 2001
Hearing Date: June 13, 2001
Commission Action:

Item W-24**RECORD PACKET COPY****STAFF REPORT: REVOCATION REQUEST**

APPLICATION NO: R-5-00-229

APPLICANT: Steve Hartunian

PROJECT LOCATION: 16201 Shadow Mountain Drive, Pacific Palisades, City and County of Los Angeles

PROJECT DESCRIPTION (Approved January 11, 2001): Construction of a 56' by 120' tennis court partially supported over the existing grade with two caissons. The project includes 250 cu. yards of graded cut to be exported and one 10-foot high retaining wall on the north side of the tennis court.

PERSON REQUESTING REVOCATION: Pacific Palisades Residents Association

AGENT: John Murdock

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **deny** the request for revocation on the basis that no grounds exist for revocation under either Section 13105(a) or (b).

PROCEDURAL NOTE: The California Code of Regulations, Title 14 Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit (or permit amendment) are as follows:

Grounds for revocation of a permit shall be:

- a) **Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;**
- b) **Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the**

Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application (14 Cal. Code of Regulations Section 13105).

REQUESTOR'S CONTENTIONS:

Section 13105(a)

The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous or incomplete information to the Commission in the coastal development permit (permit amendment) application. The contentions raised by the request include the following:

- 1) "Staff's reasoning [for approval of the tennis court] is based in part on the fact that the vegetation in this area outside the limit line was already 'disturbed' by the construction of an emergency access road and a 'V' ditch. However, the major disturbance in the area was created by construction of a swimming pool facility by this same applicant, and the removal of most of the vegetation was accomplished during that process. The access road was constructed before any of the homes were built and the 'V' ditch is not a factor causing vegetation removal outside the ULL.... Since the degradation of foliage played a major part influencing staff's decision to allow additional development, we believe the omission of accurate information as to the cause of the degradation constitutes additional grounds for revocation under Section 13105(a)."

Section 13105(b)

The request for revocation contends that grounds for revocation in Section 13105(b) exist because the applicant failed to comply with the notice provisions of Section 13054. The contentions raised by the request include the following:

- 1) "Pacific Palisades Residents Association (PPRA) is an 'interested person' under §13054 because it is a party to an agreement concerning the recorded covenant prohibiting this construction, yet PPRA was not given prior notice of the application for permit on the matter. By reason thereof, PPRA was not present to provide material information at the hearing that could have caused the Commission to require additional or different conditions or deny the application, per §13105(b)."

The request continues to contend that the terms of the settlement agreement are binding to all successors in interest, including the applicant (Mr. Hartunian). "Therefore, by virtue of the successor-in-interest clause, PPRA is known to be an interested party concerning applications outside or in violation of the urban limit line."

MOTION: *I move that the Commission grant revocation of Coastal Development Permit No. 5-00-229.*

STAFF RECOMMENDATION

The staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY REVOCATION:

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit No. 5-00-229 on the grounds that:

- a) **There was no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;**
- b) **There was no failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application (14 Cal. Code of Regulations Section 13105).**

II. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Background

On January 11, 2001, the Commission approved, with conditions, Coastal Development Permit 5-00-229 (Hartunian) for the construction of a 56' by 120' tennis court partially supported over the existing grade with two caissons. The project included 250 cubic yards of grading to be exported and one 10-foot high retaining wall located along the north side of the court.

The applicant owns and lives in a single family home on the adjacent lot (lot #16). The project subject to this revocation request is located on lot 15 (also owned by Mr. Hartunian). Currently, work is underway to improve lot 15 with a pool, pool house, and landscaping. The previous owner of lot 15 received approval to construct a single family home with a pool and pool house from the City of Los Angeles. Mr. Hartunian then

purchased the property and began construction for the pool, pool house, and landscaping. The City exempted the pool, pool house, and landscaping from its coastal development permit process pursuant to Coastal Act section 30610(a), as a structure appurtenant to the proposed home, which was itself exempted based on Categorical Exclusion E-79-8. However, in this case the home was never built.

Categorical exclusion orders issued under 30610.1 of the Coastal Act only exempts certain identified categories of development from permit requirements. The Categorical Exclusion (E-79-8) authorized construction of the single family homes in the subdivision with certain limitations regarding the location on the lots. The limitations state that the excluded single family homes must conform to the City height and use requirements without a variance. Projects are not excluded if they are within 100 feet of the State Park or if they require grading. The City could exempt the pool, pool house, and landscaping (under 30610 (a) of the Coastal Act) because such developments are considered appurtenant structures associated with a single family home and they are located on the lot. The tennis court, however, was not exempt under Categorical Exclusion (E-79-8) or 30610 (a) of the Coastal Act because the tennis court is not a category of development identified in Categorical Exclusion (E-79-8), is not considered an appurtenant structure normally associated with a single family home, and is not located on the lot where the existing single family home is located.

In addition, the tennis court extends outside an established urban limit line established in the permit for the subdivision (A-390-78). The original coastal development permit #A-390-78 (AMH) and amendments related to the impacts of traffic on recreational access, the impacts of massive grading and its effect on public views and habitat resources, and the need to limit excessive build-out of the subdivision. To offset the impacts of development on such issues, the Commission imposed an urban (grading) limit line on each lot for the subdivision (Exhibit #2). This condition was imposed to avoid grading into undisturbed areas, where natural habitat and scenic views still existed. Most of the graded lots were oriented toward lands which were to be dedicated to Topanga State Park and the park that existed prior to the approval of A-390-78. This gave future residents dramatic views of the park. However, such development, if built out beyond certain limitations, could impact public views from the park. The urban limit line designated by permit #A-390-78 (AMH) allowed the development of the single-family homes while limiting impacts on the Topanga State Park viewshed. Certain categories of development could be constructed outside the designated urban limit line by approval from the Executive Director of the Commission. At its hearing on January 11, 2001, the Commission discussed the issues relating to development outside the urban limit line, specifically addressing the construction of the tennis court. These issues were resolved at that meeting, and the Commission approved the permit for the tennis court, with conditions.

A Notice of Intent to Issue Permit (NOI) was sent to Mr. Hartunian on February 9, 2001 for Coastal Development Permit 5-00-229. The NOI states that the permit is being held in the South Coast District office until fulfillment of the Special Conditions imposed by the

Commission. The applicant has yet to fulfill such conditions and therefore, the permit has not been issued.

B. Ground for Revocation

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit application intentionally included inaccurate, erroneous, or incomplete information where accurate and complete information would have caused the Commission to act differently; and (2) that there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

The South Coast District office has received a written request for revocation of the subject coastal development permit from John Murdock, representing the Pacific Palisades Residents Association (Exhibit #2). As previously stated, the request for revocation is based on both grounds indicated above.

Section 13105(a)

The first alleged grounds for revocation contains three essential elements or tests which the Commission must consider:

- a. Did the applicant include inaccurate, erroneous, or incomplete information relative to the permit?
- b. If the application included inaccurate, erroneous, or incomplete information, was the inclusion intentional (emphasis added) on the part of the applicant?
- c. Would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

As indicated above, the first standard consists, in part, of the inclusion of inaccurate, erroneous, or incomplete information in connection with the coastal development permit application. The revocation request contends that the applicant omitted accurate information with respect to removal of vegetation below the property, which led to the Commission approval of permit #5-00-229. The request for revocation of the permit states:

Staff's reasoning [for approval of the tennis court] is based in part on the fact that the vegetation in this area outside the limit line was already 'disturbed' by the construction of an emergency access road and a 'V' ditch. However, the major disturbance in the area was created by construction of a swimming pool facility by

this same applicant, and the removal of most of the vegetation was accomplished during that process. The access road was constructed before any of the homes were built and the 'V' ditch is not a factor causing vegetation removal outside the ULL.... Since the degradation of foliage played a major part influencing staff's decision to allow additional development, we believe the omission of accurate information as to the cause of the degradation constitutes additional grounds for revocation under Section 13105(a).

Vegetation Clearance

The revocation request alleges that the applicant misrepresented his application by claiming the emergency access road and drainage 'V' ditch caused the disturbed vegetation rather than the swimming pool. The request states that it was the applicant's own development (the swimming pool) that caused the disturbance, which led to the Commission approval of the tennis court. The requestor, PPRA, has submitted photographs of the site before and after the construction of the swimming pool. These photos were submitted with the revocation request and are shown in Exhibit #4. The picture taken before the construction of the swimming pool demonstrates that vegetation did exist below the emergency access road and drainage 'V' ditch (shown on Exhibit #2 as "Vegetation before Hartunian pool construction". However, the "before" picture also demonstrates that the area *above* the emergency access road and drainage 'V' ditch contained *no* vegetation. As indicated on page #8 of the staff report for permit #5-00-229, this area was graded for the construction of the access road and 'V' ditch which occurred in the mid 1980's when the grading for the subdivision occurred.

