

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

RECORD PACKET COPY**Fr13a**

Filed: 8/20/2002
49th Day: 10/8/2002
180th Day: N/A
Staff: CP-LB
Staff Report: 1/17/2003
Hearing Date: February 7, 2003
Commission Action:

**STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Denied

APPEAL NUMBER: A-5-PPL-02-282

APPLICANT: Ronald Swepston
APPELLANT: Ronald Swepston

AGENT: Pamela S. Schmidt of Jeffer, Mangels, Butler & Mamaro LLP

PROJECT LOCATION: 649 N. Resolano Drive (Portion Lot 9, Block 1, Tract 10175), Pacific Palisades, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Los Angeles approval of Local Coastal Development Permit Application No. ZA-2001-5337 for construction of a three-level, 4,700 square foot single family residence on a vacant 9,150 square foot hillside lot (RE15-1-H Zone). An unquantified amount of grading would be necessary to carry out the proposed development.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the appeal raises **no substantial issue**. The local government's denial of the local coastal development permit for the proposed development raises no substantial issue with regards to the Chapter 3 policies of the Coastal Act. The local government's denial of the coastal development permit is correctly based on its adopted findings which state that the proposed development would negatively affect public views, create hazardous traffic and pedestrian situations, and could not be found to conform with Chapter 3 of the Coastal Act. The City also did not certify Mitigated Negative Declaration (ENV-2001-5338-MND) for CEQA compliance and found that the proposed project would not conform to the requirements of the City's hillside ordinance. **The motion to carry out the staff recommendation is on Page Four.**

The applicant/appellant disagrees with the staff recommendation, claiming that the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections. The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles Local Coastal Development Permit Application No. ZA-2001-5337.
2. Geologic and Soils Engineering Exploration Report, by Grover, Hollingsworth and Associates, Inc, November 2, 2001 (GH10169-G).

I. APPELLANT'S CONTENTIONS

The applicant, Ronald Swepston, has appealed the City of Los Angeles denial of Local Coastal Development Permit No. ZA-2001-5337 for a proposed single family residence on a vacant hillside lot situated in the Pacific Palisades area (See Exhibits). The applicant's grounds for the appeal are that the proposed project is consistent with the Coastal Act, but the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections (Exhibit #4, p.3). The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

II. LOCAL GOVERNMENT ACTION

- 2/14/2002 The City of LA Planning Dept., Zoning Administrator holds a public hearing for Local Coastal Development Permit Application No. ZA-2001-5337.
- 4/19/2002 The City of LA Planning Dept., Zoning Administrator issues letter approving with conditions Local Coastal Development Permit Application No. ZA-2001-5337.
- 5/2/2002 Applicant Ronald Swepston appeals the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337.
- 5/3/2002 Miramar Homeowners' Assoc., represented by Audrey Ann Boyle, appeals the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337.
- 5/3/2002 Neighbors Marc & Louise Schmuger, represented by Irell & Manella LLP (Alan J. Abshez, Esq) appeal the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337.
- 6/19/2002 The West Los Angeles Area Planning Commission holds a public hearing for the appeals of Local Coastal Development Permit Application No. ZA-2001-5337.
- 7/16/2002 The West Los Angeles Area Planning Commission issues its determination to: a) DENY the appeal by applicant; b) GRANT the appeals by the opponents; c) OVERTURN the action of the Zoning Administrator approving Local Coastal Development Permit Application No. ZA-2001-5337; d) DENY Local Coastal Development Permit Application No. ZA-2001-5337; e) MODIFY the Zoning Administrator's findings; and f) NOT ADOPT Mitigated Negative Declaration (ENV-2001-5338-MND) for the proposed development (See Exhibit #5).

- 7/25/2002 The Commission's South Coast District office receives the City's Notice of Final Action for the City's denial of Local Coastal Development Permit Application No. ZA-2001-5337, and establishes the 20-working day appeal period, which ends on August 22, 2002.
- 8/20/2002 The Commission's South Coast District office receives the appeal by Applicant Ronald Swepston (A5-PPL-02-282) appealing the City's denial of Local Coastal Development Permit Application No. ZA-2001-5337 (See Exhibit #4).
- 8/20/2002 The Commission's South Coast District office notifies City of the appeal, and requests copies of the City's file (all relevant docs).
- 9/9/2002 The Commission opens and continues the public hearing on Appeal A5-PPL-02-282. The Commission cannot act on the appeal because City has not yet sent its file to South Coast District office.
- 12/10/2002 The Commission's South Coast District office sends the City a second notice of the appeal, and again requests copies of the City's file (all relevant docs).
- 12/20/2002 The Commission's South Coast District office receives a copy of the City's file.
- 1/17/2003 The Commission's South Coast District office issues the staff report for the Commission's scheduled February 7, 2003 public hearing for Appeal No. A5-PPL-02-282.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13302-13319 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act.

After a final local action on a local coastal development permit, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission (Coastal Act Section 30602).

The appeal and local action are then analyzed to determine if a substantial issue exists as to the conformity of the project to Chapter 3 of the Coastal Act [Section 30625(b)(1)]. If the Commission finds that the appeal raises a substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter.

At this point, the Commission may decide that the appellants' contentions raise no substantial issue of conformity with the Coastal Act, in which case the action of the local government stands. Or, the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Section 13114.

IV. DUAL PERMIT JURISDICTION

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a "dual" coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required.

The proposed development is not located within the *Dual Permit Jurisdiction*.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to whether the approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

Staff recommends a **YES** vote on the following motion:

MOTION:

*"I move that the Commission determine that Appeal No. A-5-PPL-02-282 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed."*

A majority of the Commissioners present is required to pass the motion.

