

CALIFORNIA COASTAL COMMISSION

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Commission Action:

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

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Denied

RECORD PACKET COPY

APPEAL NUMBER: A-5-PPL-03-156

APPLICANT: Ronald Sweptson

APPELLANT: Ronald Sweptson

AGENT: Law Offices of Alan Robert Block

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 denial of Local Coastal Development Permit Application No. ZA-2002-4168 for construction of a three-level, 4,400 square foot single family residence on a vacant 9,150 square foot hillside lot (RE15-1-H Zone). The proposed development requires approximately 526 cubic yards of grading.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that 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 Commission's role at the "substantial issue" phase of an appeal is not to reassess the evidence in order to make an independent determination as to consistency of the project with Chapter 3, but only to decide whether the appeal of the local government action raises a substantial issue as to conformity with those standards. In this case, the local government's findings for the denial of the coastal development permit support its determination that the proposed development does not conform to the policies of Chapter 3 of the Coastal Act. The findings state that the proposed development would negatively affect public views, create hazardous traffic and pedestrian situations, and could not be found to conform with the Chapter 3 policies 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 Seven.**

The applicant/appellant disagrees with the staff recommendation, asserting that the proposed development conforms to the Chapter 3 policies of the Coastal Act and that it is substantially identical to the development that has been permitted on the surrounding properties. The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Commission Appeal File No. A-5-PPL-02-282 (Swepston).
2. City of Los Angeles Local Coastal Development Permit Application No. ZA-2002-4168.
3. City of Los Angeles Local Coastal Development Permit Application No. ZA-2001-5337.
4. 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-2002-4168 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, which are attached to this report as pages three through five of Exhibit #4, are as follows:

- The City's denial of the local coastal development permit is not supported by the Chapter 3 policies of the Coastal Act (Exhibit #4, p.3).
- The City's denial of the local coastal development permit lacks any evidence, much less the required substantial evidence in the record, to support its decision.
- The City has misapplied and misinterpreted the applicable sections of the Coastal Act, particularly Sections 30251 and 30253.
- The City has taken and damaged the subject property for public use, without payment of just compensation in direct violation of Section 30010 of the Coastal Act.
- The City has denied the applicant the ability to build a single family residence on a legal "in fill" lot substantially identical to that existing on all of the surrounding properties, many of which have been built with Commission approval.
- The City failed to resolve conflicts in the Chapter 3 policies of the Coastal Act affecting the proposed development, including Sections 30250-30253, in the manner required by Section 30007.5 of the Coastal Act, and failed to make findings supporting its resolution of such conflicts as required by Section 30200(b) of the Coastal Act.
- The City improperly construed the provisions of the California Environmental Quality Act (CEQA).
- The West Los Angeles Area Planning Commission committed a prejudicial abuse of discretion when it denied the revised permit application.
- The applicant can not receive a "fair trial" before the West Los Angeles Area Planning Commission (Exhibit #8).

The applicant/appellant requests that the Commission overturn the City's denial of the local coastal development permit.

II. LOCAL GOVERNMENT ACTION

Note: The applicant submitted two separate local coastal development permit applications to the City of Los Angeles Planning Department for the same property: Application Nos. ZA-2001-5337 and ZA-2002-4168. The two applications proposed the same general type of project, though the second application scaled down the size in an attempt to incorporate some of the modifications that the zoning administrator had imposed on the first to reduce the impacts of the project. The processing of the applications by the City and the resulting appeals to the Coastal Commission, at times, overlapped. The following timeline includes the actions for both applications, with *the actions for Application No. ZA-2001-5337 (Appeal No. A5-PPL-02-282) shown in italics*, and **the actions for Application No. ZA-2002-4168 (Appeal No. A5-PPL-03-156) shown in bold text**. The instant appeal (**in bold text**) is an appeal of the City's denial of the second of the two applications.

- 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, which proposes the construction of a three-level, 5,300 square foot single family residence on a vacant 9,150 square foot hillside lot (RE15-1-H Zone).*
- 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 to the West Los Angeles Area Planning Commission.*
- 5/3/2002 *Miramar Homeowners' Assoc. (represented by Audrey Ann Boyle) and Neighbors Marc & Louise Schmuger (represented by Alan J. Abshez, Esq. of Irell & Manella LLP) appeal the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2001-5337 to the West Los Angeles Area Planning Commission.*
- 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 Coastal 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.*

- 7/26/2002 ^{JOS}
^{10J} The applicant submits an application form and fee to the City of Los Angeles Planning Department for Local Coastal Development Permit Application No. ZA-2002-4168, proposing to construct a three-level, 4,400 square foot single family residence on a vacant 9,150 square foot hillside lot (RE15-1-H Zone). [See Exhibit #6.]
- 8/20/2002 *The Coastal 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.*
- 8/20/2002 *The Coastal Commission's South Coast District office notifies City of the appeal, and requests copies of the City's file (all relevant docs) for Local Coastal Development Permit Application No. ZA-2001-5337.*
- 9/9/2002 *The Coastal 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.*
- 9/19/2002 The City of Los Angeles Planning Department Zoning Administrator holds a public hearing for Local Coastal Development Permit Application No. ZA-2002-4168. The applicant presented two versions (A&B) of a proposed three-level, 4,400 square foot single family residence, with the garage located near the mid-point of the Resolano Drive frontage (Exhibit #6). Version A allowed a greater side yard setback, but no view corridor. Version B partially preserved a 42-foot view corridor over the house as was required by a condition of approval in a prior coastal development permit action (Application No. ZA-2001-5337).
- 12/4/2002 (Exhibit #7) The City of Los Angeles Planning Department Zoning Administrator issues a letter approving with conditions Local Coastal Development Permit Application No. ZA-2002-4168 for the construction of a 36-foot high, three-level, 4,400 square foot single family residence. The Zoning Administrator found that neither of the applicant's proposed plan versions A or B complied with the view corridor condition (#7) of the prior coastal development permit action (Application No. ZA-2001-5337). The Zoning Administrator granted conditional approval for a "building envelope" controlling views, number of stories, building area, and yard setbacks.
- 12/20/2002 *The Coastal Commission's South Coast District office receives a copy of the City's file for Local Coastal Development Permit Application No. ZA-2001-5337.*
- 12/18/2002 Miramar Homeowners' Assoc. (represented by Audrey Ann Boyle) and neighbor Marc Schmuger (represented by Alan J. Abshez, Esq. of Irell & Manella LLP) appeal the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2002-4168 to the West Los Angeles Area Planning Commission.

- 12/19/2002 Applicant Ronald Swepston appeals the Zoning Administrator's conditional approval of Local Coastal Development Permit Application No. ZA-2002-4168 to the West Los Angeles Area Planning Commission.
- 2/7/2003 *After a public hearing on the matter, the Coastal Commission determines that Appeal No. A5-PPL-02-282 raises no substantial issue, and does not overturn the City's denial of Local Coastal Development Permit Application No. ZA-2001-5337.*
- 2/19/2003 The West Los Angeles Area Planning Commission holds a public hearing for the appeals of Local Coastal Development Permit Application No. ZA-2002-4168.
- 3/12/2003 The West Los Angeles Area Planning Commission issues its determination to: a) GRANT the appeals by the opponents; b) DENY the appeal by applicant; c) OVERTURN the action of the Zoning Administrator approving Local Coastal Development Permit Application No. ZA-2002-4168; d) DENY Local Coastal Development Permit Application No. ZA-2002-4168; e) MODIFY the Zoning Administrator's findings by adopting the findings of the previous case on the site under ZA-2001-5337; and f) NOT ADOPT Mitigated Negative Declaration (ENV-2001-5338-MND) for the proposed development. [See Exhibit #5.]
- 4/14/2003 The Coastal 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-2002-4168, and establishes the 20-working day appeal period, which ends on April 14, 2003.
- 4/14/2003 The Coastal Commission's South Coast District office receives the appeal by Applicant Ronald Swepston (A5-PPL-03-156) appealing the City's denial of Local Coastal Development Permit Application No. ZA-2002-4168. [See Exhibit #4.]
- 4/16/2003 The Coastal Commission's South Coast District office notifies City of the appeal, and requests copies of the City's file (all relevant docs) for Local Coastal Development Permit Application No. ZA-2002-4168.
- 5/6/2003 In Monterey (California) the Coastal Commission opens and continues the public hearing on Appeal A5-PPL-03-156. The Commission cannot make a determination on the substantial issue question because it has not yet received the City's record on the matter (the permit application file).
- 5/6/2003 The Coastal Commission's South Coast District office in Long Beach receives a copy of the City's file for Local Coastal Development Permit Application No. ZA-2002-4168.
- 5/28/2003 The Coastal Commission's South Coast District office issues the staff report for the Commission's scheduled June 11, 2003 public hearing for Appeal No. A5-PPL-03-156.

- 6/4/2003** **The Coastal Commission's South Coast District office receives the applicant's waiver of the 49-day time limit for hearing Appeal No. A5-PPL-03-156.**
- 6/6/2003** **The Coastal Commission's South Coast District office receives the applicant's written request to postpone the Commission's scheduled June 11, 2003 public hearing for Appeal No. A5-PPL-03-156.**
- 7/7/2003** **The Coastal Commission's South Coast District office receives the applicant's written request to schedule the public hearing for Appeal No. A5-PPL-03-156 during the Commission's September 2003 meeting in Eureka.**
- 8/21/2003** **The Coastal Commission's South Coast District office issues the staff report for the Commission's scheduled September 11, 2003 public hearing for Appeal No. A5-PPL-03-156.**

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 13301-13325 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. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After a final local action on a local coastal development permit application, 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. [Cal. Pub. Res. Code § 30602.]

Any appeal of the local action is then analyzed to determine if a substantial issue exists as to conformity with Chapter 3 of the Coastal Act (Sections 30200-30265.5). [Cal. Pub. Res. Code § 30625(b)(1).] Unless the Commission finds that the appeal raises no substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.]

At this point, the Commission may decide that the appellants' contentions raise no substantial issue as to conformity with Chapter 3 of 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 Chapter 3 of 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 Sections 13114 and 13057-13096 of the Commission's regulations.