The picture taken after the swimming pool construction does show that vegetation below the emergency access road was cleared. However, the swimming pool construction is separated from this slope area by both the drainage 'V' ditch and the emergency access road. Also, as indicated on page #8 and Exhibit #5 of the staff report for permit #5-00-229, the area below the emergency access road and drainage 'V' ditch was cleared because of brush clearance notices (Exhibit #5 & #6). Commission staff's investigation indicates that the vegetation cleared was not caused by the construction of the pool, but was a requirement by City of Los Angeles Fire Department, brush clearance notice. Based on numerous conversations with the applicant (Mr. Hartunian) and a staff site visit during the review process of the coastal development permit application, staff was aware of the reasons for the disturbed vegetation. There was not inaccurate information as to the cause of the vegetation removal. There is also no evidence provided in the revocation request that the construction of the pool caused the degradation. Therefore, the Commission finds that the applicant did not include inaccurate, erroneous, or incomplete information relative to disturbed vegetation outside the urban limit line.

The second standard consists of determining whether the inclusion of inaccurate, erroneous, or incomplete information was intentional. As stated previously, there was no inclusion of inaccurate, erroneous, or incomplete information provided by the applicant. The applicant submitted brush clearance notices with the permit application indicating the

reasons for vegetation removal. The applicant also allowed staff to investigate the property, including the area surrounding the pool construction. The applicant stated that the sloped area above the emergency access road had not supported vegetation since he had purchased the property. Assuming, however, for the purpose of analysis, incomplete or misleading information was provided by the applicant, there is no evidence that it was provided intentionally. The applicant initiated clearance of the vegetation in reliance on the notice of noncompliance by the City of Los Angeles, Fire Department (Exhibit #5 of the staff report for permit #5-00-229) (Exhibit #5). The applicant informed both staff and the Commission that this was the reasoning for clearing the vegetation below the emergency access road. Therefore, there is no evidence that the applicant intentionally submitted inaccurate information concerning the clearance of vegetation below the emergency access road.

The third standard for the Commission to consider is whether accurate information would have resulted in the requirement of additional or different conditions or the denial of the permit application. As stated previously, the applicant did submit a complete permit application as required by the Commission regulations, which did not include inaccurate, erroneous, or incomplete information along the lines of the requestor's assertion. At the Commission hearing on January 11, 2001, the Commission was given a slide presentation of the site area. Slides were taken from the emergency access road and displayed both the slope above and below the proposed tennis court. Slides were also taken from Las Pulgas Road, below the proposed tennis court, which showed the slope where vegetation clearance occurred (a similar location as photographs submitted by the PPRA and Exhibit #4). At the hearing, the Commission added special condition #5, which required the submittal and implementation of a landscaping plan for the sloped portion of the lot. The plan required landscaping with native/drought and fire resistant vegetation on the sloped portion below the emergency access road. This was the area previously disturbed by brush clearance. Therefore, the Commission was aware of the clearance issue required by the City of Los Angeles, Fire Department and did require an additional condition to landscape the area for slope protection and to protect the visual quality of the area. Staff presentation to the Commission explained why the area was cleared. The Commission was given a slide presentation showing the area where brush was cleared, as a requirement of the brush clearance order. Thus, even if the applicant had intentionally withheld information, the Commission had complete and accurate information at the time it made its decision. Thus, it is non-sensical to argue that such information, had it been known, would have caused the Commission to require additional or different conditions or to deny the permit.

Therefore, since there is no evidence supporting any of the three necessary elements for satisfaction of Section 13105(a), the Commission finds that the basis for revocation has not been met.

Section 13105(b)

The second alleged ground for revocation of the permit is that the applicant failed to comply with the Commission's notice requirements. More specifically, the essential question the Commission must consider is whether or not there was "failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the Commission to require additional or different conditions on a permit or deny an application".

The revocation request asserts that the applicant did not provide the required public notice. The notification requirements for permits are found in Section 13054 of the Commission's regulations. These provisions require that (1) the applicant shall provide a list of addresses of all residences and owners of parcels within 100 feet (excluding roads) of the perimeter of the parcel on which the development is proposed, (2) provide a list of names and addresses of all persons known to the applicant to be interested in the application, (3) provide stamped envelopes for all addresses provided pursuant to the prior two requirements, and (4) post a notice, provided by the Commission, in a conspicuous location on the project site that describes the nature of the project.

After review of the permit file for 5-00-229 Commission staff has determined the site was posted, as attested by a declaration of posting, on November 20, 2000. The site was posted at the "front of property next to the street". In addition, public hearing notices were mailed on December 26, 2000 to surrounding residents and property owners within 100 feet of the subject parcel and other interested persons known at the time through a mailing list provided by the applicant and prepared by JPL Zoning Services, Inc. (Exhibit #3).

The revocation request alleges that the PPRA was an interested party known to the applicant and did not receive proper notification as described in Section 13054. The revocation request states that the PPRA should have been notified "because it is a party to an agreement concerning the recorded covenant prohibiting this construction..." and "was not present to provide material information at the hearing that could have caused the Commission to require additional or different conditions or deny the application..." (Exhibit #2). The agreement mentioned in the request pertains to a settlement agreement between the PPRA and Watt Industries, Inc., the developer of the subdivision (Exhibit #7). The agreement was executed on January 9, 1981, and related to the density of the subdivision, the urban limit line, trail easements, and land dedications. Part of the settlement agreement, as referenced by the revocation request, states that the PPRA has the standing and the right to enforce certain specified obligations and conditions contained in the original permit in the event that the California Coastal Commission should fail to do so. The request contends that the Commission failed to enforce the conditions in the original permit, and therefore the PPRA has the right and standing to enforce the original permit themselves.

The PPRA is not bringing an enforcement action, though, and the issue at hand remains whether the applicant did not provide adequate notice to all parties known to be interested in the project. As previously mentioned all residents and owners were properly noticed

more than two weeks prior to the hearing date. The revocation request alleges that the PPRA is an interested party due to the fact that they were a party to a settlement agreement with the developer of the subdivision in 1981. Residents in this area, and in all of the Pacific Palisades, are not required to join the PPRA as if it were a homeowners association. The PPRA is a voluntary organization established to act as a community "watchdog". The president of the PPRA, Bob Locker has stated that approximately 700 to 1000 residents belong to the Association.

Section 13054(a)(3) requires the applicant to submit names and addresses (with envelopes) "of all persons known to the applicant to be interested in the application..." (emphasis added). There is no evidence in the record that the applicant was aware of PPRA's interest in the application. The applicant was not a party to the settlement agreement. The agreement is 20 years old and explicitly states that it is by and between PPRA and Watt Industries, two independent parties. A twenty-year old agreement between independent parties, relating to density, urban limit lines, trail easements, and land dedications does not, without much more, require all future land owners developing within the affected area to notify the original parties.

The revocation request points to the CC&Rs on the property as evidence that the applicant, upon purchasing the property, was made aware of this agreement. However, this argument fails for two reasons. First, although the CC&Rs mention the urban limit line, they make no mention of the agreement. Thus, the CC&Rs did not put the applicant on notice that PPRA was an interested party. Secondly, even if the applicant was on some sort of constructive notice, Section 13054(a)(3) does not require notice to all parties the applicant should have known to be interested in the application, but only those of whom the applicant actually is aware. In this case, there is no evidence provided by the requestors that the PPRA was known to be an interested party by Mr. Hartunian. Therefore, the first element in deciding whether there was failure in the noticing requirement is not met.

The second question asked is whether the views of persons that were not notified were otherwise made known to the Commission. Assuming, for the purpose of this analysis, that the PPRA is an interested person under Section 13054, the question asked is whether their views were made present at the Commission hearing prior to any action taken on the permit application. Letters of objection were received from interested parties relative to the permit application. These objections were given to the Commission before the public hearing related to this project. One letter written by the objectors attorney, Cary Lowe of Jenkins and Gilchrist, LLP, specifically address the issue of development outside the urban limit line (Exhibit #9). The letter clearly identifies the conditions of the original permit A-390-78, the requirement of the urban limit line, and the types of development allowable outside the urban limit line that can be approved by the Executive Director of the Coastal Commission. These views were discussed and debated at the Commission hearing on January 11, 2001. Therefore, the Commission knew of the issues related to development outside the urban limit line prior to acting on the permit. The views represented by the Law Firm of Jenkins and Gilchrist were similar to those stated in the letter requesting

revocation. Therefore, the revocation letter does not present evidence that views of any persons not notified were not made known to the Commission. Therefore, the second element in deciding whether there was failure in the notice requirement is not met.

Lastly, the third question asked regarding the revocation of a permit due to failure to comply with the notice requirement is whether the view of persons that might not have been notified and not otherwise made known to the Commission caused the Commission to require additional or different conditions or deny the permit. The letter from the Law Firm of Jenkins and Gilchrist addressed the issues relative to the urban limit line (Exhibit #9). The Commission was made aware of such issues prior to taking action on the permit. Based on the fact that the Commission was aware of the issues related to development outside urban limit line, the Commission finds that any views that may have been raised with respect to such issues would not have caused the Commission to either require additional or different conditions or deny the permit application. Therefore, the third element in deciding whether there was a failure in the notice requirement is not met.