Resolution to Find No Substantial Issue for Appeal A-5-PPL-02-282

The Commission hereby finds that Appeal No. A-5-PPL-02-282 presents no substantial issue with respect to conformity with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a three-level, 4,700 square foot single family residence on a vacant 9,150 square foot hillside lot (Exhibit #6). An unquantified amount of grading would be necessary to carry out the proposed development. The site is the southern part of Lot 9, a lot that is bisected by Resolano Drive (Exhibit #3). The applicant disputes that the road to the site, Resolano drive, is a public street. He asserted at the local hearings that Resolano Drive has been withdrawn from public use. The City record states that the City Engineering Department allegedly claims that a prescriptive easement exists on the paved 20-foot wide street that has existed since the 1940s (Exhibit #5, p.11). Resolano Drive provides public access to trailhead(s) that go to Topanga State Park (Exhibit #1). The City found that the driveway to the proposed residence would create a hazardous traffic situation for pedestrians and other vehicles using Resolano Drive. In addition, the proposed project was found to have a negative effect on the public's view from Resolano Drive.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that no substantial issue exists with respect to whether the approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that no substantial issue exists.

The applicant/appellant asserts that the City misused its authority and improperly used the Coastal Act as an excuse to deny the proposed project because the neighbors strong objections. The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

As stated in the previous section of this report, the Commission's decision will be guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

First, the City's record provides a high degree of factual and legal support for its decision that the development is inconsistent with the Coastal Act. The Planning Commission's Determination Report, attached as Exhibit #5, clearly explains that proposed development does not comply with Chapter 3 of the Coastal Act because the proposed development would negatively affect public views (Section 30251) and create hazardous traffic and pedestrian situations (Sections 30253). The affected public view is identified as the view from Resolano Drive, above the project site (Exhibit #5, p.4). Resolano Drive is also where the hazardous traffic situation would be created (Exhibit #5, p.4).

Number two; the local government denied the entire development.

Three, the affected public view and the threat to public safety are significant. The residence could probably be resited or redesigned to avoid or reduce the impacts on public views. A smaller house could decrease the project's impact on the public view. In fact, the City is currently processing a new coastal development permit application that the applicant

submitted after the denial of the application subject to this appeal. It is not clear if the proposed project's impacts on public safety can be mitigated.

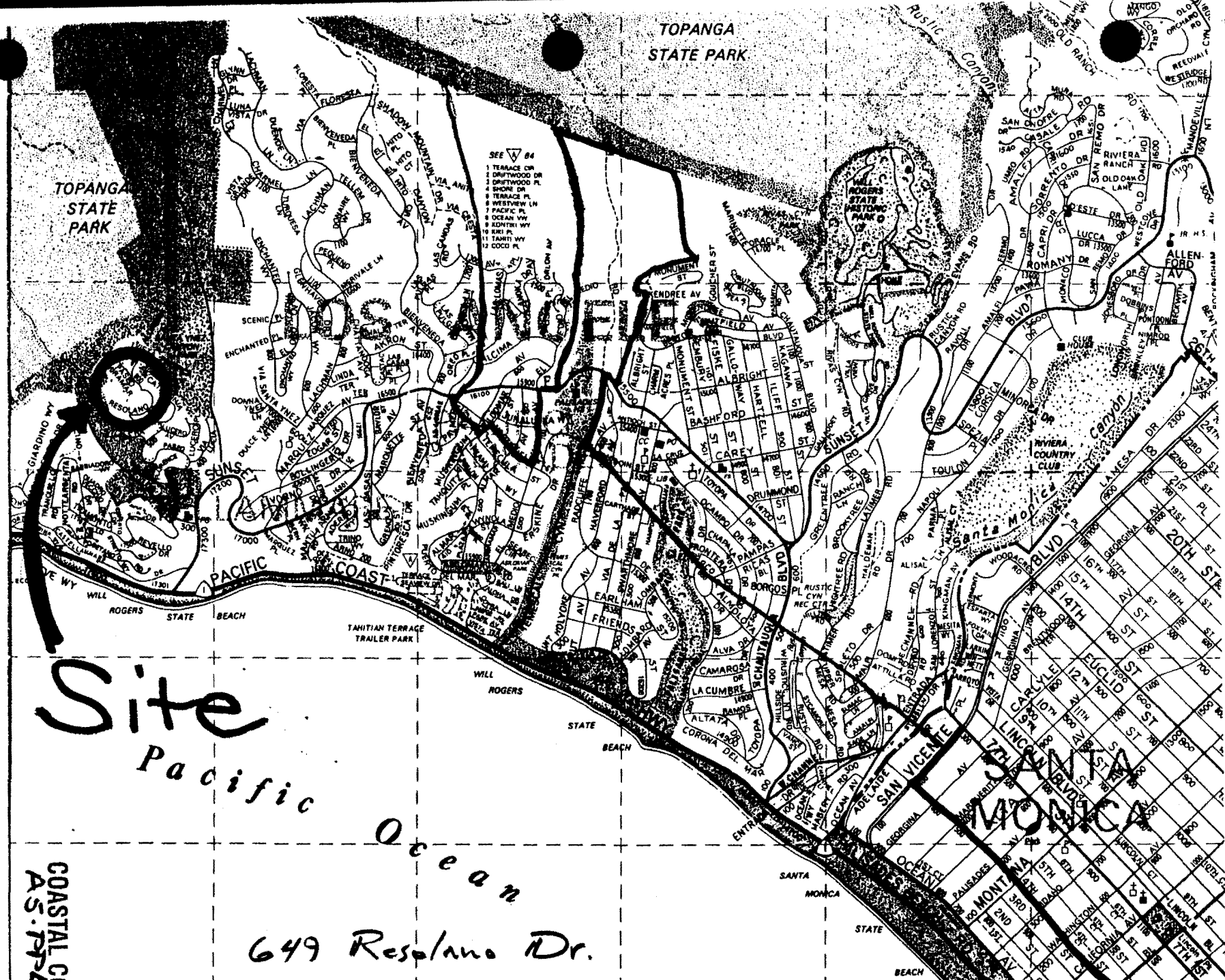
Four, the City's denial would not be a negative precedent. No coastal resources would be harmed by the denial.