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 local government action conforms with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to California Public Resources Code 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-03-156 raises **NO SUBSTANTIAL ISSUE** as to conformity with Chapter 3 of the Coastal Act."*

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

Resolution to Find No Substantial Issue for Appeal A-5-PPL-03-156

The Commission hereby finds that Appeal No. A-5-PPL-03-156 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, 4,400 square foot single family residence on a vacant 9,150 square foot hillside lot (Exhibit #6). Approximately 526 cubic yards 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 a prescriptive easement exists on the paved 20-foot wide street that has existed since the 1940s. 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 appeal raises no significant question." 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 relevant provisions of 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 local government action conforms with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. Substantial Issue Analysis

The applicant/appellant asserts that the proposed development conforms to the Chapter 3 policies of the Coastal Act and that it is substantially identical to the development that has been permitted on the surrounding properties (Exhibit #4, Attachment A). The applicant/appellant therefore requests that the Commission overturn the City's denial of the permit.

As indicated above, the standard of review is only whether the appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act, Cal. Pub. Res. Code §§ 30200-265.5, (hereinafter "Chapter 3").¹ [Cal. Pub. Res. Code § 30625(b)(1); 14 C.C.R. § 13321.] The appeal raises no substantial issue as to conformity with Chapter 3.

The Determination Report issued by the West Los Angeles Area Planning Commission ("Planning Commission") shows that the Planning Commission applied the policies of Chapter 3² and concluded that the development, as proposed, would run afoul of at least two of those policies – one related to the protection of scenic and visual qualities, and the other related to the safety of new development (see Exhibit #5).³ Moreover, the Planning Commission's analysis appropriately interpreted the standards established by those policies.⁴

The Planning Commission also appropriately relied upon the Coastal Commission's Interpretive Guidelines, adopted pursuant to Section 30620(a)(3) for the explicit purpose of assisting local governments "in determining how the policies of [the Coastal Act] shall be applied in the coastal zone prior to the certification of local coastal programs."

Finally, the Planning Commission's conclusion regarding the inconsistency of the proposed development with these policies was supported by substantial evidence. This Commission's role at the "substantial issue" phase of an appeal is not to reassess the evidence in order to make an independent determination as to consistency of the project with Chapter 3, but only to decide whether the appeal of the local government action raises a substantial issue as to conformity with those standards. There is no question that the local decision correctly applied the policies of Chapter 3, and the appeal raises no substantial issue regarding conformity therewith.

¹ Unless otherwise indicated, all subsequent statutory references are to sections within the Coastal Act. Cal. Pub. Res. Code §§ 30000 *et seq.*

² The Planning Commission's findings combine references to local land use regulations with references to Chapter 3 policies. However, the intermingling of these two sources of law does not, in and of itself, raise a substantial issue as to conformity with Chapter 3, and there is no evidence of any conflict between the two bodies of law.

³ Although the specific Coastal Act sections are not listed by number in the Planning Commission's findings, it is clear that the Planning Commission considered the proposed development in light of the mandates within Sections 30250, 30251 and 30253.

⁴ Although the City determined that the project would run afoul of at least two of the Chapter 3 policies, the City's denial need only be based on the finding that the project would conflict with at least one of the Chapter 3 policies.

Applying the five factors listed in the prior section further clarifies that the appeal raises no "substantial" issue with respect to Chapter 3, as it shows that, even if Chapter 3 policies were not correctly applied, the nature of the proposed project, the local government action, and the appeal do not implicate Chapter 3 policies to a level of significance necessary to meet the substantiality standard of Section 30265(b)(1).

The first factor is the degree of factual and legal support for the local government's decision that the development is inconsistent (in this case) with Chapter 3 of the Coastal Act. As indicated above, the Planning Commission's conclusion was supported by substantial evidence. Specifically, the Planning Commission's Determination Report, attached as Exhibit #5, explains that the proposed development does not comply with Chapter 3 because it 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 the upper portion of Resolano Drive, adjacent to and above the project site (Exhibit #5, p.4). Pictures of the site and site visits confirm that the design of the proposed house, would in fact, block a spectacular coastal view from the Resolano Drive.

Resolano Drive is also where the existing hazardous traffic situation would be worsened by the location of the proposed driveway (Exhibit #5, p.4). The location of the proposed driveway would contribute to an existing hazardous traffic situation by intersecting a narrow Resolano Drive in the middle of a steep, blind S-curve. The existing dangerous road situation, caused by the narrow road width and the limited visibility around the curves, would be worsened with the addition a new driveway in a hazardous location. The probability of collisions between cars, or between cars and pedestrians, would clearly be increased by the proposed project.

Even though the applicant provided two different plans for a proposed single family residence, the applicant did not present a project plan that the Planning Commission found to be consistent with Sections 30250, 30251 and 30253 (Exhibit #6). Therefore, the Planning Commission's decision that the project was inconsistent had substantial factual and legal support.

The second factor is the scope of the development denied by the local government. Here, the proposed development denied by the local government was the construction of a single family home. Not only is this a relatively minor project, but because the local decision is a denial and the proposal is not for a type of development that is prioritized by the policies of Chapter 3, the posture in which this proposal comes to the Commission is one in which the scope of development would be nil. Put differently, the scope of the development *denied* is minor, and that denial does not rob the site of any resources or amenities promoted by Chapter 3; and the scope of the development *approved* is none.

The third factor is the significance of the coastal resources affected by the decision. Again, because the local decision is a denial, leaving the local decision in place by declining to accept the appeal would not have any significant affect on any coastal resources. Moreover, as also indicated above, since there is no Coastal Act policy promoting residential development, the denial does not represent the loss of any potential improvement of coastal resources. If the local decision were an approval, the Commission would need to consider the significance of the public view resource and the public safety issues allegedly impaired by the development, and thus, the decision. However, given the current posture of the decision, these issues are not before us.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. This is designed to avoid leaving decisions in place that could create a precedent for how the relevant provision of the LCP is to be interpreted, assuming the local government has a certified LCP. In this case, since the City does not have a certified LCP, the local government's decision should not have any precedential value for the future interpretation of any LCP that the City may develop. In theory, there could be an *indirect* impact if a future LCP were to be interpreted based on an assumption that all pre-LCP permitting decisions must have been consistent with the policies of the LCP eventually developed, but there would be no direct impact. For example, there could be an indirect impact if the City later developed an LCP policy about hazards to match Coastal Act Section 30253, and the City assumed that this pre-LCP interpretation of Section 30253 must apply to the analogous LCP provision as well. Alternatively, this factor could be interpreted – in the limited context of appeals from local governments acting pursuant to Section 30600(b) – as inquiring into the potential precedential value of the local government's decision on interpretations of the *Chapter 3 policies*, since that is the governing standard of review in such cases. However, it is unlikely that one local government's decision interpreting Chapter 3 policies would inform another local government's interpretation thereof,⁵ or the Commission's. Thus, the only possible precedential value would be to this local government's interpretation of the Coastal Act in its issuance of permits for the period until it develops an LCP. In any case, the City's denial of a project that cannot be found to conform with the Chapter 3 policies of the Coastal Act is not a bad precedent.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. This appeal raises an extremely localized issue related to this particular site, but it does not raise any generic local issues, or issues of regional or statewide significance.

Therefore, in conclusion, the Commission finds that the City's finding that the proposed development does not comply with the Chapter 3 policies of the Coastal Act was not an unreasonable conclusion. Each of the proposed project designs, even as modified by the conditions imposed by the Zoning Administrator, would adversely affect the public view from Resolano Drive, and would increase the probability of collisions on Resolano Drive. Moreover, the local government action does not raise any substantial Chapter 3 issues because the City's decision is consistent with Chapter 3. Therefore, no substantial issue exists with respect to the Chapter 3 policies of the Coastal Act.

D. Responses to Applicant's/Appellant's Specific Contentions

The previous section assessed the appeal under the applicable standard of review – whether it raised a substantial issue as to conformity with Chapter 3 of the Coastal Act. The applicant raised several specific grounds for his appeal that are not directly relevant to that standard. Nevertheless, the Commission responds to each of the applicant's specific contentions below. The grounds for the appeal are attached to this report as pages three through five of Exhibit #4.

- The City's denial of the local coastal development permit is not supported by the Chapter 3 policies of the Coastal Act (Exhibit #4, p.3).

⁵ Moreover, since no other local government currently issues coastal development permits pursuant to Section 30600(b), there is no other local government in a position to be so influenced.

- The City has misapplied and misinterpreted the applicable sections of the Coastal Act, particularly Sections 30251 and 30253.

These two contentions are addressed in the "Substantial Issue Analysis" section (Section VI.C.), under the first of the five factors that guide the Commission's review of an appeal, as they challenge the legal support for the local government's decision. The Planning Commission applied the policies of Chapter 3 and concluded that the development, as proposed, would adversely affect the public view from Resolano Drive. Pictures of the site (and site visits) confirm that the design of the proposed house would, in fact, block a spectacular coastal view from the street. This scenic coastal vista is protected by Section 30251 of the Coastal Act, which states:

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

The Planning Commission determined that neither of the two proposed project designs, even as modified by the conditions imposed by the Zoning Administrator, would protect the coastal view from Resolano Drive as required by Section 30251. The appellant disagrees with the determination, as may others, but the Planning Commission's determination is based on and supported by a correct application/interpretation of Section 30251 of the Coastal Act. The propriety of the City's ultimate action (denying the permit rather than, for example, approving it with conditions to address the impacts) is not before us.

In regards to the driveway and road issue, the Planning Commission concluded that the development would contribute to an unsafe traffic situation, and did not adequately minimize the safety risks on Resolano Drive. Section 30253 of the Coastal Act, states, in part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

The City made a decision about the safety of the proposed driveway in relation to the unsafe road. The safety issue is a clearly an issue to be addressed by Section 30253 of the Coastal Act. Section 30253 requires that risks (including risks caused by an unsafe road condition) in a fire hazard area (or geologic hazard area) must be minimized. The project site, situated on the southern slope of the Santa Monica Mountains is an area of high geologic and fire hazard. Landslides and wildfires are not uncommon in this mountainous zone. The proposed development, if not designed to minimize the dangerous road condition, would contribute to an already unsafe road and increase the probability of collisions. This would increase the risks for persons (pedestrians and in cars) using the road to access their homes or the trailhead for

Topanga State Park. A worsening of the dangerous road situation would also increase the risks to life and property by making ingress (Fire Dept.) and egress (evacuation) more difficult and dangerous during an emergency situation (e.g. wildfire or slope failure). Therefore, the Planning Commission's determination is supported Section 30253 of the Chapter 3 policies of the Coastal Act.