Therefore, since there is no evidence supporting any of the three necessary elements for satisfaction of Section 13105(b), the Commission finds that the basis for revocation has not been met.

D. Conclusion

For the reasons set forth above, the Commission finds that the request for revocation does not meet the requirements contained in Section 13105(a) or (b). Therefore, the Commission finds that the revocation request should be denied on the basis that no grounds exist because there is no evidence of the intentional inclusion of inaccurate, erroneous, or incomplete information in connection with a coastal development permit application which could have caused the Commission to require additional or different conditions on a permit or deny an application; and on the basis that there is no evidence that the notice provisions of Section 13054 were not complied with where the views of the person(s) not identified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

End/am

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SANTA MONICA, CALIFORNIA 90405

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April 24, 2001

Peter Douglas, Executive Director
California Coastal Commission
South Coast Area Office
Attn: Pam Emerson, Supervisor
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Appl. No. 5-00-229
Revocation Hearing

Dear Mr. Douglas:

This letter constitutes a request pursuant to 14 CCR §13106 for a revocation hearing by my client, Pacific Palisades Residents Association, regarding the permit conditionally approved but not yet issued to applicant Steve Hartunian to construct a tennis court outside the "Urban Limit Line" at 16201 Shadow Mountain Drive, Pacific Palisades, City and County of Los Angeles (No. 5-00-229, January 2001).

The grounds for this request are that Pacific Palisades Residents Association ("PPRA") is an "interested person" under §13054 because it is a party to an agreement concerning the recorded covenant prohibiting this construction, yet PPRA was not given prior notice of the application for permit on the matter. By reason thereof, PPRA was not present to provide material information at the hearing that could have caused the Commission to require additional or different conditions or deny the application, per §13105(b).

In stark terms, the proposal to construct a private facility outside the urban limit line violates the covenant imposed by agreement between PPRA¹ and the applicant's predecessor-in-interest, Watt Industries, Inc., the developer of the tract, which agreement is dated January 9, 1981 and is appended hereto. By its terms (para. 9, p. 13) it is binding on all successors in interest, including Mr. Hartunian. Therefore, by virtue of the successor-in-interest clause, PPRA is known to be an interested party concerning applications outside or in violation of the urban limit line.

¹ PPRA is the same corporate entity as the party identified in the contract as "Pacific Palisades Property Owners' Assn."

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The agreement specifically grants PPRA the standing and the right to enforce the urban limit line in the event the California Coastal Commission should fail to do so (see p. 3). The Agreement required the developer to submit the covenant which was adopted as part of the coastal permit prohibiting development outside the urban limit line, except for minor grading to recontour or for pathways or low-intensity recreation uses, or for minor public service facilities. (See para. (b) at p. 8). The proposal to construct a private tennis court in this area is not within the scope of these allowable developments.

We have reviewed the staff report upon which your decision to issue a conditional approval was based, and we disagree with staff's "interpretation" of the covenant. The covenant is clear and unambiguous on its face, and this proposal for grading/construction violates the prohibition. Staff's reasoning is based in part on the fact that the vegetation in this area outside the limit line was already "disturbed" by the construction of an emergency access road and a "V" ditch. However, the major disturbance in the area was created by construction of a swimming pool facility by this same applicant, and the removal of most of the vegetation was accomplished during that process. The access road was constructed before any of the homes were built and the V ditch is not a factor causing vegetation removal outside the ULL. I enclose for your review "before and after" color photos demonstrating that the vegetation was removed when the pool was constructed. Since degradation of foliage played a major part influencing staff's decision to allow additional development, we believe the omission of accurate information as to the cause of the degradation constitutes additional grounds for revocation under Section 13105(a). The applicant has effectively bootstrapped additional disturbance onto construction activity that was neither reviewed nor approved by the Commission.

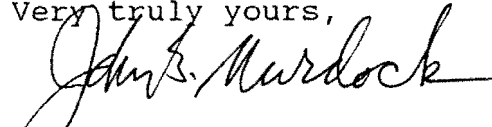
PPRA is concerned about the precedent set by this application. It is based upon a staffer's interpretation of the "intent" of the prohibition in the covenant, yet that interpretation is inconsistent with the plain language of the covenant. Under standard legal principles, resort to "intent" offered by one party or the other for an interpretation is not permissible where the language of the instrument is clear on its face. See, Civil Code §§1638, 1644; unless a contract is ambiguous, its meaning must be determined from the words used, and courts will not, because a more equitable result might be reached thereby, construe into a contract provisions that are not within it. *Schleimer v. Strahl* (1963, 4th Dist) 219 Cal.App.2d. 613, 33 Cal.Rptr.412; *Southern Cal. Gas Co. v. Ventura Pipe Line Constr. Co.* (1957) 150 Cal.App.2d 253, 309 P.2d 849.

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The tentative approval which you voted upon in January is conditioned on certain events, one of which is the applicant's submitting the matter to the Ridgeview Country Estates Homeowners Association, in charge of CC&Rs for the lot. (That approval has not yet been granted). PPRA requests that you revoke the conditional approval, reopen the hearing to consider additional evidence, and require that no additional grading or development take place outside the urban limit line.

Thank you for your consideration of this matter.

Very truly yours,



John B. Murdock

JBM:ly

cc: PPRA Pres. Bob Locker
Benjamin M. Reznik, Esq. (Applicant's Attorney)
Ridgeview County Estates Homeowners' Assn.
Chairperson, Cal. Coastal Commission