Finally, the appeal does not raise any local issues, or issues of regional or statewide significance.

Therefore, in conclusion, the Commission finds that the City used proper discretion in denying the local coastal development permit finding that the proposed development does not comply with Chapter 3 of the Coastal Act. Also, the City did not adopt the MND to meet the requirements of CEQA. Therefore, the no substantial issues exists with respect to the Chapter 3 policies of the Coastal Act.

End/cp





TOPANGA STATE PARK

TOPANGA STATE PARK

Site
Pacific Ocean

649 Resolano Dr.
Pacific Palisades, Los Angeles

SEE ∇ 84

- 1 TERRACE DR
- 2 DRIFTWOOD PL
- 3 SHORE DR
- 4 TERRACE PL
- 5 WESTVIEW LN
- 6 PACIFIC PL
- 7 OCEAN WY
- 8 KONTRI WY
- 9 KRI PL
- 10 TANTY WY
- 11 COCCI PL

COASTAL COMMISSION
A.S. 77-2-02-282

EXHIBIT # 1
PAGE 1 OF 1

Grover-Hollingsworth and Associates, Inc.

Geotechnical Consultants

AS-PPL-02-282

BY SH DATE 10/01

CLIENT SWEPSTON

REF. MCGILL GEOLOGIC MAP 1982

GH 10169-G

SUBJECT MCGILL
GEOLOGIC MAP

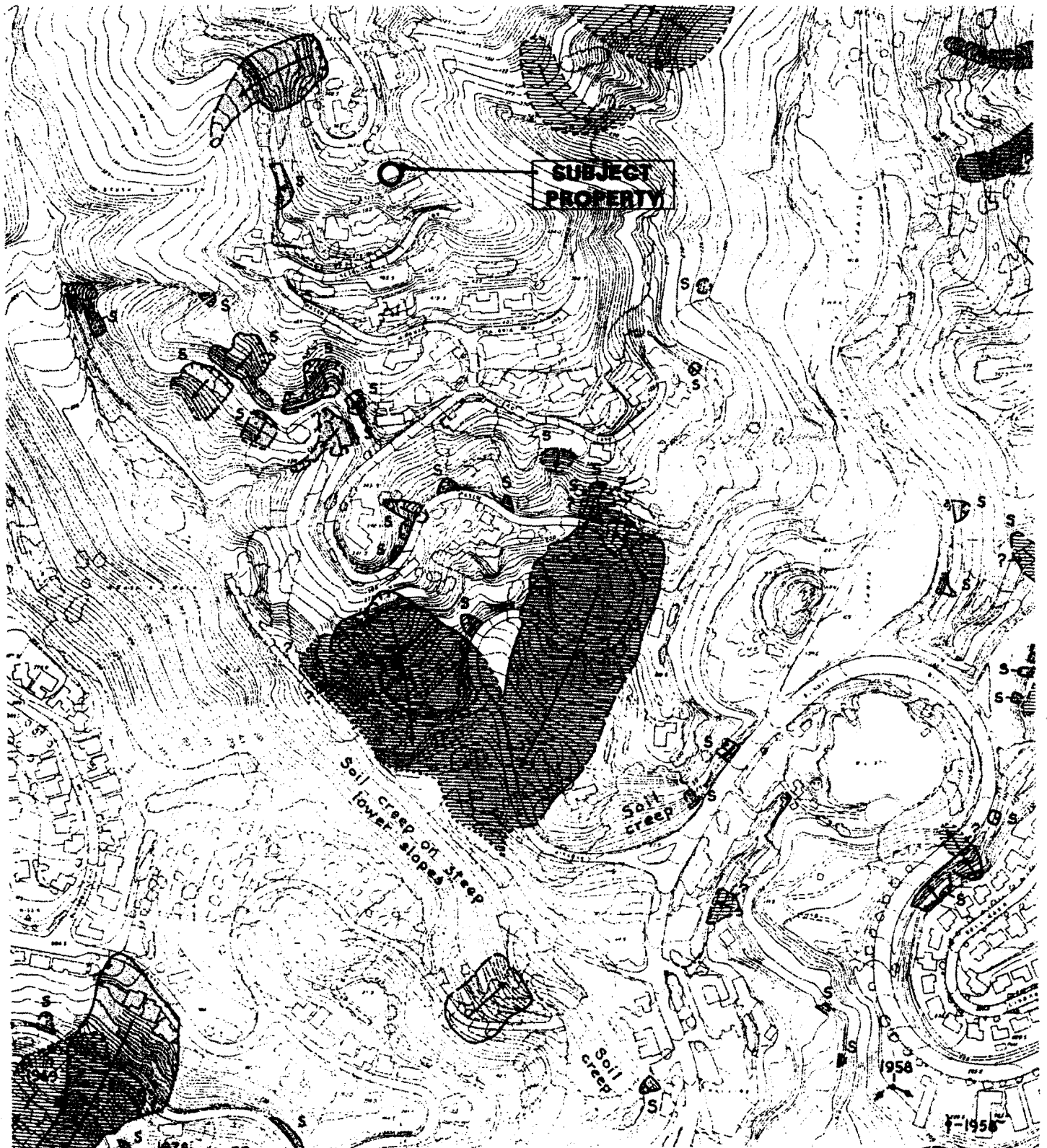
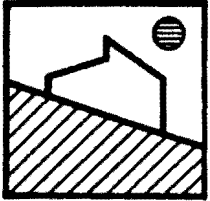











Exhibit 2

ZIMAS INTRANET

Address: 649 N RESOLANO DR
 APN: 4416019025
 Tract: TR 10175
 Block: None
 Lot: PT 9
 Arb: 1
 PIN #: 129B117 59