- The City's denial of the local coastal development permit lacks any evidence, much less the required substantial evidence in the record, to support its decision.

This Commission's role at the "substantial issue" phase of an appeal is not to reassess the evidence in order to make an independent determination as to consistency of the project with Chapter 3, but only to decide whether the appeal of the local government action raises a substantial issue as to conformity with those standards. However, the required substantial evidence is in the record. Pictures of the site (and site visits) confirm that the design of the proposed house would, in fact, block a spectacular coastal view from the street. The proposed driveway would intersect a narrow Resolano Drive in the middle of a steep, blind S-curve, thus contributing to a hazardous traffic situation (Exhibit #3). The existing dangerous road situation, caused by the narrow road width and the limited visibility around the curves, would be worsened with the addition a new driveway in a hazardous location. The probability of collisions between cars, or between cars and pedestrians, would clearly be increased by the proposed project. Therefore, the risks to life and property have not been minimized.

- The City has taken and damaged the subject property for public use, without payment of just compensation in direct violation of Section 30010 of the Coastal Act.

The applicant claims that the Planning Commission "denied the project finding the subject lot 'substandard and unbuildable', and prohibiting any and all development on the property." [See Exhibit #4, Page 3.] Although the Planning Commission's Finding 2.B. does refer to the property as a "substandard non-conforming lot, which has always been regarded as undevelopable," it also goes on to say that applications to develop such lots may require additional conditions to mitigate the impacts of developing them, implying that the Planning Commission does not treat such lots as ultimately undevelopable (Exhibit #5, ps.3&4). In the end, the local government action does not facially appear to deny the applicant any right to build a single-family home.

Moreover, the question of the City's compliance with Section 30010 (or with any constitutional prohibitions on taking property without just compensation) is not appropriately before the Commission. The Commission has a limited appellate authority/jurisdiction as defined by Section 30625(b)(1). The Commission is not a judicial body of general jurisdiction, as its review is limited to assessing conformity with Chapter 3. Coastal Act Section 30010 is not within Chapter 3 of the Coastal Act.

That being said, the City has only denied a proposed project that would adversely affect a public view; it has not denied all development on the property. Conceivably, a project could be designed that protects the public view and minimizes the risks to life property and property consistent with Chapter 3. The City has denied a 4,400 square foot house. The applicant may apply to the City for a smaller house that adequately protects the public view and includes a driveway design that minimizes the risks to life and property.

- The City has denied the applicant the ability to build a single family residence on a legal "in fill" lot substantially identical to that existing on all of the surrounding properties, many of which have been built with Commission approval.

The Commission has no record of any permits for the existing homes on Resolano Drive. Several homes on Paseo Miramar, an intersecting street, have been approved by the Commission. Each property, however, and each house's affect on the public view, is different. Any project proposed on the appellant's property must be reviewed for the project's specific effects on coastal resources and consistency with Chapter 3 of the Coastal Act. As long as the City's action reasonably appears to have considered those effects and the consistency of the project with Chapter 3, this Commission lacks the ability to overturn the local government decision.

- The City failed to resolve conflicts in the Chapter 3 policies of the Coastal Act affecting the proposed development, including Sections 30250-30253, in the manner required by Section 30007.5 of the Coastal Act, and failed to make findings supporting its resolution of such conflicts as required by Section 30200(b) of the Coastal Act.

No conflicts in the Chapter 3 policies are evident.

- The City improperly construed the provisions of the California Environmental Quality Act (CEQA).

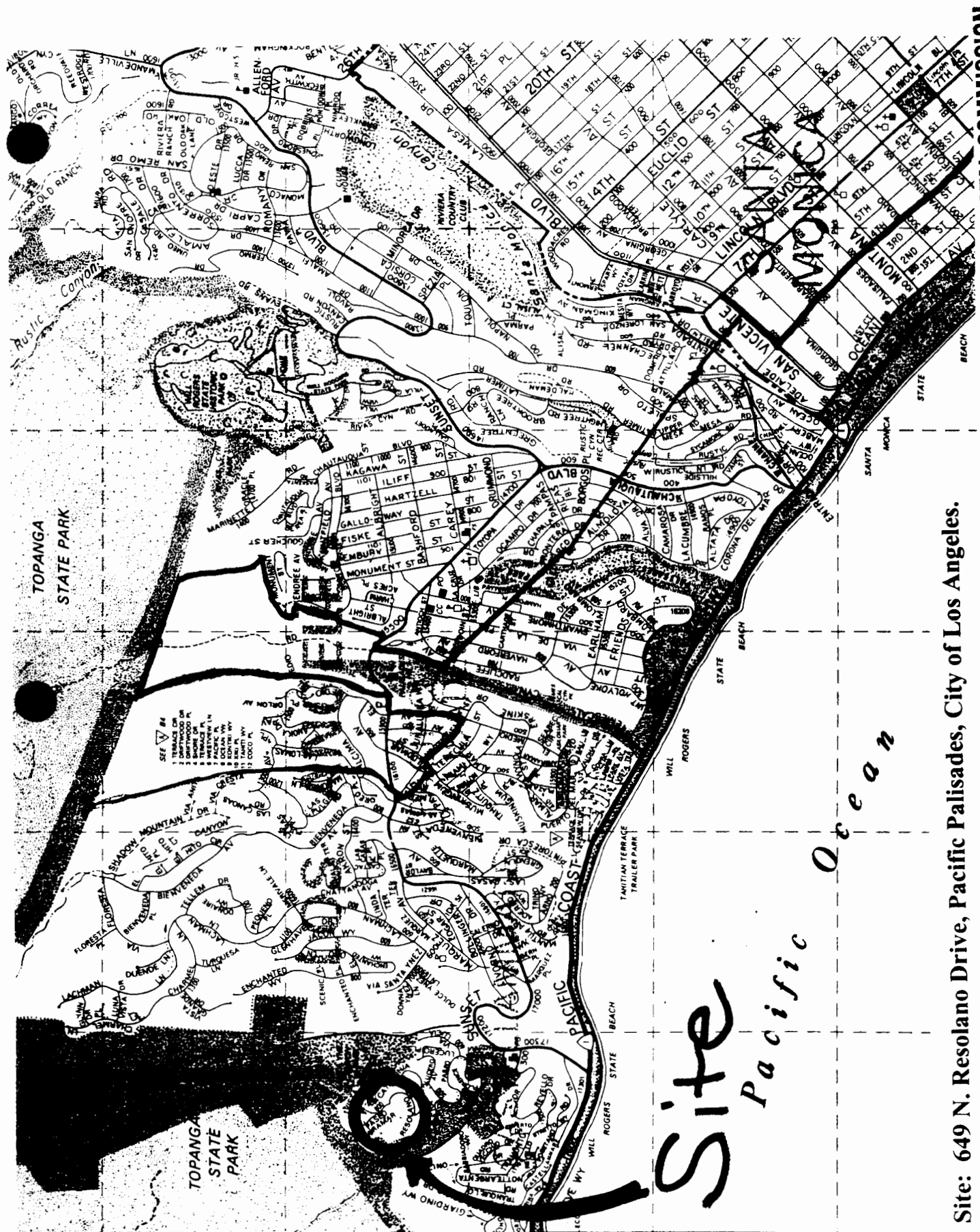
It is not the Commission's role to resolve conflicts over CEQA compliance. The Commission has a limited appellate authority/jurisdiction as defined by Section 30625(b)(1). The Commission is not a judicial body of general jurisdiction, as its review is limited to assessing conformity with Chapter 3. The California Environmental Quality Act is not within Chapter 3.

- The West Los Angeles Area Planning Commission committed a prejudicial abuse of discretion when it denied the revised permit application.

The Planning Commission correctly used its legal discretion in making a determination, based on substantial evidence, that the proposed project as revised does not conform with the Chapter 3 policies of the Coastal Act.

- The applicant can not receive a "fair trial" before the West Los Angeles Area Planning Commission (Exhibit #8).

This contention, again, does not raise an issue in regards to consistency of the local decision with the policies of Chapter 3. The appellant alleges a motive for an unfair City determination, but the Commission's review is limited to whether the actions were inconsistent with Chapter 3, not the motive for those actions. The appellant has recourse in the State courts of general jurisdiction. In fact, the appellant has already filed suit against the City and the Commission.



Site: 649 N. Resolano Drive, Pacific Palisades, City of Los Angeles.

COASTAL COMMISSION
AS-PPL-03-156

EXHIBIT # 1



Grover-Hollingsworth and Associates, Inc.

Geotechnical Consultants

AS-PPL-02-282
AS-PPL-03-156

BY SH DATE 10/01

CLIENT SWEPTON

REF. MCGILL GEOLOGIC MAP 1982

GH 10169-G

SUBJECT MCGILL
GEOLOGIC MAP



Exhibit 2

ZIMAS INTRANET



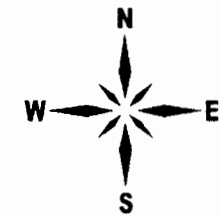
City of Los Angeles
Department of City Planning

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

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



COASTAL COMMISSION
A5-PPL-03-156

EXHIBIT # 3
PAGE 1 OF 1

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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

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

GRAY DAVIS Governor
RECEIVED
South Coast Region

APR 14 2003

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)/Agent:

Ronald Swebston	Alan Robert Block, Esq.
P.O. Box 338	1901 Avenue of the Stars, Ste. 470
Pacific Palisades, CA 90272	Los Angeles, CA 90067
(310) 459-3505 Zip	Area Code Phone No.(310) 552-3336

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 - denial

3. Development's location (street address, assessor's parcel
no., cross street, etc.): 649 N. Resolano Drive
Pacific Palisades, CA 90272

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: See attached Determination of West Los Angeles Area Planning
Commission dated 3/12/03 (Ex. 4)

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-PPL-03-156DATE FILED: 4-14-03DISTRICT: South Coast / Long Beach

H5: 4/88

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 5

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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 ADDENDUM 1

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.