COASTAL COMMISSION
R-5-00-229

EXHIBIT # 2
PAGE 3 OF 3

1 4420-039-011

EMPIRE PROPERTIES INC
1049 CENTURY PARK E
LOS ANGELES CA 90067

2 4420-039-010

MARY E. & JUNE F. WANG
16200 SHADOW MOUNTAIN DR
PACIFIC PALISADES CA 90272

3 4420-039-009

LAWRENCE J. KONDR
16212 SHADOW MOUNTAIN DR
PACIFIC PALISADES CA 90272

4 4420-039-008

RONALD R. & PAMELA P. STEPHENSON
16224 SHADOW MOUNTAIN DR
PACIFIC PALISADES CA 90272

5 4420-039-013

BERT & RUTH MANDELBAUM
16223 SHADOW MOUNTAIN DR
PACIFIC PALISADES CA 90272

6 4420-039-012

STEVEN HARTUNIAN
16215 SHADOW MOUNTAIN DR
PACIFIC PALISADES CA 90272

7 4420-040-004

SCHAFFNER ROGER A & FAMILY TRUST
1328 LAS PULGAS RD
PACIFIC PALISADES CA 90272

8 4420-008-025

DAN F. & DOROTHY C. HAZEN
1322 LAS PULGAS RD
PACIFIC PALISADES CA 90272

9 4420-012-044

CHRISTOPHER J. & EILEEN M. BALL
1321 LAS PULGAS RD
PACIFIC PALISADES CA 90272

10 4420-012-043

WILLIAM J. & CATHERINE D. REA
1378 LAS CANOAS RD
PACIFIC PALISADES CA 90272

11 4420-012-042

ELEANOR J. BUCK
1373 LAS CANOAS RD
PACIFIC PALISADES CA 90272

999

JPL ZONING SERVICES INC #2943
6257 VAN NUYS BLVD, # 101
VAN NUYS CA 91401-2711

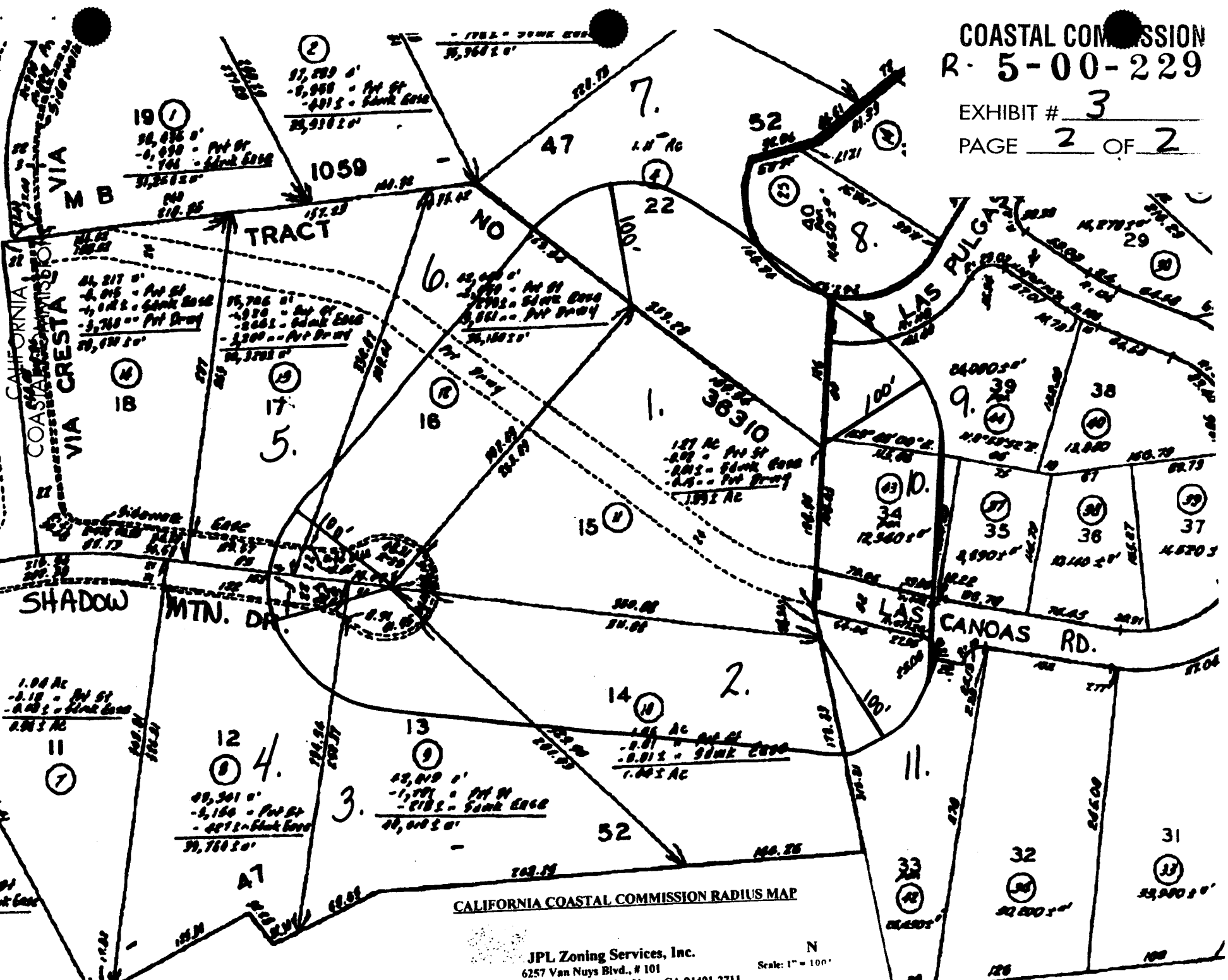
999

BRENT & MILLER ARCHITECTS
STANLEY BRENT
13400 RIVERSIDE DR #211
SHERMAN OAKS CA 91423

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R- 5 - 00 - 229

EXHIBIT # 3
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JUN 23 2000



CALIFORNIA COASTAL COMMISSION RADIUS MAP

JPL Zoning Services, Inc.
6257 Van Nuys Blvd., # 101
Van Nuys, CA 91401-2711

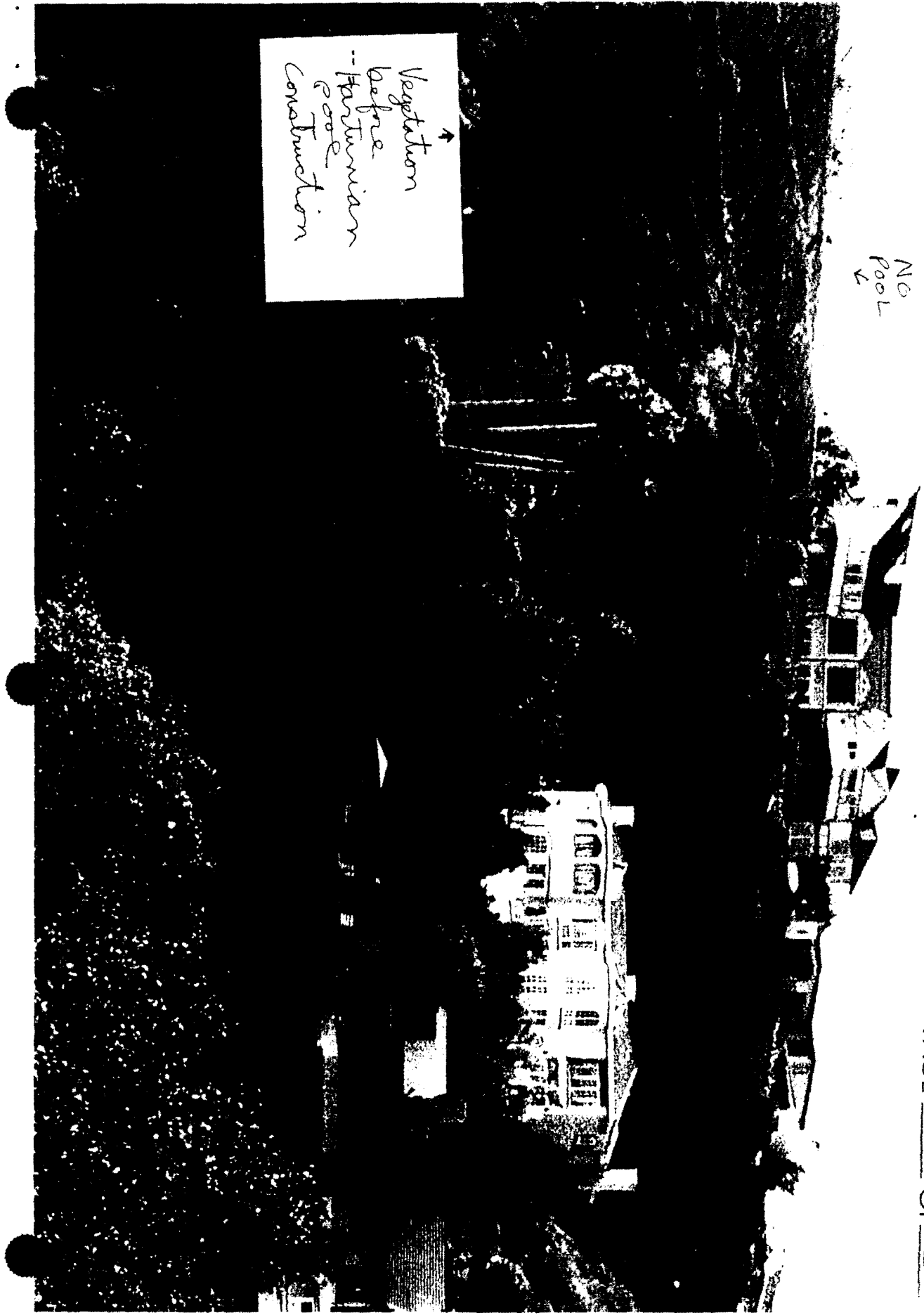
Scale: 1" = 100'

Hortman

house

NO
POOL

↓
Vegetation
before
Hortman
pool
construction



COASTAL COMMISSION
R-5-00-229

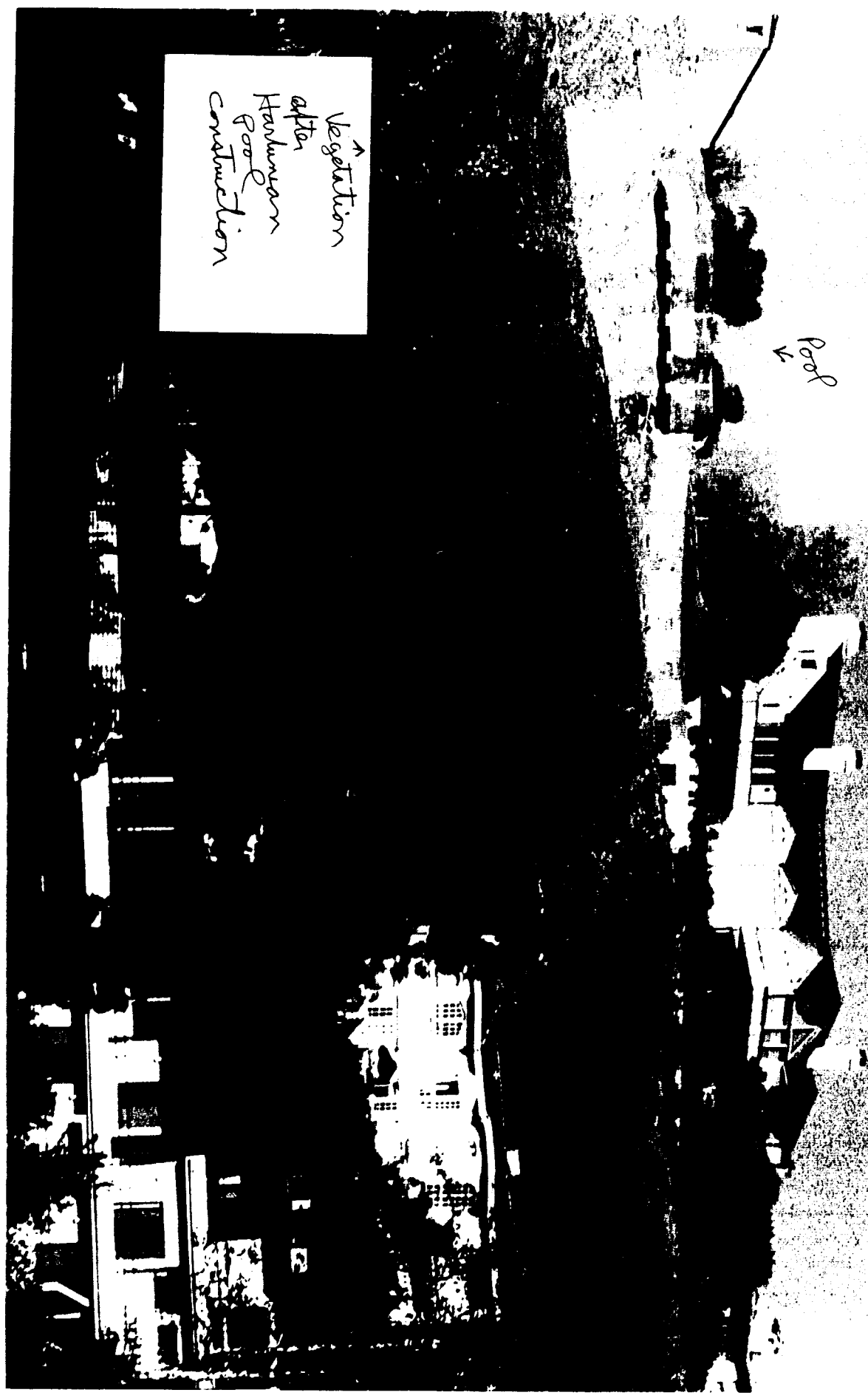
EXHIBIT # 4
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Horticulture