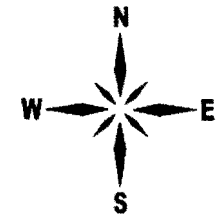
ZONING LEGEND

-  OS
-  A, RA
-  RE, RS, R1, RU, RZ, RW1
-  R2, RD, RMP, RW2, R3, R4, R5
-  ADP, C1, C1.5, C2, C4, C5, CR, CW, LASED, WC
-  CM, MR, CCS, M1, M2, M3, SL
-  P, PB
-  PF
-  HILLSIDE



City of Los Angeles
 Department of City Planning

Scale: One Inch = 280 Feet
 Printed On: 5/3/02



COASTAL COMMISSION
 AS-PPL-02-282

EXHIBIT # 3
 PAGE 1 OF 1

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
(Commission Form D)

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Ronald Sweepston
P.O. BOX 334
Pac. Pal. CA 90272 (310) 459-3505
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: West Los Angeles Area Planning Commission

2. Brief description of development being appealed: Single-FAMILY house

3. Development's location (street address, assessor's parcel no., cross street, etc.): 649 N. Resolano Dr. Pac. Pal. CA 90272

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: See Attachment B

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-PPL-02-282

DATE FILED: 8.20.02

DISTRICT: South Coast/Long Beach

H5: 4/88

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 3

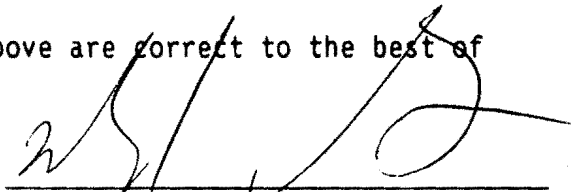
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See ATTACHMENT A

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date 8/14/2002

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

COASTAL COMMISSION

Attachment A

The City improperly used the Coastal Act as an excuse to deny the permit for this single family house which conforms to all City zoning and building code requirements. In particular, the neighbors in the area strongly objected to the construction of any home on this lot and convinced the City to (mis)use its authority under the Coastal Act to deny the permit.

The only possible issue implicated by the Coastal Act deals with an alleged view that occupants of a vehicle traveling along the upper portion of Resolano Drive might see. However, as conditioned by the Associate Zoning Administrator, the proposed home would preserve even this dubious coastal view. Thus, the City was not advancing any goals of the Coastal Act when it denied this permit to build a single family house.

Indeed, in its zeal to use the Coastal Act to deny this project, the City relied on the special coastal provision that deals with development between the nearest public road and the sea or shoreline. (See page 4, Paragraph E of City division).

The misuse of the Coastal Act by the City to deny a project that conforms to the Act, and also conforms in all respects to the City's zoning and building code only serves to weaken that act and should not be tolerated by the Commission. The Applicant asks that the Coastal Commission overturn the City's denial of the Coastal Development Permit.

A5-PFL-02-282
COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 3



West Los Angeles Area Planning Commission

200 North Spring Street, Room 532, Los Angeles, CA 90012-4801 (213) 978-1300

Website: www.cityofla.org/PLN/index.htm

DETERMINATION OF THE WEST LOS ANGELES AREA PLANNING COMMISSION

Mailing Date: July 16, 2002

Case No.: ZA 2001-5337(CDP)-A3

COASTAL DEVELOPMENT PERMIT

CEQA: ENV 2001-5338-MND

Location: 649 N. Resolano Dr.

Council District: 11

Plan Area: Brentwood-Pacific Palisades

Zone: RE15-1-H

D.M.: 129 B 117

Legal Description: Portion of Lot 9, ARB 1, Tract 10175

Applicant: Ronald Swepston

Appellant: A1) - Ronald Swepston

A2) - Miramar Homeowners' Association/Audrey Ann Boyle (Representative)

A3) - Marc and Louise Schmuger/Irell & Manella, LLP, Alan J. Abshez, Esq. (Representative)

At the meeting on June 19, 2002, the West Los Angeles Area Planning Commission:

Denied the Appeal by the Applicant (A1)

Granted the Appeals by the Miramar Homeowners' Association (A2) and Marc and Louise Schmuger/Irell & Manella, LLP (A3)

Overturned the action of the Zoning Administrator

Denied the Coastal Development Permit

Modified the Findings of the Zoning Administrator

Did no adopt ENV 2001-5338-MND

This action was taken by the following vote:

Moved: Ritter Simon

Seconded: Krisiloff

Ayes: Rodman

Absent: Hall

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COASTAL COMMISSION

Effective Date:

Coastal Development Permit effective at the City level upon the mailing of this report

Appeal Status:

Coastal Development Permit is not further appealable at City level but appealable only to the California Coastal Commission - South Coast District office California Coastal Commission upon receipt and acceptance of this Determination will establish start of the 20-day appeal period

~~Greg Bartz, Commission Executive Assistant~~
West Los Angeles Area Planning Commission

Attachment(s): Findings,

cc: File Distribution

COASTAL COMMISSION
A5-PPL-02-282

EXHIBIT # 5

PAGE 1 OF 12

WEST LOS ANGELES AREA PLANNING COMMISSION DETERMINATION REPORT

BACKGROUND, APPEAL REQUEST AND PROJECT DESCRIPTION:

1. On April 19, 2002, Zoning Administrator Anik Charron, pursuant to Los Angeles Municipal Code Section 12.20.2 approved a Coastal Development Permit for the construction, use and maintenance of a maximum 4,7000 square-foot single-family dwelling in the RE15-1-H Zone.
2. The Applicant (A1) appealed certain Conditions, elements or parts of the Zoning Administrator's approval and Appellants A2 and A3 , aggrieved residents, appealed the entire determination of the Zoning Administrator's approval.