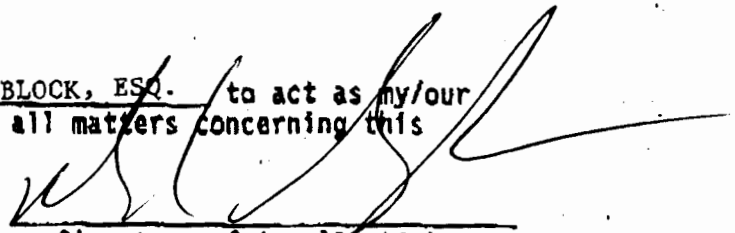

Signature of Appellant(s) or
Authorized Agent

Date April 10, 2003

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

Section VI. Agent Authorization

I/We hereby authorize ALAN ROBERT BLOCK, ESQ. to act as my/our representative and to bind me/us in all matters concerning this appeal.


Signature of Appellant(s)

Date 4/10/04

COASTAL COMMISSION

EXHIBIT # 4

PAGE 2 OF 5

ADDENDUM 1

The subject property is a 9,343 square foot vacant hillside lot in the Pacific Palisades area, north of Pacific Coast Highway and west of Sunset Boulevard. It is a pie shaped lot with a frontage of approximately 130 feet on the south side of Resolano Drive and an approximate depth varying from 137 to 157 feet. The property slopes down steeply from the street and is zoned for single family residential use. It is surrounded by two-story single family residences. Most of the homes in the area are three-story and most are substantially larger than the proposed development.

On February 7, 2003, the Coastal Commission, in A-5-PPL-02-282, found "no substantial issue" when the applicant and appellant, Ronald Sweptson, appealed the decision of the West Los Angeles Area Planning Commission ("WAPC") denying the approval of a 5,300 square foot single family residence, after the City of Los Angeles Department of Planning and Office of Zoning Administration recommended approval of the subject project, and the Zoning Administrator approved the project, subject to numerous conditions which reduced the size of the proposed residence to 4,700 square feet.

The applicant and appellant thereafter submitted a second Coastal Development Permit ("CDP") application to the City, No. ZA-2002-4168(CDP), further reducing the size of the proposed residence to 4,400 square feet, and incorporating conditions of the Zoning Administrator's earlier approval into the revised project.

The Department of Planning and Office of Zoning Administration recommended approval of the revised project finding it consistent with the subject property's zoning designation; the City's hillside ordinance; the Flood Hazard Management Specific Plan; the California Environmental Quality Act ("CEQA"); the adopted Brentwood-Pacific Palisades Development Plan, and the Chapter 3 policies of the Coastal Act. The Zoning Administrator thereafter approved the revised project subject to numerous conditions, including, but not limited to, the applicant providing a 42 foot continuous viewing corridor of the coastline across the property; limiting vehicular access to one driveway; and requiring the relocation of the proposed driveway to outside of the northeasternmost 100 feet of the front property line. The same neighbors who opposed the original project thereafter filed another appeal to the WAPC which once again denied the project finding the subject lot "substandard and unbuildable", and prohibiting any and all development on the property.

The decision of the WAPC is not supported by the Chapter 3 policies of the Coastal Act, and lacks any evidence, much less the required substantial evidence in the record, to support its decision. The WAPC has consistently misapplied and misinterpreted the applicable sections of the Coastal Act, particularly Sections 30251 and 30253, and has taken and damaged the subject property for public use, without the payment of just compensation in direct violation of Section 30010 of the Coastal Act.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 5

The action of the WAPC has denied the applicant and appellant the ability to build a single family residence on a legal "in fill" lot, substantially identical to that existing on all of the surrounding properties, many of which have been developed with similar single family homes with Commission approval.

When the WAPC denied the revised CDP application, it failed to resolve conflicts in the Chapter 3 policies of the Coastal Act effecting the proposed development, including those policies set forth in Public Resources Code §§30250-30253, in the manner required by Public Resources Code §30007.5, and to make findings supporting its resolution of such conflicts as is required by Public Resources Code §30200(b). It further improperly construed the provisions of CEQA to preclude the Zoning Administrator from recommending conditions which required modification to the proposed development without first requiring a new environmental review of the modified project.

When the WAPC denied the revised CDP application, it further committed a prejudicial abuse of discretion inasmuch as, among other reasons:

(a) the WAPC's findings are conclusory and not supported by substantial evidence in light of the entire record. Specifically, there is no evidence in the record establishing that the creation of a 42-foot wide view corridor, the requirement for a single driveway, the relocation of the single driveway to a location with improved visibility, and the decrease in the size and elevation of the single family residence fail to adequately mitigate the impacts of the proposed development;

(b) the WAPC's finding that the subject property is "undevelopable" is not supported by substantial evidence in light of the entire record;

(c) the WAPC's finding that the subject property lacks sufficient geologic stability to support the proposed single family residence is not supported by substantial evidence in light of the entire record;

(d) the WAPC's finding that the City's Environmental Review Section did not conduct an adequate environmental review is not supported by substantial evidence in light of the entire record;

(e) the WAPC's finding that the proposed development, as opposed to the current design of Resolano Drive and the distraction created by the view from the subject property, will cause a hazardous condition for vehicular and pedestrian traffic is not supported by substantial evidence in light of the entire record; and

COASTAL COMMISSION

EXHIBIT # 4
PAGE 4 OF 5

(f) the WAPC's finding that "the redesigned project will not be in conformance with the intent and objectives of the Coastal Guidelines and the District Plan" is not supported by substantial evidence in light of the entire record.

Copies of the following relevant documents are attached hereto:

- Exhibit 1: Department of Planning and Office of Zoning Administration, Staff Report, dated September 9, 2002.
- Exhibit 2: Department of Planning Environmental Review Unit, Comments on Proposed Mitigated Negative Declaration ("MND"), dated September 16, 2002.
- Exhibit 3: Department of Planning and Office of Zoning Administration, Notice of CDP Approval and Findings, dated December 4, 2002.
- Exhibit 4: WAPC Notice of CDP Denial and Findings, dated March 12, 2003.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 5 OF 5



West Los Angeles Area Planning Commission

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

Website: <http://www.lacity.org/pln/index.htm>

DETERMINATION OF THE WEST LOS ANGELES AREA PLANNING COMMISSION

Mailing Date: March 12, 2003

Location: 649 N. Resolano Dr.

Case No.: ZA 2002-4168(CDP)-A3

Council District: 11

CEQA: ENV 2002-5338-MND

Plan Area: Brentwood-Pacific Palisades

Zone: RE15-1-H

District Map: 129B117

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

Applicant: Ronald Swebston / Jeffer, Mangels, et.al., Pamela Schmidt (Representative)

Appellant: A1 - Marc Shumger / Irell & Manella, LLP, Alan J. Abshez, Esq. (Representative)

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

A3 - Ronald Swebston / Jeffer, Mangels, et. al., Pamela Schmidt (Representative)

At the meeting on February 19, 2003, the West Los Angeles Area Planning Commission:

Granted Appeals A1 and A2

Denied Appeal A3

Overturned the action of the Zoning Administrator

Denied the Coastal Development Permit for the construction, use and maintenance of a maximum 4,400 square -foot, single-family dwelling in the RE15-1-H Zone

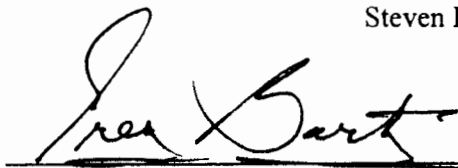
Modified the Findings of the Zoning Administrator by adopting the Findings of the previous case on the site under ZA 2001-5337(CDP)-A3

Did not Adopt Mitigated Negative Declaration ENV 2002-5338-MND

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

<u>Moved</u>	<u>Seconded</u>	<u>West L.A. Area Planning Commission</u>	<u>Yes</u>	<u>No</u>	<u>Absent</u>
		Matthew Rodman, President	<input checked="" type="checkbox"/>		
<input checked="" type="checkbox"/>		Flora Gil-Krisiloff, Vice President	<input checked="" type="checkbox"/>		
	<input checked="" type="checkbox"/>	Robyn Ritter Simon, Commissioner	<input checked="" type="checkbox"/>		
		Elvin W. Moon, Commissioner	<input checked="" type="checkbox"/>		
		Steven E. Belhumeur, Commissioner			<input checked="" type="checkbox"/>


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

Vote: 4-0

COASTAL COMMISSION
A5-PPL-03-156

EXHIBIT # 5
 PAGE 1 OF 6

Effective Date / Appeals: The Denial of the Coastal Development Permit is effective at the City level on the mailing date of this determination. The Denial is not further appealable at the City level but appealable only to the California Coastal Commission - South Coast District Office. The California Coastal Commission, upon receipt and acceptance of this Determination, will establish the start of the 20-day appeal period

The time in which a party may seek judicial review of this determination is governed by California Code of Civil Procedure Section 1094.6. Under that provision, a petitioner may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, only if the petition for writ of mandate pursuant to that section is filed no later than the 90th day following the date on which the City's decision becomes final.

Attachment(s): Findings

c: Notification List

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 6

FINDINGS

1. The Commission determined that the Zoning Administrator did err or abuse his discretion in that this case before the Commission "mirrors" the situation that was previously denied by the Commission and the California Coastal Commission on February 07, 2003 denied the appeal of the Area Planning Commission's determination dated July 16, 2002 when the Coastal Commission determined there was "no substantial issue."
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.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 4 OF 6

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). On September 16, 2002, the City's environmental review staff issued a re-evaluation of the Mitigated Negative Declaration. 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.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 6 OF 6

A black and white architectural sketch of a long, single-story building. The building features a prominent entrance with a small portico supported by columns. To the right of the entrance, there is a sign that reads "RESOLANO DRIVE". The building has a series of windows along its length, and a large, multi-story structure is visible on the right side. The sketch is rendered in a simple, line-art style.

ORIGINAL PROPOSED FRONT ELEVATIONS SHOWING CHANGES

100'-0" FROM PL

RESOLANO

MAIN LEVEL = 852.0'

ENTRY LEVEL = 864.0'

DRIVE

RONALD GREENSTEIN

Architectural drawing showing a building facade with a driveway and a sloped roofline. The drawing includes the following text and dimensions:

- 100'-0" FROM R.L.
- RESOLANO
- DRIVE
- MAIN LEVEL = 552.0'
- 2nd FLY LEVEL = 564.0'

Architectural drawing of a two-story house. The drawing includes dimensions and labels. A diagonal line labeled "RESOLAND" runs across the front of the house. The text "NEW SINGLE-FAMILY CONSTRUCTION" is written vertically on the right side. The drawing is dated "1992" and "1993".