→ Arrows

Pool
↓

↑
Vegetation
after
Horticulture
Pool
Construction





NOTICE OF NONCOMPLIANCE

Map Book 4420	Page 039	Parcel D11	Location of Hazard 16201 SHADOW MOUNTAIN DR. Y/L
To EMPIRE PROPERTIES INC.			Date of Inspection 9-5-00
Address 1801 CENTURY PARK E. 5-2400		City L.A.	State CA.
Zip Code 90067		Compliance Signature	Date
		Improved	Unimproved ✓

YOU ARE HEREBY DIRECTED TO ELIMINATE THE HAZARDOUS CONDITIONS ON YOUR PROPERTY THAT ARE IN VIOLATION OF L.A.M.C. SECTION 57.21.07. THE CONDITIONS INDICATED BELOW MUST BE CORRECTED ON OR BEFORE 9-25-00. WHEN ALL WORK IS COMPLETED YOU MUST CALL THE NUMBER BELOW FOR A PROPERTY INSPECTION AND A WRITTEN INSPECTION RECORD.

MINIMUM CLEARANCE REQUIREMENTS

- All native brush, weeds, grass, and hazardous vegetation on your property within 100 feet of structure/s including but not limited to:

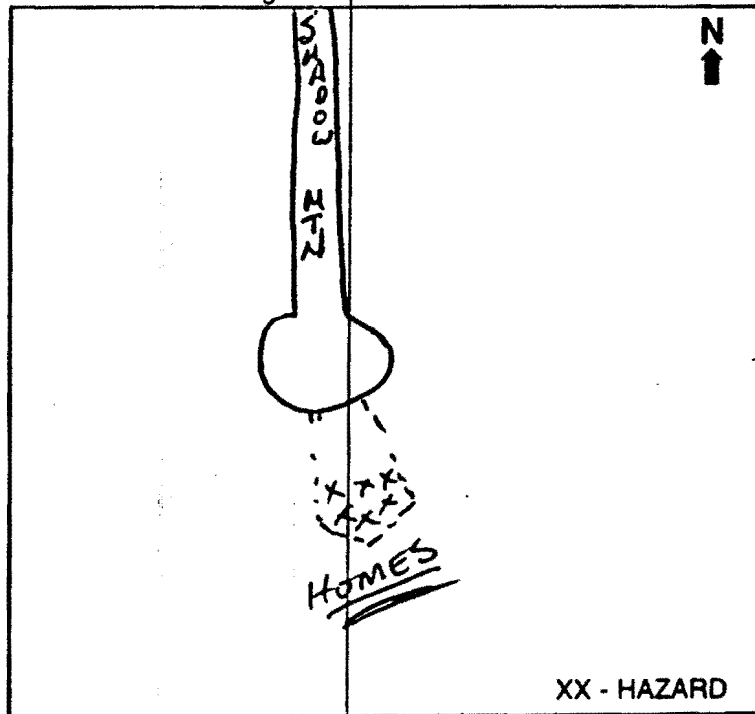
ALL STRUCTURES

shall be maintained in accordance with the requirements on the reverse side of this Notice.

- Reduce the amount and/or modify the arrangement of hazardous vegetation within the area comprising the second 100 feet for a total distance of 200 feet from any structure.
- Maintain all weeds and other vegetation located within 10 feet of any combustible fence or an edge of that portion of any highway, street, alley, or driveway improved or used for vehicular travel.
- Remove and safely dispose of all cut vegetation, native, or otherwise, all DEAD TREES, and all debris. Cut vegetation may be machine processed and spread on site.
- Maintain all landscape vegetation in such a condition that it will not contribute to the spread or intensity of a fire.
- Additional requirements: _____

TELEPHONE NUMBER TO CALL FOR INSPECTION

Diagram of Hazard/Location



XX - HAZARD

Note: This diagram is to be used as a guideline only, and is not drawn to scale.

YOU MUST CALL FOR AN INSPECTION WHEN THE WORK IS COMPLETED. IF FOUND IN COMPLIANCE AT THAT TIME, YOU WILL RECEIVE A WRITTEN "CLEANED BY OWNER INSPECTION RECORD" (F-1307) FOR YOUR RECORDS AND NO FURTHER ACTION WILL BE TAKEN.

NOTE: See reverse side for specific details of the above requirements.

ALL THE REQUIREMENTS INDICATED ABOVE MUST BE COMPLETED BEFORE YOU CALL FOR A COMPLIANCE INSPECTION. BY ORDER OF THE CHIEF ENGINEER AND GENERAL MANAGER.

By ROBERT P. KELLY F.S.# 65
Signature Robert P. Kelly

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EXHIBIT # 5
PAGE 1 OF 1

Grading

The amended permit #A-390-78 (AMH) approved the grading of 65 buildable pads for single family homes. The permit provides that the Executive Director "may approve minor modifications of the proposed Tract provided that the changes do not either increase the total density of the project or necessitate more extensive grading of undisturbed areas" (as stated in Special Condition #1). Condition #4b of the amended permit #A-390-78 (AMH) adds "in areas outside of the development limit line: minor grading may be performed to re-contour previously graded land; paved or unpaved pathways and other incidental improvements for low intensity recreation may be constructed; minor facilities to provide public or utility services which do not require significant grading...; vegetation within 100 feet of any residential structure may be removed or altered for fire protection purposes" (Exhibit #7).

The area outside the urban limit line on the subject site (lot 15) has been disturbed by previous grading and brush clearance. The grading in this area occurred during the construction of an emergency access road and a concrete "V" ditch. These structures were constructed by the City of Los Angeles, Department of Public Works, but not approved in permit #A-390-78 (AMH). The access road bisects the subject property and connects Via Cresta (to the north) to the terminus of Las Canoas (to the south) (Exhibit #6). The proposed tennis court is directly east of the emergency access road. The "V" ditch is adjacent to and west of the access road. The access road, concrete "V" ditch, and proposed tennis court are located outside the urban limit line on lot 15.

Also, vegetation on the site has been continually removed for brush clearance as required by the City of Los Angeles, Department of Fire (Exhibit #5). Exhibit #5 demonstrates that the area designated as a hazard, where the Department of Fire requires brush clearance, is the total area outside the urban (grading) limit line. Thus, for the applicant to be in conformance with the Department of Fire brush clearance notice, he must clear all vegetation outside the designated urban limit line. The brush clearance is allowable under permit # A-390-78 (AMH), condition #4b (Exhibit #7). This is required because of the proximity of other homes below lot 15 (the subject site).

During a site visit and through photographs taken by the applicant, staff confirmed that the area outside the urban limit line has been substantially graded and the little vegetation that does exist is of non-native, introduced species.

It was the intent of the original permit, in part, to provide protection of native vegetation and sensitive habitat in areas outside the urban limit line. As previously stated, the project location outside the urban limit line has been significantly disturbed from past construction of the emergency access road and "V" ditch. Also, fire department clearance requirements have eliminated any native vegetation that may have been present after construction of the emergency access road and drainage "V"

ditch. The proposed tennis court is outside the urban limit line and would require grading. However the project will not result in disturbance or grading in an undisturbed area, and will not harm native vegetation. Thus, the proposed development outside the urban limit line would not lessen the intent of the underlying permit A-390-78 (AMH) to protect sensitive, undisturbed areas. In addition, the original permit was intended to protect views from Topanga State Park, as discussed in more detail below.

Visual Resources

As part of the approval for A-390-78 (AMH), the applicant deeded lands to the State Park system to offset the impacts of the development on the ability of important public access routes to provide access for recreational use of the beaches and mountain parks in western Los Angeles County. This land dedication extended Topanga State Park from the eastern boundary of the lots to Temescal Ridge on the east and Pacific Highlands to the northwest. The urban limit line established in the approval created a buffer to protect the visual resources to and from Topanga State Park.