FINDINGS:

1. The Commission determined that the Zoning Administrator did err or abuse her discretion.
2. The Mandatory Findings of the Zoning Administrator were modified by the Commission and are delineated as follows:
 - A. **The development is not in conformity with Chapter 3 of the California Coastal Act of 1976**

Chapter 3 of the California Coastal Act provides standards by which "the permissibility of proposed developments subject to the provision of this division are determined". In the instant case, the Coastal Act provides that: "New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources".

The project site is presently vacant, and proposed to be developed with a single-family home, consistent with the plan land use designation, the existing zoning and other development in close proximity. However, public views of the coastal area will not be preserved by the redesigned project. Vehicular access to the site will not be available in a safe manner. Hazardous situations will occur due to the number of blind curves along Resolano Drive. **The project will not be in compliance with all the applicable requirements of the Hillside Ordinance.** Grading and geological stability information of the site should be submitted for consideration in light of the fact that the area is considered to be unstable. This information was not provided.

Also, the original project plans were not approved. There should be a new public hearing with an opportunity for the community to provide input on the revised plans that were not approved. The public has a right pursuant to the California Environmental Quality Act (CEQA) to review and comment upon the adequacy of the environmental analysis of the Applicant's actual project.

- B. **The permitted development will prejudice the ability of the City of Los Angeles to prepare a local coastal program that is in conformity with Chapter 3 of the California Coastal Act of 1976.**

Currently, there is no adopted Local Coastal Program (LCP) for this portion of the Coastal Zone; in the interim, the adopted Brentwood-Pacific Palisades Community Plan serves as the functional equivalent in conjunction with any pending LCP under consideration. The adopted Brentwood-Pacific Palisades District Plan designates the subject property for Very Low II Density Housing with corresponding zones of RE15 and RE11 and Height District No. 1. However, the property is a substandard non-conforming lot, which has always been regarded as undevelopable. There are literally thousands of such non-conforming lots in the City's hillside areas. The City's minimum zoning criteria do not address protection necessary to mitigate the impact of developing such lots. The City must strictly scrutinize applications to develop such lots because additional conditions and mitigations may be required to mitigate the impacts of developing them and thereby avoid planning blight.

- C. **The Interpretive Guidelines for Coastal Planning and Permits as established by the California Coastal Commission (revised October 14, 1980) and any subsequent amendments thereto have been reviewed, analyzed and considered in light of the individual project in making this determination.**

The following Guideline standards are relevant to the project:

- 1.) Parking.

Only two parking spaces are required by the Guidelines. However, due to its location in a designated Hillside area, the project will have to be in conformance with the much stricter requirements of the Hillside Ordinance. In this instance, at a maximum of 4,700 square feet of floor area, the project will have to provide the two basic covered spaces required by for every single-family dwelling plus one additional space for each 1,000 square feet of floor area in excess of 2,400 square feet (Section 12.21-A,17(h) of the Municipal Code), that is 5 spaces for this project.

- 2.) Road construction or improvements.

"Road construction or improvement should be based on the suitability of the area to increased access."

As detailed above, Resolano Drive is a 30-foot easement improved barely over 20 feet in the vicinity of the project site, qualifying the roadway as a Standard Hillside Limited Street. As required under Section 12.21-A,17(e)(1), the applicant is required by the City Engineer to dedicate at least one-half of the width of the street for the full width of the frontage of the lot to Standard Hillside Limited Street dimensions, which in this instance amounts to providing a 14-foot wide half roadway. However, Resolano Drive has numerous "blind curves" which creates hazardous conditions for motorists. Dedication and improvements do not appear to alleviate this condition.

3.) Public view preservation.

"Views to the shoreline and the Santa Monica Mountains from public roads should be preserved and protected".

As detailed above, the property offers expansive views to the south portion of the Santa Monica Bay all the way to Palos Verdes for the upper portion of Resolano Drive. As originally proposed, the third story of the dwelling would have blocked that view.

Additionally, numerous references are made in the Brentwood-Pacific Palisades District Plan to mandate the preservation of such views. However, the redesigned project will not be in conformance with the intent and objectives of the Coastal Guidelines and the District Plan.

D. The decision of the permit-granting authority has been guided by any applicable decision of the California Coastal Commission pursuant to Section 30625(c) of the Public Resources Code.

This section of the California Public Resources Code provides that "prior decisions of the Coastal Commission, where applicable, shall guide local governments in their actions in carrying out their responsibility and authority under the Coastal Act of 1976". This request conforms with such known applicable decisions.

E. If the development is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development shall be in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.

The development is located along an access that is questionable. Numerous blind curves create hazardous conditions and jeopardize the safety of residents in the area..

F. An appropriate environmental clearance under the California Environmental Quality Act has not been granted.

On December 12, 2001, a mitigated negative declaration was granted, under ENV-2001-5338-MND, which is inadequate to satisfy the requirements of the California Environmental Quality Act of 1970, as amended for the revised project.

G. Mello Act

The project if approved would be automatically exempt from the Mello Act's requirements concerning inclusionary residential units because it does not consist of the construction of more than nine residential units (one single-family home), and does not entail the demolition of any residential unit.

- H. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 154,405, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding. (No shading)
- I. On December 19, 2001, the City Planning Department Environmental Staff Advisory Committee (ESAC) issued Mitigated Negative Declaration No. ENV 2001-5338-MND (Article V - City CEQA Guidelines). The Commission did not adopt that action. The records upon which this decision is based are with the Environmental Review Section in Room 763, 200 North Spring Street.
- J. Fish and Game: The subject project, which is located in Los Angeles County, will not have an impact on fish or wildlife resources or habitat upon which fish and wildlife depend, as defined by California Fish and Game Code Section 711.2.
3. The Commission arrived at its determination based upon its review of available records and evidence contained in the subject and related files and upon testimony and evidence provided at the Commission's hearing on the subject matter.