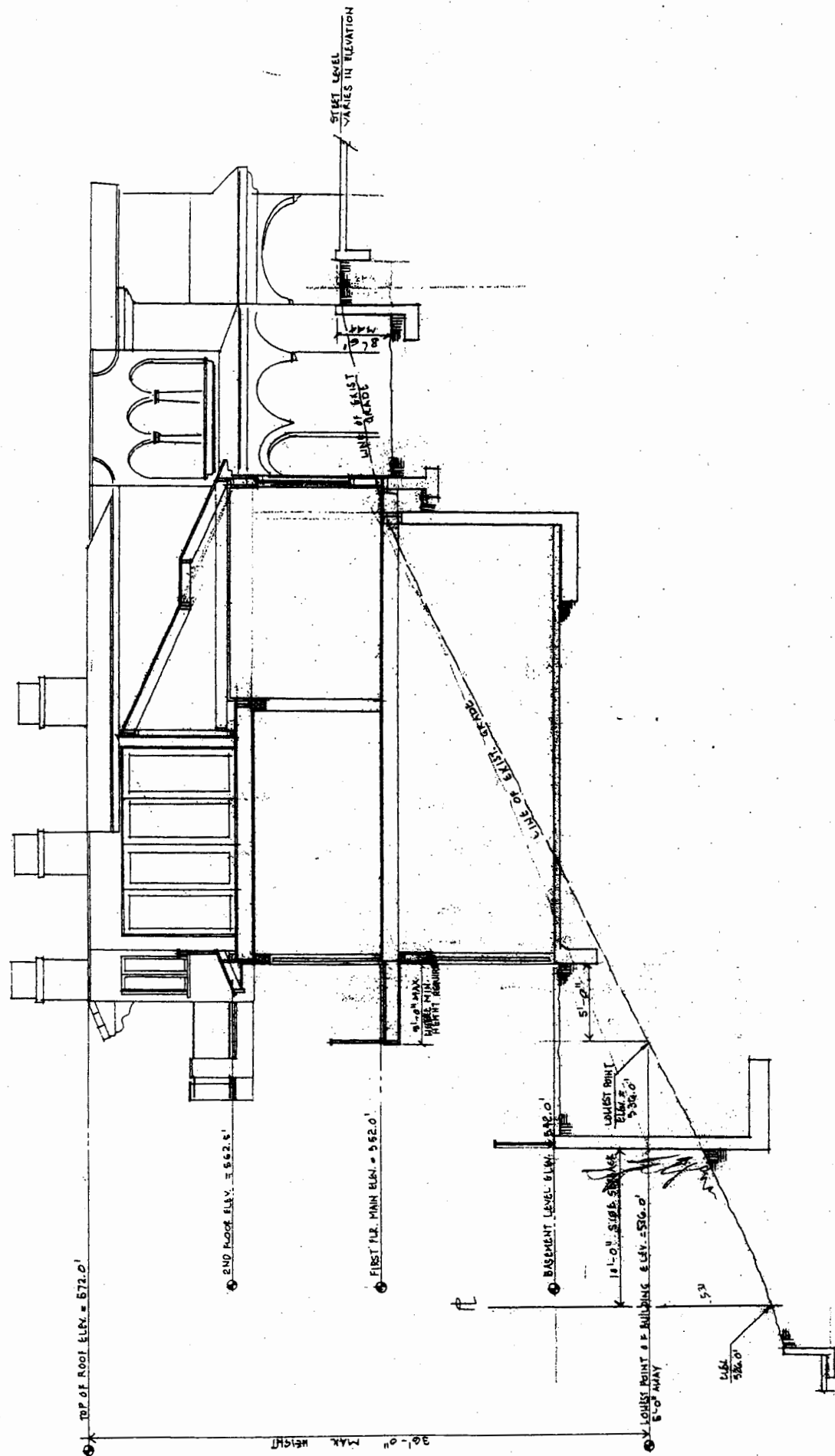
Architectural drawing of a house with a driveway and a sloped lot line. The drawing includes a house with a garage, a driveway, and a front door. A diagonal line represents the lot boundary, with the word "RESOLAND" written along it. The text "100' 0" FROM E" is written above the house. The text "DRIVE" is written above the driveway. The text "NEW FLOOR PLAN 1993.0" is written near the front door. The text "PTE" and "400 WTS" are written in the bottom left corner. The text "ZA - 2002-416" is written in the bottom right corner. The text "NEW SINGLEFAMILY" is written vertically on the far right edge.

NEW SINGLE-FAMILY CONSTRUCTION
 1970 CUMULATIVE RESIDENCE

COASTAL COMMISSION
A5-PPL-03-152

EXHIBIT # 6

PAGE 1 OF 2



SITE BUILDING SECTION

A-A

COASTAL COMMISSION
AS-PPL-03-156

EXHIBIT # 6
PAGE 2 OF 2

CITY OF LOS ANGELES
CALIFORNIA



JAMES K. HAHN
MAYOR

DEPARTMENT OF
CITY PLANNING
CON HOWE
DIRECTOR

FRANKLIN P. EBERHARD
DEPUTY DIRECTOR

OFFICE OF
ZONING ADMINISTRATION

200 N. SPRING STREET, 7TH FLOOR
LOS ANGELES, CA 90012
(213) 978-1318
FAX: (213) 978-1334

ROBERT JANOVICI
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

NICOLAS BROWN
ANIK CHARRON
EMILY J. GABEL-LUDDY
DANIEL GREEN
LOURDES GREEN
DAVID KABASHIMA
ALBERT LANDINI
JON PERICA
SARAH RODGERS

December 4, 2002

Ronald Swebston (A)
P.O. Box 338
Pacific Palisades, CA 90272

Gertrude Picone (O)
12910 West Sunset Boulevard
Los Angeles, CA 90049

Department of Building and Safety

CASE NO. ZA 2002-4168(CDP)
COASTAL DEVELOPMENT PERMIT
649 North Resolano Drive
Brentwood-Pacific Palisades
Planning Area
Zone : RE15-1-H
D. M. : 129B117
C. D. : 11
CEQA : ENV 2001-5338-MND
Fish and Game: Exempt
Legal Description: Portion of Lot 9,
Appt 1, Tract 10175

Pursuant to Los Angeles Municipal Code Section 12.20.2, I hereby APPROVE:

a Coastal Development Permit for the construction, use and maintenance of a maximum 4,400 square-foot single-family dwelling in the RE15-1-H Zone,

upon the following additional terms and conditions:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.
2. Prior to the issuance of any permit, revised plans shall be submitted in substantial conformance with the requirements herein, to the satisfaction of the Zoning Administrator. The revised plans shall include detailed site plan, 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, all to be dimensioned to show conformance with all conditions herein.
3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective conditions, if, in the Administrator's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

COASTAL COMMISSION

4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
5. A copy of the first page of this grant and all conditions and/or any subsequent appeal of this grant and its resultant conditions and/or letters of clarification shall be included in and printed on the "notes" portion of the building plans submitted to the Zoning Administrator and the Department of Building and Safety for purposes of having a building permit issued.
6. No structure on the site shall exceed a height of 36 feet.
7. In order to maintain a public view corridor of the coastline, nowhere on the site within 42 feet of the westerly property line, shall any structure, including roof structures of any type, walls and fences, exceed an elevation point 4 feet higher than the elevation point of the closest finished grade of Resolano Drive. After the 42-foot point the building height can be raised to 8 feet and continue at a right angle down Resolano Drive to the eastern side of the proposed house footprint as shown on Exhibit C. No second story above ground level as viewed from Resolano Drive is allowed. A partial basement level below a one story ground level is allowed.
8. Vehicular access to the property shall be limited to one driveway. Access to the driveway shall be not be located anywhere within the northeasternmost 100 feet of the front property line, and must instead be located within the westernmost 80 feet of the site.
9. Parking shall be provided pursuant to Section 12.21-A, 17(h) of the Municipal Code. At the request of the applicant, one of the parking spaces shall be designed to meet standards for handicapped parking spaces.
10. Prior to the issuance of any permits, front yards requirements shall be determined by the Department of Building and Safety pursuant to Section 12.07-C, 1 of the Municipal Code. Should it be determined by the Department of Building and Safety that the "prevailing" setback requirements apply to the property, the applicant shall provide to the satisfaction of the Department of Building and Safety a certified plot plan showing the existing front yard setbacks for Lots 31 to 34, in order to determine the required size of the front yard setback for the property. The southern side yard setback of the house shall be 15 feet.
11. The lot coverage shall not exceed 40%, and the approved house size shall not exceed 4,400 square feet.
12. There shall be no swimming pool.
13. Prior to the issuance of any permit, street dedication shall be provided to the satisfaction of the City Engineer. Minor repair of existing improvements may be required as well as necessary fees, including that for investigation purposes.
14. Prior to the issuance of any permit, grading plans shall be submitted for review and approval by the Department of Building and Safety, Grading Division. Grading shall not exceed 1,000 cubic yards of export soil.

15. Prior to the issuance of any permits, plans shall be submitted for review and approval to the Fire Department.
16. Prior to the issuance of any permit, a parking and driveway plan shall be submitted to the Department of Transportation for review and approval.
17. Grading activities shall be conducted under a valid City permit, to the satisfaction of the Department of Building and Safety, Grading Division.
19. Construction related vehicles, including worker transportation, shall be prohibited from parking on the street. A staging area shall be designated where construction workers can park and be shuttled to the site, and a shuttling/construction protocol program shall be prepared, all to the satisfaction of the Department of Transportation and the Zoning Administrator, which shall include, but not be limited to, the following provisions:
 - a. Prior to beginning of any grading or construction, a construction relations officer shall be designated by the applicant to serve as a liaison with the neighbors during construction activities. This person shall personally contact all neighbors directly abutting, and across the street from the project site prior to the start of any construction activity, including grading. Each neighbor shall be given the name and phone number of the person to contact should any issue arise. Calls shall be returned within the hour.
 - b. A sign shall be posted by the construction relations officer listing his/her name and phone number in clear view for any neighbor.
 - c. At no time shall Resolano Drive be blocked by contractor or sub-contractor vehicles, staging, access, etc. In the event a construction vehicle cannot be accommodated on site, a minimum of two flag persons shall be placed on the street to direct traffic in a safe manner.
 - d. The construction relations officer shall schedule the arrival and off-loading of all sub-contractor personnel and materials so as to cause minimal disruption to street traffic.
 - e. Construction-related vehicles may arrive at the site no earlier than 7:00 a.m. so that actual construction may begin at 7:30 a.m. Construction worker vehicles shall exit the property no later than 5:00 p.m. This condition does not apply to construction personnel engaged in supervisory, administrative or inspection activities.
 - f. Construction personnel and construction-related vehicles shall not park on any street in the neighborhood. Construction equipment, including haul trucks if any, shall be cleaned, watered and covered before leaving the property. Any material spilled on the streets adjacent to the property shall be removed immediately by the contractor. Construction equipment and trucks shall be staged on the property or at a designated site as approved by the Department of Transportation and the Zoning Administrator. Haul trucks, if any, shall not queue on streets adjacent to the property.