The subject lot is one of the few lots in the subdivision that does not front or is not adjacent to Topanga State Park. The intent of the amended permit #A-390-78 (AMH) and the established urban limit line was to protect views to the Santa Monica Mountains within Topanga State Park. Las Canoas Road and Las Pulgas Road front the subject property (Exhibit #6). These streets were developed under a separate subdivision with single family homes. The subject lot and the proposed tennis court are not visible from Topanga State Park or from Pacific Coast Highway. Thus, the development would not impact the visual quality of the Santa Monica Mountains and, would therefore, not lessen the intent of the amended permit #A-390-78 (AMH).

D. Visual Impacts/Landform Alteration

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 the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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RECEIVED
Jan 27 1981
CALIFORNIA
COASTAL COMMISSION

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into and executed this ninth day of January, 1981, by and between PACIFIC PALISADES PROPERTY OWNERS ASSOCIATION, INC., a California non-profit corporation (hereinafter referred to as "PPPOA") and WATT INDUSTRIES, INC., a California corporation as successor in interest to AMH CORPORATION (hereinafter referred to as "WATT").

R E C I T A L S

WHEREAS, WATT is the owner of certain real property located in the County of Los Angeles, State of California, as is more particularly set forth in the legal description attached as Exhibit "A" and incorporated by this reference (hereinafter referred to as the "property"). Tentative Tracts 30453, 21601 and 40432 are within the boundaries of the property as is generally depicted on the map attached as Exhibit "B" and incorporated by this reference. The location of the property is within the Marquez Knolls area of the Pacific Palisades District of the City of Los Angeles; and

WHEREAS, the property is referenced in coastal development permit number A-390-78 of the California Coastal Commission.

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Documentation relating to the Coastal development permit as subsequently amended is attached as Exhibit "C" and incorporated by this reference (hereinafter collectively referred to as the "permit"). It is understood that the permit to be issued as amended includes a housing construction and grading exemption; so that WATT need not apply to the California Coastal Commission for further coastal development permits for its grading plans, residential unit designs or construction siting; and

WHEREAS, two civil actions are currently pending between the parties hereto and others, concerning the proposed development of the property by WATT, and the application of California law thereto as delineated in the pleadings, said actions being more particularly identified as:

- 1) Pacific Palisades Property Owners Association, Petitioner and Appellant,
v. City Council of Los Angeles, et al.,
Respondents and Appellees; Headland Properties, Inc. and AMH Corporation,
Real Parties in Interest and Cross-Appellees, L.A.S.C. No. C 247 072
presently on appeal to the Second Appellate District, Division Five,
2d Civ. No. 58581

- AND -

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- 2) AMH Corporation, Petitioner, v.
California Coastal Commission and
Michael' Fischer, Respondents; Pacific
Palisades Property Owners Association,
Inc., et al., Real Parties in Interest,
L.A.S.C. No. C 298 046; and

WHEREAS, the parties have conducted extensive negotiations and attended numerous hearings leading to the issuance of the permit; and

WHEREAS, the parties wish to resolve their differences and terminate the aforementioned actions upon the terms and conditions hereinafter set forth; and

WHEREAS, it is the desire of PPPOA, as beneficiary of the terms and conditions of the permit, to have the standing and the right to enforce certain specified obligations and conditions contained in the permit in the event the California Coastal Commission should fail to do so, as hereinafter set forth; and

WHEREAS, PPPOA desires to dismiss the appeal of the first aforementioned action in conjunction with the dismissal the appeal of the second aforementioned action by WATT;

RH

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PAGE 3 OF 14

TERMS AND CONDITIONS

NOW, THEREFORE, IT IS AGREED, that in consideration of the mutual covenants and benefits contained in this Settlement Agreement:

I

Permit Enforcement

The following terms and conditions under the permit may be enforced by PPPOA through injunctive relief and/or by an action in specific performance:

A. Density:

Density of construction in the three tracts shall have an overall limit of one hundred and forty (140) residential units. Tract 21601 shall be limited to approximately 33 such units, Tract 30453 shall be limited to approximately 41 such units (including the resubdivision of the six acre "recreation lot" into estate lots for up to six residential units), Tract 40432 shall be limited to approximately 66 such units, all as generally depicted on Exhibit "B." It is understood that WATT may further subdivide additional lots for the purpose of the dedications, utility lines and trails as hereafter referenced but that such additional subdivided lots shall not be utilized to site residential construction in excess of the overall limit of one hundred forty (140)

residential units. Construction of a single family dwelling unit, together with appurtenant garages, carports and accessory structures on each residential lot' is contemplated by this Agreement.

It is understood and agreed that the Executive Director of the Coastal Commission may, as is necessary, approve modifications of the proposed tract without PPPOA's prior agreement provided that the changes do not result in either of the following: (1) an increase in the total overall density or (2) necessitate more extensive grading of undisturbed areas.

It is contemplated by the parties that modifications may be necessary to engineer the design or construction, to adapt development to the physical terrain, to provide a secondary access to Tract 40432 and to accommodate such design changes as may be imposed by governmental agency requirements.

B. Development Limit Line:

Prior to or concurrent with the recordation of each final map, WATT shall record covenants running with the land in a form approved by the Executive Director of the Coastal Commission. The covenants shall be recorded to the extent practicable free of all prior liens and encumbrances excepting those of record and tax liens, shall be irrevocable, and shall bind the applicant and all successors in interest.

The current state of the title is as reflected on the most recent policy of title insurance attached hereto as Exhibit "D" and incorporated herein by reference.

These covenants shall at minimum provide as follows:

a. A prohibition on further subdivision for residential purposes outside of the urban limit line, viz: in those portions of the property not included in Tentative Tracts 30453, 21601 and 40432.

b. A prohibition on further development in areas outside of the urban limit line except as approved by the Executive Director of the Coastal Commission as necessary and permissible under the terms of the permit,

c. A waiver of all claims against the public for damages due to flood, fire or geologic instability which may arise as a consequence of the approval or development of the property.

C. Trail Easements:

WATT shall record an offer to dedicate trail easements to provide public access to Temescal Ridge over the existing trails and pathways on Lots 51 through 54 and Lot 65 of Tract 40453. With the approval of the Executive Director of the Coastal Commission, WATT may relocate such trails where the existing trail alignment would interfere with residential development of the lots provided that such relocated trails are improved

for use in a condition comparable to the presently existing trails concurrent with finish grading or commencement of construction on the lots.

This offer to dedicate shall be a form approved by the Executive Director of the Coastal Commission; it shall be irrevocable for a period of 21 years, shall be made in favor of the State of California, another public agency or a non-profit private association approved by the Executive Director of the Coastal Commission, and this offer shall be recorded as is practicable free of all prior liens and encumbrances, excepting those of record and tax liens.

D. Revised Plans:

Prior to the recordation of final maps or the commencement of construction, WATT shall submit for the review and approval of the Executive Director of the Coastal Commission revised plans to provide at minimum the following:

a. Access:

An emergency access roadway and a pedestrian and bicycle path at the northerly terminus of Lachman Lane within Tract 21601. The roadway shall be designed and constructed so as to cause a minimum practicable alteration of land forms, and it is to be constructed to provide an emergency entry to and exit from the adjacent development of Palisades Highlands. The

roadway shall be wide enough to accommodate two lanes of vehicles and meet the minimum width specifications of the City of Los Angeles. Cuts and fills required for construction of the roadway shall be the minimum required by the City of Los Angeles. Non-emergency use by vehicles shall be precluded by a service gate or other barrier facility as may be required by the City of Los Angeles.

WATT and PPPOA agree each with the other that it is to their mutual advantage to minimize the width of the roadway and thereby both limit construction costs to WATT and also reduce the amount of change to adjacent land forms. WATT and PPPOA agree to cooperate in the further public agency processing with respect to the provision of such an emergency access. This cooperative effort will be made with a view to limiting the public agency width requirement for such roadway.

b. Areas Outside the Urban Limit Line:

In areas outside the urban limit line WATT may do any of the following: minor grading may be performed to recontour previously-graded land; paved or unpaved pathways and other incidental improvements for low-intensity recreation uses may be constructed; minor facilities to provide public or utility services may be installed if alternate locations are not feasible and vegetation within one hundred feet of any residential structure may be removed or altered for fire protection purposes.

c. Slope Areas:

Slope areas exposed by grading or other construction shall be revegetated with primarily endemic, drought and fire-resistant vegetation. Landscaping shall be provided which when mature will screen future residential units from visibility from Topanga State Park.

E. Dedications:

Prior to or concurrent with the recordation of final map for Tract 21601, WATT shall record an offer to dedicate title to the approximately ~~twenty-five~~ ^{forty-seven (47)} (25) acres northeasterly of Tract 21601 (as generally shown in Exhibit 5 to the permit). *RAI BK*

Prior to or concurrent with the recordation of a final map for Tract 40432, the applicant shall record an offer to dedicate title to the approximately two hundred and four (204) acres northeasterly of Tract 40432 (as generally shown in Exhibit 3 to the permit).