SUMMARY OF THE HEARING:

Zoning Administrator Anik Charron summarized the request, the facts surrounding the case, the action taken, and the Findings made. She indicated:

- Project approved with modifications;
- Site is a pie-shaped, steep-sloped lot with a coastal view;
- Resolano Drive was a cul-de-sac;
 - landslide changed access;
 - improved with a 20-foot street;
 - has blind curves;
- Property re-zoned from R1 to RE15;
- Site subject to the Hillside Ordinance;
- Two driveways are proposed;
- Issues and concerns;
 - preservation of coastal views;
 - substandard driveways and number of driveways;
 - street easement;
 - amount of grading;
 - no grading plans prepared;
 - authority of regulations;
 - approving a design concept;
 - Findings for approval, not design of project;
 - access;
 - application of the Hillside Ordinance;
 - height;
- Recommends approval of the request based upon;
 - Findings made in the affirmative;
 - height of structures under the Hillside Ordinance;

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Determination Report: 649 N. Resolano Dr.

- development is in compliance with the Los Angeles Municipal Code (LAMC) and there are no other discretionary actions being requested;
- final design of structures needs to be approved; and
- approval subject to Conditions of Approval.

The Applicant (A1), his Representatives and son in support of the proposed project indicated:

- Lot is legally divided;
- Street withdrawn from public use;
 - City records indicate Resolano Dr. is not a public street;
- House is designed to;
 - comply with the LAMC;
 - step down the hill in which the top of the hills is the area of concern;
 - be a home for Applicant's family;
 - consider the view corridor which is protected by the Hillside Ordinance;
 - take into consideration eleven months of research;
 - be smaller than their neighbors' homes;
 - be less than a three-story house;
 - basement determination questionable when basement is "buried" by more than 50%;
 - take into consideration architect's 15 years of experience;
- Other lots in the area were granted variances;
- Willing to reduce the dwelling's square footage;
- Unfair to be judged differently;
- Should be allowed same development rights of other landowners; and
- Five parking spaces required by LAMC necessitates having two driveways where you don't need to back out into the road.

The Appellants and their Representative, a Representative from the Council Office of the District and residents in the area who oppose the requested project indicated;

- Original application lacked details of design;
- Request should be denied, thereby overturning the action of the Zoning Administrator;
 - opposed by the Council Office and homeowners in the area;
 - Resolano Dr.;
 - never intended to be a public street;
 - less than 20 feet wide;
 - questionable if it is a public street;
 - steep, narrow street;
 - has blind curves;
 - utilized as access to trails for hikers and bikers;
 - land never was intended to be developed;
 - site is undevelopable;
 - CCR's restricted original lot to be developed with one house only but original lot was "subdivided" by a road through the lot;
 - this "fragmented" lot is not the same as other lots in the area;
 - project to be redesigned;

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- no plans for the Commission or community to comment and approve or whether plans comply with LAMC;
- no topographic maps available;
- options available;
- Findings can't be made;
- new environmental review needed;
- no grading study available;
- grading over 1,000 cubic yards necessitates a review;
- Applicant failed to identify project issues such as rear yard setback;
- a new hearing needed to address revised (new) project;
- over a dozen residents present raised hand opposing project request;
- developer is not the owner of the property;
- proposed driveway(s) will create a hazardous situation;
- views obstructed;
- development contrary to CCR's;
- CCR's restricts developments from being oversized; and
- City should scrutinize developments on this type of property.

After closing the public hearing, the Commission deliberated and the following points were made:

- Unsure of the application before the Commission;
 - Building and Safety determined proposed structure will be a three-story house;
 - important to have a new public hearing with community input for a revised (new) project (public has a right to review plans);
 - site stability information was not provided to the Commission for their consideration;
 - area considered to be unstable;
 - project before the Commission is not what was originally proposed;
 - Applicant appealing redesign of the project;
- Dedication but no improvements required;
- Not comfortable to waive mitigations;
- Reducing amount of building square footage is a move in the right direction;
- Preserving the public view is a mandate of the Coastal Act;
 - Applicant is not complying with a 42-foot view corridor;
- Height of the structure is more important than the number of stories of the house;
- Difficult site to develop;
- Can't make the necessary Findings; and
- Can't adopt the mitigated negative declaration (MND);

After deliberating the Commission unanimously passed a motion to:

- Deny the appeal by the Applicant, Ronald Swepston (A1)
- Grant the appeal by the Miramar Homeowners' Association/Audrey Ann Boyle (Representative) (A2)
- Grant the appeal by Marc and Louise Schumger/Irell and Manella, LLP, Allan J. Abshez, Esq. (Representative) (A3), thereby;
 - overturning the action of the Zoning Administrator ;
 - denying the Coastal Development Permit;

COASTAL COMMISSION

Determination Report: 649 N. Resolano Dr.

- finding the Zoning Administrator erred in her decision;
- Modify the Findings of the Zoning Administrator to include;
 - Applicant's project is not in conformity with view preservation of the California Coastal Act;
 - grading concerns due to instability of the area;
 - safety and hazard concerns of Resolano Dr.;
 - inadequate Mitigated Negative Declaration;
 - development not in conformity with Chapter 3 of the California Coastal Act of 1976;
 - Finding 3 (of the Zoning Administrator's determination) /Finding C (of the Commission's determination) can't be made;
 - comments made during Commission's deliberation;
 - Findings of Allan J. Abshez per Exhibit "A" in letter dated June 10, 2002; and
- Not adopt ENV 2001-5338-MND.