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- g. A maximum of two catering truck visits daily are permitted and such trucks shall be accommodated entirely within the property.
 - h. Any portable toilets shall be on the property and not visible from adjoining properties or the public street where feasible.
 - i. The construction area shall be sufficiently dampened to control dust caused by grading, hauling, and wind.
 - j. Compressors shall have noise suppression features so as to reduce noise impacts off-site.
 - k. Sound blankets shall be used on all construction equipment where technically feasible.
20. Environmental Conditions in Case NO. ENV 2001-5338-MND listed below must be signed for implementation by the applicant:
- a. Cultural Resources (Archaeological):
 - 1) If any archaeological materials are encountered during the course of the project development, the project shall be halted. The services of an archaeologist shall be secured by contacting the Center for Public Archaeology - Cal State University Northridge, or a member of the Society of Professional Archaeologist (SOPA) or a SOPA-qualified archaeologist to assess the resources and evaluate the impact.
 - 2) Copies of the archaeological survey, study or report shall be submitted to the UCLA Archaeological Information Center.
 - 3) A covenant and agreement shall be recorded prior to obtaining a grading permit.
 - b. Seismic:

The design and construction of the project shall conform to the Uniform Building Code seismic standards as approved by the Department of Building and Safety.
 - c. Erosion/Grading/Short-Term Construction Impacts:
 - 1) Air Quality:
 - a) All unpaved demolition and construction areas shall be wetted at least twice daily during excavation and construction, and temporary dust covers shall be used to reduce dust emissions and meet SCAQMD District Rule 403. Wetting could reduce fugitive dust by as much as 50 percent.

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- b) The owner or contractor shall keep the construction area sufficiently dampened to control dust caused by grading and hauling, and at all times provide reasonable control of dust caused by wind.
 - c) All loads shall be secured by trimming, watering or other appropriate means to prevent spillage and dust.
 - d) All materials transported off-site shall be either sufficiently watered or securely covered to prevent excessive amount of dust.
 - e) All clearing, grading, earth moving, or excavation activities shall be discontinued during periods of high winds (i.e., greater than 15 mph), so as to prevent excessive amounts of dust.
 - f) General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions.
- 2) Noise:
- a) The project shall comply with the City of Los Angeles Noise Ordinance Nos. 144,331 and 161,574, and any subsequent ordinances, which prohibit the emission or creation of noise beyond certain levels at adjacent uses unless technically infeasible.
 - b) Construction activities shall be restricted to the hours of 7:30 a.m. to 4:30 p.m. Monday through Friday, prohibited on Saturdays, Sundays and National Holidays.
 - c) Construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
 - d) The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
 - e) The project sponsor must comply with the Noise Insulation Standards of Title 24 of the California Code Regulations, which insure an acceptable interior noise environment.
- 3) Grading:
- a) Excavation and grading activities shall be scheduled during dry weather periods. If grading occurs during the rainy season (October 15 through April 1), construct diversion dikes to channel runoff around the site. Line channels with grass or roughened pavement to reduce runoff velocity.

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- b) Incorporate appropriate erosion control and drainage devices to the satisfaction of the Building and Safety Department shall be incorporated, such as interceptor terraces, berms, vee-channels, and inlet and outlet structures, as specified by Section 91.7013 of the Building Code, including planting fast-growing annual and perennial grasses in areas where construction is not immediately planned. These will shield and bind the soil.
- c) Stockpiles and excavated soil shall be covered with secured tarps or plastic sheeting.

4) General Construction:

- a) All waste shall be disposed of properly. Use appropriately labeled recycling bins to recycle construction materials including: solvents, water-based paints, vehicle fluids, broken asphalt and concrete; wood, and vegetation. Non recyclable materials/wastes must be taken to an appropriate landfill. Toxic wastes must be discarded at a licensed regulated disposal site.
- b) Clean up leaks, drips and spills immediately to prevent contaminated soil on paved surfaces that can be washed away into the storm drains.
- c) Do not hose down pavement at material spills. Use dry cleanup methods whenever possible.
- d) Cover and maintain dumpsters. Place uncovered dumpsters under a roof or cover with tarp or plastic sheeting.
- e) Use gravel approaches where truck traffic is frequent to reduce soil compaction and limit the tracking of sediment into streets.
- f) Conduct all vehicle/equipment maintenance, repair, and washing away from storm drains. All major repairs are to be conducted off-site. Use drip pans or drop clothes to catch drips and spills.

d. Safety Hazards/Wildfires/Evacuation

Submit a driveway plan, and street plan adjacent to property showing dedications and improvements that incorporates design features that shall reduce accidents, and provide for an adequate evacuation route to the Bureau of Engineering, the Department of Transportation and the Fire Department for approval.

21. The existing large Monterey pine tree on-site shall be preserved.

22. The northern, western and eastern sides of the house shall be landscaped with lawn, ground cover or small bushes not to exceed 2 feet in height to preserve views. On the south side, the retaining wall shall be covered with climbing vines planted 5 feet

on center and have 36-inch box trees planted 15 feet on center within the side and rear yard setback areas. All landscaping shall be watered by automatic sprinklers. The Zoning Administrator shall approve the final landscape plan which must be prepared by a landscape architect.

23. Any fence built along Resolano Drive must be an open wrought iron design approved by the Zoning Administrator. No solid wall is allowed. Any southern property line wall shall be made of open design wrought iron.
24. The project shall comply with all Zone Code provisions.
25. Prior to the issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms conditions established herein shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

OBSERVANCE OF CONDITIONS - TIME LIMIT - LAPSE OF PRIVILEGES - TIME EXTENSION

All terms and conditions of the approval shall be fulfilled before the use may be established. The instant authorization is further conditional upon the privileges being utilized within two years after the effective date of approval and, if such privileges are not utilized or substantial physical construction work is not begun within said time and carried on diligently to completion, the authorization shall terminate and become void. A Zoning Administrator may extend the termination date for one additional period not to exceed one year, if a written request on appropriate forms, accompanied by the applicable fee is filed therefore with a public Office of the Department of City Planning setting forth the reasons for said request and a Zoning Administrator determines that good and reasonable cause exists therefore. This process is subject to a mandatory hearing pursuant to Section 12.27-B,7 of the Los Angeles Municipal Code.

TRANSFERABILITY

This authorization runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent that you advise them regarding the conditions of this grant.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

Section 12.29 of the Los Angeles Municipal Code provides:

"If any portion of a privilege authorized by a variance or conditional use is utilized, the conditions of the variance or conditional use authorization immediately become effective and must be strictly complied with. The violation of any valid condition imposed by the Administrator, Board or Commission in connection with the granting of any variance, approval of a conditional use or other action pursuant to the

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authority of this chapter, shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code."

Every violation of this determination is punishable as a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

APPEAL PERIOD - EFFECTIVE DATE

The applicant's attention is called to the fact that this authorization is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any condition of this grant is violated or not complied with, then this authorization shall be subject to revocation as provided in Section 12.27 of the Municipal Code. The Zoning Administrator's determination in this matter will become effective after DECEMBER 19, 2002, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at www.lacity.org/pln.** Public offices are located at:

Figueroa Plaza
201 North Figueroa Street, #300
Los Angeles, CA 90012
(213) 977-6083

6251 Van Nuys Boulevard
First Floor
Van Nuys, CA 91401
(818) 756-8596

Furthermore, this coastal development permit shall be subject to revocation 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.

Provided no appeal has been filed by the above-noted date, a copy of the permit 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.

The time in which a party may seek judicial review of this determination is governed by California Code of Civil Procedure Section 1094.6. Under that provision, a petitioner may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, only if the petition for writ of mandate pursuant to that section is filed no later than the 90th day following the date on which the City's decision becomes final.

NOTICE

The applicant is further advised that all subsequent contact with this Office regarding this determination must be with the Zoning Administrator who acted on the case. This would

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include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished **BY APPOINTMENT ONLY**, in order to assure that you receive service with a minimum amount of waiting. You should advise any consultant representing you of this requirement as well.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on September 19, 2002, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the requirements and prerequisites for granting a coastal development permit as enumerated in Section 12.20.2 of the Municipal Code have been established by the following facts:

BACKGROUND

The subject property is a sloping, pie-shaped, interior, record lot, having a frontage of approximately 130 feet on the south side of Resolano Drive and an approximate depth varying from 137 to 157 feet. The property features a steep downslope from the street frontage. The subject site is a vacant land to be developed with a two-story single-family residence.

Surrounding properties are within the RE15-1-H Zone and are characterized by hillside topography and narrow streets. The surrounding properties are developed with two-story single-family dwellings and a vacant land.

Resolano Drive, adjoining the subject property to the north, is a Local Street dedicated to a width of 30 feet and improved with curb, gutter and no sidewalk.

Previous zoning related actions on the site/in the area include:

Subject Property:

Case No. ZA 2001-5337(CDP) - On April 19, 2002, the Zoning Administrator approved a Coastal Development Permit for the construction, use and maintenance of a maximum 4,700 square-foot single-family dwelling in the RE15-1-H Zone.

Appealed to West Los Angeles Area Planning Commission, July 16, 2002. Determination: Denied appeal of applicant and granted appeals by Miramar Homeowners Association and Marc and Louise Schmuger.

Surrounding Properties:

Case No. YV 81-579 - On March 26, 1981, the Zoning Administrator approved reduced side yards at 606 Resolano Drive. Appealed to BZA under 2999. BZA denied appeal on June 2, 1982.

Case No. YV 83-113 - On September 19, 1983 the Zoning Administrator dismissed request to modify BZA conditions. The BZA granted in part December 7, 1983.

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Case No. ZA 89-1143(YV) - request at 625 Resolano Drive for reduced side yards. Withdrawn December 14, 1989.