Both offers shall be in a form approved by the Executive Director of the Coastal Commission. The referenced offers shall be made in favor of the State of California, shall run with the land and be binding on the applicant and all its successors in interest, shall be irrevocable for a term of 21 years, and shall be recorded as is practicable free of all prior liens and encumbrances excepting those of record and tax liens.

II

Resolution of Litigation

Upon the execution of this Settlement Agreement, each party hereto shall deliver to the other an executed Request for Dismissal with prejudice as to each of the aforementioned actions. PPPOA and WATT also shall execute and file with the District Court of Appeal a stipulation and order of withdrawal or abandonment of appeal and cross-appeal coupled with an order for remittitur, all as in the form collectively attached as Exhibit "E" and incorporated herein by this reference.

All claims for costs, fees and expenses as between the parties hereto which exist or may exist, are waived, and each party shall bear its own costs, fees and expenses.

III

Release Agreement

1. PPPOA and WATT do hereby release and forever discharge the other, together with the agents, representatives, employees, officers, insurers, directors, stockholders, attorneys, predecessors, successors, assigns, heirs, personal representatives and executors of the aforesaid named entities and/or persons, both past and present, and all persons, firms, associations, co-partners, co-venturers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates or corporations connected

therewith, and each of them, from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions and causes of action of every nature, character and description which they have held, now hold, or may hold in the future, whether known or unknown, ~~including, but not~~ limited to, those directly or indirectly arising out of the transactions and events alleged in the two aforementioned actions.

RH
OK

2. Except to enforce the obligations undertaken in this Settlement Agreement, they shall forever refrain and forbear from commencing, instituting or participating, either as a named or unnamed party, in any lawsuit, action or other proceedings against the other, or any of them, whether brought by themselves or by others on their behalf, based on or arising out of the two aforementioned actions or any facts or circumstances described therein.

3. They acknowledge that no representation or promise not expressly contained in this Settlement Agreement has been made to either of them and further acknowledge that they are not entering into this Settlement Agreement on the basis of any promise or representation, expressed or implied.

4. They acknowledge that this settlement includes all injuries and damages to person and/or property whatsoever, whether such injuries and damages be known or unknown, foreseen or unforeseen, and whether they are latent or occur later.

COASTAL COMMISSION
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5. They waive all rights they may have under Section 1542 of the Civil Code of the State of California, which reads as follows:

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

6. They represent and warrant and agree:

(a) That they have not heretofore assigned or transferred, nor will they in the future in any manner assign or transfer or purport to assign or transfer to any entity, person or corporation, any claim, demand, or cause of action based on or arising out of or in connection with any matter, fact or thing here described.

(b) That no one other than the undersigned is entitled to receive the valuable consideration being received, nor have either of them transferred, assigned, conveyed or hypothecated any interest in the matter, fact or thing here described.

7. They acknowledge that this Settlement Agreement affects the settlement of claims which are denied and contested, and that nothing contained herein shall be construed as an admission against the interest of any of them, and they agree that this Settlement Agreement releases each of them from any guarantees and

warranties, of every nature, whether expressed or implied, which may have been given.

8. They agree that the entire agreement between them with reference to the subject matter hereof and all prior negotiations and understandings between the parties have been merged herein.

9. They agree that this Settlement Agreement shall be binding upon the heirs, executors, representatives, predecessors, successors and assigns of the undersigned and shall inure to the benefit of any of them.

10. They agree not to solicit, procure or assist any person in any claim against the other arising out of the facts and circumstances in the two aforementioned actions. In case of breach of any provision of this paragraph, the undersigned acknowledge that they may be required to defend other lawsuits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date specified hereinabove.

PACIFIC PALISADES PROPERTY OWNERS
ASSOCIATION, INC.

By: Rubell Helgeson
Rubell Helgeson,
Its President

By: Barbara Kohn
BARBARA KOHN
Its Secretary

[Signatures continued on page

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COASTAL COMMISSION

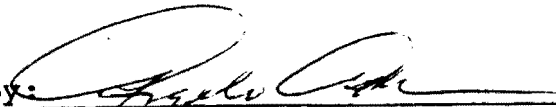
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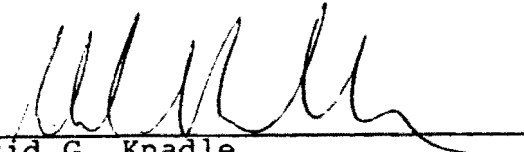
EXHIBIT # 7

PAGE 13 OF 14

[Signatures continued from page 13]

WATT INDUSTRIES, INC.

By: 
Angelo Adams,
Its President

By: 
David G. Knadle
Vice President

JEFFER, MANGELS, BUTLER & MARMARO LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

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LOS ANGELES, CALIFORNIA 90067-5010

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REF./FILE NO.

May 1, 2001

61410-0003

Peter Douglas, Executive Director
California Coastal Commission
Attn: Pam Emerson, Supervisor
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

MAY 7 2001

CALIFORNIA
COASTAL COMMISSION

RE: Application No. 5-00-229
16201 Shadow Mountain Drive, Pacific Palisades
Response to Letter From John B. Murdock, Esq.

Dear Mr. Douglas:

This office represents the applicant in the above-referenced case. The purpose of this letter is to briefly respond to a letter to you dated April 24, 2001 from John B. Murdock on behalf of the Pacific Palisades Residents Association ("PPRA").

In his letter, Mr. Murdock requests that the California Coastal Commission (the "Commission") initiate revocation proceedings in this case on the alleged ground that the PPRA is an "interested party" and was not given prior notice of the Commission's hearing on January 11, 2001. For the reasons discussed below, this request is patently frivolous and without merit, and must be denied pursuant to 14 California Code of Regulations ("CCR") § 13105.

Even if it is assumed, for the sake of argument, that PPRA is an "interested party" within the meaning of 14 CCR § 13054 and did not receive notice of the Commission hearing, as Mr. Murdock asserts, this would not constitute grounds for revocation of the permit. Specifically, under 14 CCR § 13105, failure to comply with the notice requirements of Section 13054 may constitute grounds for revocation only "where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application." 14 CCR § 13105(b).

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PAGE 1 OF 4

Peter Douglas, Executive Director
May 1, 2001
Page 2

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In this case, the views of the PPRA as expressed in Mr. Murdock's letter were in fact made known to the Commission in a letter dated January 8, 2001 from the law firm of Jenkins & Gilchrist, LLP on behalf of Roger and Marlene Schaffner. The Schaffners, who are also represented by Mr. Murdock in this matter, own property that is contiguous to the applicant's property. A true and correct copy of the letter from Jenkins & Gilchrist is attached hereto as Exhibit "A." As you will see, the "urban limit line" issue was clearly raised in section 1 of the letter.¹

For the reasons set forth in the Commission's staff report dated December 14, 2000, the Commission rejected the contentions set forth in the Jenkins & Gilchrist letter, which are identical to the issues raised in Mr. Murdock's April 24, 2001 letter to the Commission.² Thus, there is no basis to conclude that the views held by the PPRA could have caused the Commission to require "additional or different conditions" or to deny the application.

Furthermore, the notice requirements of Section 13054 were complied with in this case. Specifically, Section 13054(a) requires only that the applicant provide the Commission with, among other things, a list of "the names and addresses of all persons known to the applicant to be interested in the application" (Emphasis added.) Here, the applicant had no knowledge of the PPRA's alleged "interest" in the application prior to the date of the Commission's hearing.³ Consequently, there was no violation of Section 13054.

Finally, Mr. Murdock's disputes the statement in the Commission staff report that the area on which the Project will be built was already disturbed by the construction of an emergency access road and "V" ditch, and asserts that the omission of "accurate" information regarding the "cause of the degradation" of vegetation constitutes an additional ground for revocation. Mr. Murdock is incorrect as a matter of fact and law. The area on which the tennis court will be constructed was graded and denuded of vegetation in conjunction with the construction of the access road, and vegetation below that area was removed pursuant to brush

1/ Ironically, based on our review of the relevant permit records, it appears that the Schaffners' approximately 8,000 square foot residence was itself built outside of the urban limit line without Commission approval.

2/ The Commission did, however, impose an additional requirement that a landscape plan be prepared to screen the tennis court.

3/ Furthermore, because the settlement agreement was not recorded, it cannot be said that the applicant had "constructive" knowledge of the PPRA's alleged interest.

Peter Douglas, Executive Director
May 1, 2001
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clearance orders issued by the Los Angeles Fire Department.⁴ Although the statements contained in the Commission staff report are adequately supported by information contained in the Commission's file, we are prepared to submit a further response to Mr. Murdock's erroneous factual assertions if necessary.