APPEAL RIGHTS:

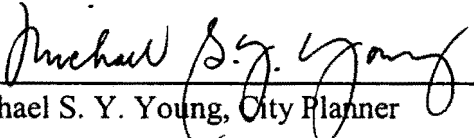
Coastal Development Permit is appealable. The determination in this matter is only appealable to the California Coastal Commission. Said determination by the West Los Angeles Area Planning Commission will become effective on the date indicated on the front page of this report unless an appeal is filed with the California Coastal Commission in accordance with their procedures. They can be reached at:

California Coastal Commission - South Coast District Office
200 OceanGate - 10th Floor
Long Beach, CA 90802
(562) 590-5071
Attention: Pam Emerson / Charles Posner

Furthermore, Coastal Development Permits are subject to revocation if approved, as provided in Section 12.20.2-J of the Los Angeles Municipal Code, as authorized by Section 30333 of the California Public Resources Code and Section 13105 of the California Administrative Code.

A copy of this action will be sent to the California Coastal Commission. Unless an appeal is filed with the California Coastal Commission before 20 working days have expired from the date the City's determination is deemed received by such Commission, the City's action shall be deemed final.

Exhibit No. A-1: Applicant's plot plan (file copy only).



Michael S. Y. Young, City Planner

MSY:gb

COASTAL COMMISSION

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IRELL & MANELLA LLP

A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

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South Coast Region

DEC 20 2002

June 10, 2002

CALIFORNIA
COASTAL COMMISSION

VIA FACSIMILE AND U.S. MAIL

West Los Angeles Planning Commission
City of Los Angeles
200 North Spring Street, Suite 532
Los Angeles, California 90012

RECEIVED
CITY OF LOS ANGELES

JUN 11 2002

CITY PLANNING DEPT.
WEST LOS ANGELES
AREA PLANNING COMMISSION

Re: ZA 2001-5337(CDP)-A3; 649 North Resolano Drive

Honorable Commissioners:

We represent Marc and Louise Shmuger (the "Shmugers"), who own the home at 633 North Resolano Drive adjacent to the lot which is the subject of the above-referenced application. We are writing to respond to the appeal of Associate Zoning Administrator Anik Charron's April 19, 2002 decision letter filed by the applicant, Mr. Ron Swepston. We have also submitted a separate letter of even date which explains that Ms. Charron in fact (and properly) rejected Mr. Swepston's plans, but mischaracterized her decision as an 'approval.' Mr. Swepston's application should have been formally denied for the reasons discussed in such letter.

As explained below, there is no merit whatsoever to the appeal filed by Mr. Swepston.

1. Mr. Swepston Is Not the Owner of the Property

Mr. Swepston is not the owner of 649 Resolano Drive as he falsely contends in his appeal. He has placed the property under "option" to see what development rights he can extract from the City. If Mr. Swepston does not obtain the development rights he seeks for the property, he can simply walk away from his option to buy it.

Developers like Mr. Swepston seek out fragment lots that were considered undevelopable by their owners, the community and the City. They then tie-up these substandard lots at low or no cost, and try to force the City to give them the same development rights that are meant for lots that been properly subdivided by the City and comply with the City's zoning standards. Because such lots were never meant to be developed, and because the City's zoning rules do not apply to them, the City should strictly scrutinize development proposals for them. The City should formally deny Mr. Swepston's

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application for the reasons Ms. Charron has already identified in her decision so that so that the environmental values of the community and coastal resources can be preserved in accordance with the Community Plan, the Coastal Act, and CEQA. Speculative efforts – such as Mr. Swepston's – to exploit hillside properties long recognized as 'valueless' and 'undevelopable' should not be rewarded.

2. No City Agency Approved Mr. Swepston's Plans

In her decision letter, Ms. Charron found that Mr. Swepston's plans and supporting materials were inadequate, and that his proposed project would not comply with hillside regulations, would result in circulation and traffic hazards, destroy a magnificent public coastal vista, and create a risk of landslides.

In his appeal, Mr. Swepston contends that other City agencies approved his plans. Yet he fails to produce any evidence of such approvals whatsoever. In any event, it is Ms. Charron's responsibility (initially) to determine the compliance of Mr. Swepston's plans with hillside and Coastal Act requirements. She has determined Mr. Swepston's plans do not comply in numerous respects and that a "major redesign" will be required together with a submission of "detailed site plans, plot plan, floor plans and elevations, showing the exterior boundaries of the property, topographic survey adjoining streets, location of all proposed structures, parking spaces, driveways, and other improvements or yards..." See Condition 2.

In addition, at page 15 of her decision Ms. Charron states that "once the project is redesigned, the necessary corrections and adjustments to the plans will have to be effected in accordance with the applicable regulations." Such adjustments include height reductions, preservation of the view corridor, increased side yards, increased front yard, lot coverage, and parking to bring about compliance with City regulations. Given all these findings, there is no basis for Mr. Swepston to contend that other City agencies have approved his plans.

3. Mr. Swepston has Erected an Illegal Spite Fence

When community members objected to the project's destruction of the existing public coastal vista of the Santa Monica Bay from Resolano Drive, Mr. Swepston responded by erecting an 8-foot tall spite fence around the property to block the view. No coastal permit was sought or obtained. Now, he argues that the fence is necessary for liability reasons. This is a specious claim. Mr. Swepston is not the owner of the property, which has been never previously been fenced. He has no liability for conditions thereon. His only purpose is to block the views that the public has long enjoyed, and to frustrate the Coastal Act's mandate that the view be preserved.

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4. A View Corridor must be Preserved Across the Property

Mr. Sweptston objects to Ms. Charron's requirement that a view corridor be included to protect the public vista of the Santa Monica Bay from Resolano Drive in accordance with the Coastal Act. Resolano Drive provides access to the State Park and is extensively traveled by members of the general public seeking coastal recreation. The vista from Resolano Drive is a major coastal resource and a significant aesthetic resource under CEQA which would have been eliminated by Mr. Sweptston's project. **Section 30251 of the Coastal Act provides that the scenic and visual qualities of the coastal area shall be considered and protected as a resource of public importance.** If new plans are prepared (Ms. Charron's decision was a de facto denial of Mr. Sweptston's plans), a view corridor must be included to protect the existing public view of Santa Monica Bay. Again, Mr. Sweptston is not the owner of the property, and if he does not wish to comply with the law, he need not buy the property.