Case No. ZA 90-0169(A) - The Zoning Administrator denied appeal. BZA 4291 appealed entire decision BZA denied February 8, 1991.

Case No. CDP 91-029 - 646, 661, 675, 685, 701 and 720 Paseo Miramar Drive, the Zoning Administrator approved a coastal development allowing the realignment and restoration of approximately 700 feet of roadway identified as a portion of Paseo Miramar Drive; and, the construction, use and maintenance of six single-family dwellings on six recorded lots fronting on said drive.

PUBLIC HEARING

A public hearing on the matter was held on September 19, 2002. Persons provided evidence and testimony at that time included, Mr. Swepston, the applicant, his attorney, a representative of the District Council Office who testified in opposition to the project, and 14 area residents who expressed opposition relative to the proposed project.

The applicant's attorney described the nature of the project and the revised request being made. The applicant's attorney presented two versions of a reduced size, 4,400 square-foot house (see Exhibit A attached). Version A allowed a greater side yard setback to make an objecting neighbor happy, and Version B partly preserved a 42-foot view corridor as required in the original City grant - ZA 2001-5337(CDP), but no increased side yard setback. Other than these major differences, the applicant believed that both plans followed the previous City condition of the Zoning Administrator in the 2001 case. Some opposing neighbors and their attorney objected to the lack of one proposed design.

Owners of nearby properties, or their representatives, raised the following major concerns:

- Preservation of the public coastal view.
- Traffic safety, location and number of driveways.
- Substandard size of the property.
- Lack of compliance of the project with the Hillside Ordinance requirements, including street dedication, height, front and side yards.
- Unknown amount of grading, remedy of existing landslide.
- Adequacy of the City environmental review process.

Six letters were received in opposition to the project citing arguments listed above. Included in the letters were two homeowners associations comments and a petition from 38 hikers who enjoy the view from the site.

Two alternative house designs (same size and height) were presented at the public hearing. The applicant said he believed one of his two alternative designs met the requirement of Condition No. 7 (maximum house height of 4 feet above Resolano Drive in

the 42-foot view corridor from the northwest corner of the site) of the original Zoning Administrator approval on the 2001 case. After the end of the extended 30-day public comment period following the public hearing, the Zoning Administrator checked with the original Zoning Administrator and was told that neither Version A of the revised house design nor Version B complies entirely with the earlier view corridor protection intention in Condition No. 7. That condition should be interpreted to be measured starting from a starting point of 4 feet above the westernmost high point of the subject lot at the property line. Going easterly down Resolano Drive for 42 feet, from the starting point, the maximum permitted height of any structure cannot exceed 4 feet above the height of the street and the applicant's design partly exceed the 4 feet limit in Version B, and totally exceeds it in Version A (see attached Exhibit B).

Therefore, because there is no current house design which meets the previous Condition 7, this grant is a "building envelope" grant controlling views, number of stories, building area, and yard setbacks. It will be up to the applicant to redesign a future house to match these building limits.

At the close of the hearing, the matter was taken under advisement for a month in order to allow the applicant to respond to the arguments presented by opponents at the public hearing. It was suggested that the applicant meet with neighbors so that everyone would know exactly what the project design looked like. No such meeting took place even though the applicant sent out a letter to all adjacent residents, the local homeowner group and Council Office.

After 30 days, two letters were later received regarding the construction of an 8-foot high chain link fence with green mesh backing along the site's property line running on the south side of Resolano Drive, resulting in the effective obstruction of the public view of the scenic coastal vista. Attorneys for the applicant and adjacent owners sent several letters each summarizing their positions from the public hearing and responding to arguments made by the other side. Opposition from the adjacent neighbors, homeowners group and Council Office did not change. The Zoning Administrator visited the site and surrounding neighborhood and State Park in September and November. View observations were made from some adjacent properties and additional pictures were taken of the site.

Zoning Administrator Discussion

History of area

The property is located in the northwest upper portion of Resolano Drive, where it meets Paseo Miramar. Resolano Drive used to be a cul-de-sac road providing access only to a handful of properties, east of Paseo Miramar, until a landslide occurred in 1944 and a substantial portion of Paseo Miramar caved in, effectively discontinuing the road shortly west of its present intersection at the northern end of Resolano Drive. At this time, Resolano Drive was extended as an emergency and only access to the upper section of the tract, and was connected to the northern portion of Paseo Miramar effectively bisecting Lot 9 of Tract 10175. The public started to utilize this access as of this time establishing all necessary requirements for a prescriptive easement.

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A'



A'



Applicable regulations

On May 4, 1965, a division of land map was approved by the Department of City Planning which created Parcels A and B of Lot 9 of Tract No. 10175. This action was not appealed. It resulted in the creation of two lots with development rights corresponding to the zone it is located in. The parcels, at the time of division of land were zoned R1-1-H.

The parcel was re-zoned RE15-1-H under the Zoning Consistency Program (AB283), to bring it in conformance with its plan land use designation for Very Low II density residential uses. Both portions of Lot 9 became legally nonconforming parcels, still with development rights, but now corresponding to the RE15-1-H Zone. More specifically, the property is now subject to the requirements of Section 12.07.01 of the Municipal Code (RE - Residential Estate Zone), as amended by the Hillside regulations (Section 12.21-A, 17 of the Municipal Code). The property is further located in the Coastal Zone and subject to Section 12.20.2 of the Municipal Code and the Los Angeles County Interpretive Guidelines adopted by the California Coastal Commission to supplement the Statewide Guidelines.

Physical setting

The property is a sloping, pie-shaped, interior, record lot, with a frontage of approximately 212 feet on the south side of Resolano Drive, immediately south of its intersection with the upper portion of Paseo Miramar. It has an approximate depth varying from 137 to 187 feet. The property features a steep downslope from the street frontage (generally from elevations of 560 feet at the top to 524 feet at the bottom of the slope, that is a denivellation of 36 feet over a linear distance of 137 feet, corresponding to a 26.2% grade. The site is presently vacant.

Resolano Drive, as confirmed by the City Engineer, is a 30-foot wide easement, improved in the vicinity of the property to barely over 20 feet, making it a Standard Hillside Limited Street. It can be characterized as narrow and steep, especially adjacent to the property: elevations at the finished grade level of the street from the southernmost point to the northernmost point of the front property line of the site vary from 532 feet to 564 feet over a distance of 212 feet, that is an average grade of 15%, with the steepest portion (20 feet grade change) over the southernmost 79 feet half of the property, corresponding to a 25.3% grade.

To compound the narrowness and steepness of the street, Resolano Drive, immediately adjacent to the property is configured as a double curve, which, with the steepness of the grade, renders the grade level of the southern portion of the property absolutely invisible to vehicles and pedestrians coming downhill from the northern portion, and the northern portion of the street not visible when driving uphill. The worse aspect of this situation however is the coupling of the steep downhill grade with the blind curve, rendering the proposed location of the main driveway of the project a absolute certainty for numerous fatal accidents.

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Finally, the northern part of the property offers to the public southbound on Resolano Drive an expansive coastal vista over the entire southern portion of the Santa Monica Bay from Santa Monica to Palos Verdes, which definitely constitutes a public coastal

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resource to be preserved under the provisions of the California Coastal Act.

Project description

The applicant proposes to build a 4,400 square-foot, "three-story", single family home (one level built into the site and two levels above). The applicant has reduced the original project size first presented at a public hearing on February 14, 2002 from 5,300 square feet to the current 4,400 square-foot request. The current project is shown in two different "versions" of the same size and 36-foot, three-story height. The two versions differ in the location of some rooms on the second floor according to the applicant:

Proposal A - Relocation of Driveway and Garage

"This proposal deals with the issue of ingress and egress addressing issues raised by the community at the February 14, 2002 hearing. This design, like the original, does not influence the view of the ocean from 758 and 767 Paseo Miramar. This proposal also maintains the privacy of 633 Resolano Drive by keeping the second story as far away from 633 Resolano Drive as possible. Existing living environment affected as little as possible. With the development of my home and this proposal maintains their privacy.

Proposal B - Relocation of Driveway and Second Floor Moving Second Floor 42 Feet from the Westerly Property Line

This proposal would block the existing view from 758 and 767 Paseo Miramar, of their existing view of the coastline and ocean. This proposal would change the environmental and privacy of 633 Resolano Drive and would also affect their sunlight and put my living quarters adjacent to their home affecting their privacy (I would be looking directly into their home from my living quarters).

By moving second floor possible, create an unsafe condition were a motorist by taking their eyes off a steep narrow street on a curve with exiting guard rail to look at view causes a very unsafe driving condition."

A front view of the overall, February, 2002, house and the two different versions of the reduced side house are shown on Exhibit A attached to this determination. Only Proposal B meets most, but not all, of the requirements of Condition No. 7 from the original approved Case No. ZA 2001-5337(CDP) to maintain a lowered view protection area for 42 feet from the northwestern property line. Part of the house in the view corridor is still taller than the maximum 4-foot limit above Resolano Drive. Proposal A does not meet the height requirement of Condition No. 7 at all in the 42-foot view corridor and so cannot be considered. For general illustration only, the site plan for Version B (the most consistent version with the 42-foot view corridor) is attached as Exhibit B. This footprint without the second level might be close to a revised footprint of a house allowed by the conditions of this grant, and would represent a house of approximately 3,300 square feet (basement and first floor/garage total). The applicant can redesign the house with a larger basement or increase the footprint of the house to increase the size consistent with the limits of this grant.

It must be noted however, that aside from the major redesigns required per this grant, major corrections may need to be made to the current plans to bring them into full conformance with the applicable regulations, which the applicant has presented as willing to abide with. These may include verification of the height measurement, side yards may need to be increased depending on the height of the structure, the front yard may need to conform with the prevailing side yard measurements of the remainder of the block. All shall be to the satisfaction of the Department of Building and Safety (Condition No. 10).

Issues

A number of issues were presented at the public hearing held on September 19, 2002. Following are responses which have not been clarified above, and proposed mitigation measures where applicable.

1. Circulation, traffic hazards.

As detailed above, Resolano Drive is a narrow, steep, winding road, where visibility over the curves is very poor if non-existent in some instances. The road, originally opened as an emergency access to the upper part of Paseo Miramar after the caving of the latter with a major landslide in the 40's, is now heavily traveled, especially during weekend and holidays, by users of Temescal State Park, a secondary entrance to which is located in the upper portion of Paseo Miramar. Cars bringing hikers and bikers to the park trailhead, result in circulation and parking problems of a major nature for an area not designed or improved for this amount of traffic. Drivers unfamiliar with the area, looking for their way and parking, in addition to bikers rushing downhill have caused numerous accidents in the immediate area.