Furthermore, Mr. Murdock's contentions regarding the cause and timing of the de-vegetation of the property, even if accepted as fact, are legally irrelevant since there is no indication that the cause or timing of the disturbance of the area on which the tennis court will be built was a material factor in the Commission's decision. See 14 CCR 13105 (erroneous or incomplete information in connection with a coastal development permit application is grounds for revocation only "where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application"). On the contrary, the Commission staff report reveals that the Commission's decision to approve the Project was based primarily on the fact that the Project is consistent with the intent of the original permit conditions for the tract:

It was the intent of the original permit, in part, to provide protection of native vegetation and sensitive habitat in areas outside the urban limit line. As previously stated, the project location outside the urban limit line has been significantly disturbed from past construction of the emergency access road and "V" ditch. Also, fire department clearance requirements have eliminated any native vegetation that may have been present after construction of the emergency access road and drainage "V" ditch. The proposed tennis court is outside the urban limit line and would require grading. However, the project will not result in disturbance or grading in an undisturbed area, and will not harm native vegetation. Thus, the proposed development outside the urban limit line would not lessen the intent of the underlying permit A-390-78 (AMH) to protect sensitive, undisturbed areas.

Commission staff report, pp. 8-9 (emphasis added). The Commission's decision was also based on the fact that the tennis court would not be visible from either Topanga State Park or Pacific Coast Highway and therefore would be consistent with the Commission's original intent to protect visual resources. Commission staff report, p. 9. Thus, even if Mr. Murdock's statement regarding the cause and timing of the disturbance was true (which we categorically dispute), it would not remotely constitute grounds for initiating revocation

4/ Copies of these orders are contained in the Commission's file.

JEFFER, MANGELS, BUTLER & MARMARO LLP

Peter Douglas, Executive Director
May 1, 2001
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proceedings because there is no basis to conclude that this "information" would have "caused" the Commission to "require additional or different conditions on a permit or deny an application." 14 CCR 13105.

For all of the foregoing reasons, we respectfully request that the Commission reject the PPRA's request to initiate revocation proceedings in this case.

Thank you for your consideration.

Very truly yours,



JOHN M. BOWMAN of
Jeffer, Mangels, Butler & Marmaro LLP

JMB:dg
Exhibit

cc: John B. Murdock, Esq. (w/exhibit)

Jenkins & Gilchrist, LLP

12100 WILSHIRE BOULEVARD
15TH FLOOR
LOS ANGELES, CA 90025

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Cary D. Lowe
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January 8, 2001

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DALLAS, TEXAS
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HOUSTON, TEXAS
(713) 951-3300

NEW YORK, NEW YORK
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SAN ANTONIO, TEXAS
(210) 246-5000

WASHINGTON, D.C.
(202) 326-1500

COASTAL COMMISSION
2-5-00-229

EXHIBIT # 9

PAGE 1 OF 4

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

Re: Opposition to Permit No. 5-00-229 (Hartunian) – Item No. TH 8b, 1/11/01

Honorable Members of the California Coastal Commission:

This office represents Roger and Marlene Schaffner, homeowners residing in the Pacific Palisades area of the City of Los Angeles. More specifically, the Schaffners reside at the base of a 100-foot slope, on the side of which the applicant for the above-referenced permit proposes to construct a platform nearly 7,000 square feet in size, cantilevered from the hillside on two massive 35-foot high concrete caissons, supporting a tennis court and topped by a 12-foot high fence. This proposed structure will devastate the esthetic appearance of the hillside in question and the view not only from the Schaffners' home but also from numerous other homes in the neighborhood and from nearby public streets. Moreover, it will intrude into hillside areas from which the Coastal Commission explicitly excluded further grading over 20 years ago in connection with approval of the subdivision in which the property at issue is located. For these reasons, and others described below, we urge the Commission to deny the pending application in this matter.

1. The Proposed Project Violates Restrictions Previously Placed on the Property by the Commission.

The residential lot on which the proposed project is to be constructed, as well as the downslope lots affected most directly by it, are contained within Tract No. 36310 in the City of Los Angeles, part of the original Tract 40432 approved by Coastal Development Permit A-390-78 in 1979 and amended in 1980. The relative locations of the lots in question are shown on the attached diagram. This tract borders Topanga State Park, and consists entirely of homes having splendid views, either from atop ridge lines or from within canyons among the ridges. At the time that the tract was originally approved, the Coastal Commission granted a permit subject to a number of strict conditions designed to protect views and preserve the original hillside character of the area. Specifically, an urban limit line was established across the sloping portions of the hilltop and ridge line lots, which could not be violated by grading or other construction activities without the express

approval of the Commission. It is primarily the need for that approval which brings the applicant before the Commission at this time.

The Commission explicitly restricted activities beyond the urban limit line to very limited functions, even with subsequent approval from Commission staff. Specifically, Special Condition B.1.d (amended as Special Condition B.2.c) allowed such violation of the urban limit line solely for: "minor grading ... to re-contour previously graded land; paved or unpaved pathways and other incidental improvements for low-intensity recreation ...; minor facilities to provide public or utility services...." The construction proposed by the applicant does not fall into any of these permitted categories. It certainly cannot be classified legitimately as an "incidental improvement" for recreational purposes, and does not relate to the other categories at all. The pending application may not be approved without first reopening and further amending the conditions of Permit A-390-78.

2. The Proposed Project Is in Conflict with Fundamental Provisions of the California Coastal Act.

Public Resources Code Section 30251 sets forth the high priority given by the California Coastal Act of 1976 to protection and enhancement of scenic and visual resources. Not only are such qualities declared to be important public resources, but any development which is to be located in scenic areas is required to be "visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas." The proposed project, rather than protecting, enhancing or restoring the scenic and visual quality of this location, would result in a massive structure, totally out of character with the surrounding area, sticking out like the proverbial sore thumb from what otherwise would remain a scenic hillside.

The staff report on this application, which recommends conditional approval, acknowledges this issue, but minimizes its importance by noting that the proposed construction will not be directly visible from either the State Park or from the coast. However, it ignores the effects on other residents of the tract, as well as others in the tract to the immediate south and the public viewing this from nearby streets, all of whom will be confronted with the visual impact of the enormous structure proposed to extend outward from this very visible hillside. Certainly, the impact would be even greater if the project site directly faced the State Park, but, at this location, the impact is substantial and affects numerous members of the public, all of whom will be forced to look up at this proposed monolith jutting from the hillside. The proposed permit conditions to which the applicant has agreed address other ancillary issues, but fail to deal at all with this primary concern.

3. The Proposed Project is in Conflict with the Commission's Own Precedents.

This is not the first time that this issue has arisen before the Coastal Commission in connection with proposed recreational improvements on a lot in this development. Most recently, the Commission addressed a similar situation involving Lot 7 of Tract No. 21601, part of the same

original development as the property in the pending application. In that instance, the homeowner proposed to construct a swimming pool, outside the same grading limit line established by the Coastal Commission which is at issue here. We are advised that the Commission denied that application in its entirety, and did not merely condition approval on mitigation of project impacts. [Note: This prior situation was just brought to our attention and we have not had an opportunity to examine the Commission's file; consequently we apologize for any inaccuracy in our characterization of that situation.]

4. The Applicant Should Not Be Allowed to Bootstrap His Way to a Permit.

We are perplexed at the logic which purports to underly the pending application, as well as portions of the supporting staff report. Much is made of the contention that the hillside in question previously was graded and revegetated in connection with the original development of the overall development project, and that, consequently, any impact resulting from the new proposed construction should be treated as irrelevant. The downslope residents were impacted once already by land form and aesthetic changes in connection with development of the lots above them, including the one in question here. Certainly the fact that they have been impacted previously should not be permitted to act as a bootstrap to compel them to suffer further from an even more intrusive construction project.

5. The Proposed Project Would Violate Restrictions Placed on the Lot by the City.

The applicant's lot is traversed by a gated easement established as an emergency access route pursuant to a General Covenant and Agreement with the City of Los Angeles pursuant to the City's tract approval conditions. By the terms of that covenant, a copy of which is attached, that right-of-way, which separates the proposed tennis court platform site from the upper portion of the lot, is closed to non-emergency use, including construction traffic. That issue did not surface in the City's Approval in Concept, but is sure to arise prior to issuance of grading or building permits. Consequently, even if the Coastal Commission were to approve the pending application, the applicant would have no practical means of actually constructing the proposed project. Presumably, it is not the practice of the Commission to issue permits for activities which are known in advance to be infeasible from a regulatory standpoint.

6. There Are No Public Policies Supporting Approval of the Application.

Approval of this application would run counter to well-established public policies relating to hillside preservation, protection of viewsheds and minimizing grading in sensitive locations. This is strictly a case of one private landowner seeking to improve his property at the esthetic expense of his neighbors. Interestingly, the applicant is not even placing the proposed construction on the same lot with his own residence. Rather, he wishes to do this on an adjacent lot, on which he already is

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in the process of constructing a swimming pool and related amenities – essentially a private playground. There is no public policy which justifies approval of this application for such a purpose.

For the reasons described above, we urge you to deny the application. Thank you for your consideration.

Very truly yours,

JENKENS & GILCHRIST, LLP



Cary D. Lowe

CDL:js

Enclosures

cc: Peter Douglas, Executive Director, California Coastal Commission
Aaron McLendon, Coastal Program Analyst, California Coastal Commission