5. Ms. Charron Properly Restricted the Driveway and its Location

Ms. Charron rejected the driveway plan for Mr. Sweptston's project and at page 11 of her decision and found that "the coupling of the steep downhill grade with the blind curve [renders] the proposed location of the main driveway of the project a **absolute certainty for numerous fatal accidents.**" Ms. Charron's decision indicates that a major redesign will be required and that the City will not accept driveways along the blind S-curve portion of the property. Mr. Sweptston objects because such restriction would impair his ability to "max-out" the property.

Ms. Charron was correct in rejecting Mr. Sweptston's proposed driveways. Resolano Drive is already a hazardous roadway overburdened with local traffic and regional traffic going to and from the State Park which it was never designed to carry. Mr. Sweptston does not have a right to compound this problem by engaging in development that would result in a continuing risk of fatal traffic accidents.

6. No Coastal Development Permit should be Approved Until the Status of Resolano Drive is Resolved

In his appeal, Mr. Sweptston contends that the Resolano Drive easement has expired and has been withdrawn from public use, and implies that he will block Resolano Drive unless he is granted the permits he seeks. The City Engineering Department maintains that Resolano Drive is a de facto or prescriptive easement. Of course, Mr. Sweptston is not the owner of the property, and has no right to do anything to change public access through Resolano Drive (which has been continuously permitted since the 1940's). Moreover, because Section 12.21.A.17(e) prohibits construction on Substandard Hillside Limited

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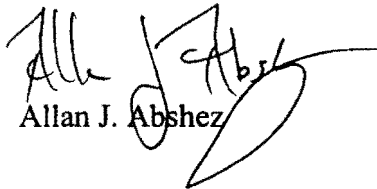
Streets unless one-half of the width the street along the lot frontage as been dedicated and improved to the full width of Standard Hillside Limited Street Dimensions (which is defined as 36 foot right-of-way including a 28 foot paved roadway and 4 feet on each side for a parkway or a sidewalk as per Bureau of Engineering Standard S-470-0 effective on November 10, 1999), no owner could develop the property unless Resolano Drive is dedicated and improved to provide a 36 foot right-of-way including a 28 foot paved roadway and 4 feet on each side for a parkway or a sidewalk. Ms. Charron's decision properly acknowledges this requirement (*see* page 17, Item 3.b and Condition 13).

Until the status of Resolano Drive is resolved – and particularly in view of Mr. Swepston's threats – no Coastal Development Permit should be granted for 649 Resolano Drive.

7. Conclusion

For all of these reasons discussed above, we respectfully request that you deny Mr. Swepston's appeal. In addition, as discussed in our other letter to the Commission of even date herewith, Ms. Charron in fact (and properly) rejected Mr. Swepston's plans. However, Ms. Charron mischaracterized her decision as an 'approval.' Mr. Swepston's application should formally have been denied for the reasons discussed in our other letter of June 10, 2002.

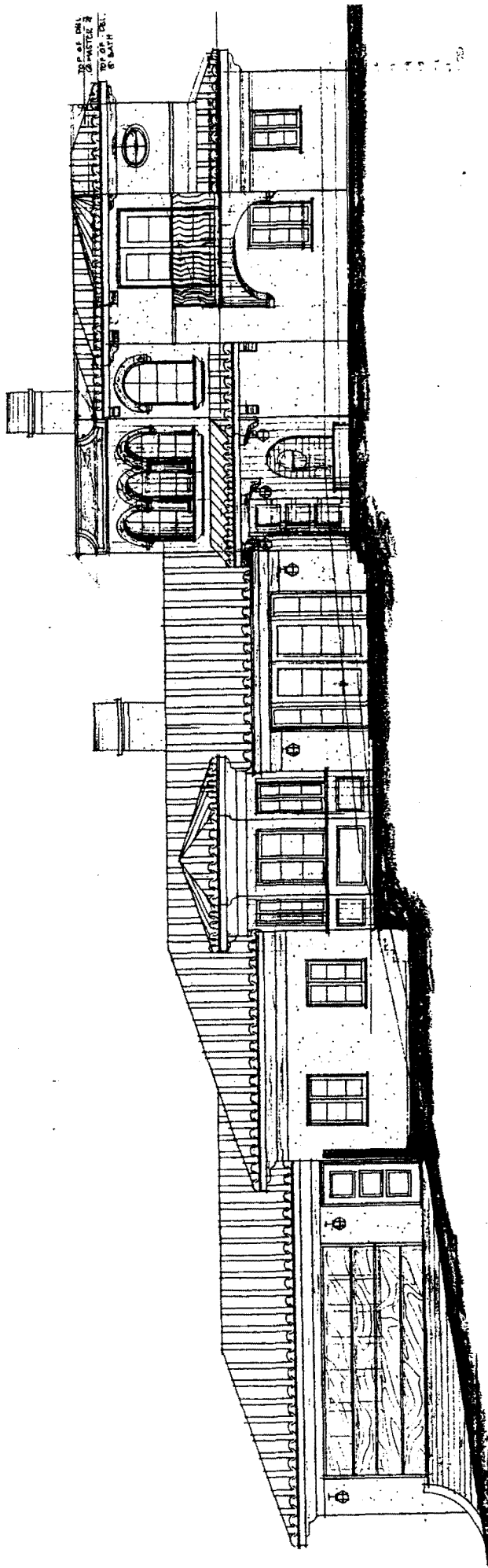
Respectfully submitted,


Allan J. Abshez

cc: Mr. & Mrs. Marc Shmuger
Councilwoman Cindy Miscikowski
Ms. Anik Charron
Sharon Siedorf-Cardenas, Esq.

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NORTH ELEVATION

649 Resolano Dr.
Pacific Palisades