As a result of the above described situation, neighbors are opposed to the addition of a new home and the additional driveways and traffic it will generate.

As detailed above, the property is a legally nonconforming lot, with its ensuing development rights. However, a field visit by this Administrator made after the public hearing and a second visit in early November confirmed the testimony of the area residents regarding the dangerous conditions of circulation on Resolano Drive. The location of the property at a double curve and very steep portion of the street renders its safe vehicular access treacherous to locate. To reduce the potential for vehicle and pedestrian accidents, a new driveway can only be built within 80 feet of the western (upslope) property line which strengthens the previous Condition No. 8. The visibility for the driveway is safest the closer it is to the west.

Legitimate concern was raised at the public hearing regarding the management of vehicular access to the site during construction activities. Condition No. 18 has been included in this approval which mandates the applicant to prepare a shuttling program for construction workers and designate a site where workers vehicles can be parked while they work on the site. The Department of Transportation and Zoning Administrator are to review and approve such program. Additionally, a construction relation officer is to be designated by the applicant or general contractor to act as a liaison with the neighbors and manage construction vehicles access to the site so that no construction vehicle be permitted to park on Resolano Drive. In the event

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large construction vehicles cannot be accommodated on site, flag persons are to be posted to direct traffic in a safe manner. Finally, considering the heavy weekend use of Resolano Drive by park users, no construction activity is allowed on Saturdays, Sundays and National Holidays (Condition No. 19c).

With the requirement of the relocation of the driveway to the upper portion of the property, where visibility is fair, and the additional conditions pertaining to the management of vehicular access to the site during construction activities, the proposed development of a single-family home at this location, will not result in any long term significant traffic or circulation impact.

2. Public coastal vista

Protecting the view corridor from this site is the paramount consideration of this grant. Maximizing the public views is not just for the drivers using Resolano Drive who could take their eyes off this steep road only to enjoy a brief scenic view of the ocean. In addition, it is for the 1,500 weekend and even larger amount of summer time visitors who come into the area to hike the nearby mountain trails above this residential area and should have their views protected against even a little bit of a loss of this significant scenic ocean view. People can park just north of the subject property at a dead end and look back at the ocean view from this significant location. Many park visitors park below the subject site and enjoy the ocean view walking by. This public view protection is the real intent of the California Coastal Act. As the Santa Monica National Park (entrance 200 yards to the north) expands and is improved, even more hikers and visitors will continue to park in this local area of Resolano near where some of the hiking trails start. Preserving the maximum amount, (not just the original 42 feet), significant view corridor from this lot is important to the thousands of visitors (over 70,000) who come into this area in a year. This view is why the applicant will have to redesign and lower the height of the house to meet the performance conditions of this grant.

As detailed above, the upper portion of the site offers a magnificent view of Santa Monica Bay to Palos Verdes for the public going down Resolano Drive. The California Coastal Act and the Brentwood-Pacific Palisades District Plan are very clear as to their instructions to protect such vistas. As proposed in Versions A and B, the second story of the structure would be blocking some part of this total scenic beach/ocean vista. In conformance with the requirements of the above cited planning documents, this grant is conditioned upon the preservation of the original (ZA 2001-5337 CDP) 42-foot view corridor to the coastal area, to be measured from the westerly property line (Condition No. 7), and the maximum amount of the coastline view from the remainder of the site, than the 2001 case required beyond the 42-foot view corridor. In effect, this more restrictive new building height requirement will result in the future house not to be able to have two stories above ground as viewed from Resolano Drive. The maximum height of the top of the structure in this view corridor is not to exceed 4 feet above the nearest elevation of the finished grade of Resolano Drive and this grant further limits the house height, downslope of the 42-foot view corridor, because the whole coastal view should be preserved, not just the 42-foot portion of the site. The preservation of the entire view with a one-story house more than doubles the public view and adds a wider view of the beach not as clearly seen from the original 42-foot view corridor. Based on the

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current Version A or B, the one-story at grade limit would mean that an approximate 1,100 square feet total would thus be subtracted from the total proposed 4,400 square footage of the house, leaving a maximum floor area of about 3,300 square feet for the revised dwelling. The new height addition to Condition No. 7 included with this approval further protects the subject view corridor by restricting a second story on a future house. This will allow the maximum pedestrian and vehicle driver views possible towards Santa Monica for the whole length of the house (however even a one-story house will block some of the lower ocean view). The applicant can still build a house on the 1st floor level and basement level of about 3,300 square feet using the proposed building footprint. If the applicant wants a larger house, an addition onto the existing terrace area and/or an expansion of the basement could create up to the same 4,400 square feet requested at the public hearing. This redesign is the only way the applicant can improve the view corridor consistent with the clear intent of the Coastal Act and address the concerns of the neighbors, Council Office and Area Planning Commission who might only consider accepting a smaller house than the applicant has offered in his second application for this site.

In light of the above, conditioned to preserve an even greater public view of the coast line, the construction of a single-family home at this location will be in conformance with the public view preservation requirements of the Coastal Act and the Brentwood-Pacific Palisades District Plan.

3. Geological stability

As detailed above, the area has a long history of geological activity. Area residents are concerned that the construction of a new single-family home at this location will result in a worsening of the existing situation. While the area is known to be geologically sensitive, it is recognized that soil stabilization and correction do not occur naturally, and that often a sensitive situation becomes a lot safer once qualified remedies have been implemented. This is such an instance, where a steeply sloping property left to itself can become a hazard, in particular to the residences located downhill from it, while once improved with the necessary soil stabilization and corrections, its hazardous nature is greatly reduced.

On December 5, 2001, under Log # 35163, the Department of Building and Safety, Grading Division, issued Approval Conditions For Soil And/Or Geology Reports for the construction of a "proposed two-story, single-family residence with a basement and a two-level attached garage". The Zoning Administrator confirmed with Mr. Hsu, Geotechnical Supervising Engineer with the Department of Building and Safety, Grading Division, that the document was indeed an approval, not just a review in concept. One of the conditions requires that a grading permit be obtained. At this stage of development, it is a common occurrence for the City to issue such conditions, insofar as detailed grading plans will be reviewed at a later date when the design of the structure itself is finalized. What this approval indicates is that the construction of a single-family home on this property will be subject to the designated conditions. The Department of Building and Safety will review any future revised grading and soil stability report based on a modified smaller home and would have to approve these issues before this grant becomes effective (Condition No. 17).

The argument will most likely be made that the Department of Building and Safety has not reviewed the final design as approved in this grant, and that the project may not be feasible. The response can be made that the proposed design itself was not final, and that some minor corrections would most likely have had to be made, which bear no consequences on the grading or geological environment of the project. Building and Safety's determination constitutes the approval of a single-family dwelling of a certain size, footprint, etc., mainly a general envelope for this site. The project, as approved by this grant, will again most likely have a similar footprint, and the design details, will be, gradingwise, minor adjustments which will be reviewed when final grading plans are submitted. The current reduction in the project size to 4,400 square feet has reduced the "cut" and "fill" to 353 and 180 cubic yards, respectively, and total soil export to 173 feet.

As such, the approval of the project, as revised, will not result in a geologically hazardous situation, but to the contrary will contribute to the stabilization of the soil and geological conditions on the property.

4. Hillside regulations

The property is located in a designated Hillside area. Specific height, yard setbacks, lot coverage, and parking requirements are required of structures to be constructed on property so designated. The applicant has indicated his willingness to abide by all these requirements. Again, once the project is redesigned, the necessary corrections and adjustments to the plans will have to be effected in accordance with the applicable regulations. Generally, the tallest height of the structure is not be permitted to exceed 36 feet (Condition No. 6). It will even be further reduced in the view corridor designated under Condition No.7 of this grant. Side yards will depend upon the final height of the building, but will not be inferior to 10 feet. The Zoning Administrator viewed the subject site from the lower owners home. In order to reduce the mass of a tall home on the downslope neighbor, the southeast side yard setback is increased from 10 to 15 feet and a more dense landscape design is required to shield the view of any new house (Condition No. 22). The front yard will not be less than 10 feet, unless prevailing setback requirements apply, to the satisfaction to the Department of Building and Safety (Condition No. 10). Lot coverage will not exceed 40% (Condition No.11). Parking will be provided in accordance with the Hillside Ordinance Off-Street Parking requirements (Condition No.9).

The applicant has indicated his willingness to abide by the zoning regulations applying to his property, which include a Hillside designation. No adjustment or variance from any of the zoning regulations has been requested, nor is granted as part of this approval.

5. Environmental clearance

Arguments were presented at the public hearing that the environmental clearance did not identify or address and mitigate all impacts of the project. Comments were submitted to this effect during the legal comment period after publication of the Mitigated Negative Declaration for the project. In a letter dated September 16, 2002,

the leading agency responded to the comments, concluding that the environmental clearance issued is adequate.

Further, in response to the concerns raised at the public hearing, this grant includes additional and more restrictive conditions pertaining to the location of the driveway, the improved preservation of a view corridor by limiting any new house to one story at grade level in height, management of construction activities, which contribute to the mitigation of possible impacts of the development to an insignificant level, pursuant to CEQA requirements. New conditions have also been added to require the preservation of the large 3-foot trunk Monterey pine tree on-site, improved a side yard setback and increased landscaping for the downslope area neighbor to reduce the impact of the height of the new house and open fencing. With these improved existing and new conditions, the MND is valid.

MANDATED FINDINGS

In order for a Coastal Development Permit to be granted all of the requisite findings maintained in Section 12.20.2-G of the Los Angeles Municipal Code must be made in the affirmative. Following is a delineation of the findings and the application of the facts of this case to same.

1. The development is 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. As conditioned to be redesigned, public views of the coastal area will be preserved, and vehicular access to the site will be available in a safe manner. The project will be in compliance with all the applicable requirements of the Hillside Ordinance. The Department of Building and Safety issued an approval for grading purposes for the construction of a single-family dwelling on the site. Regardless of the modifications required of the design of the structure by this grant, the requirements for a grading and geological stability of the site should be substantially the same, and definitely feasible, however extensive they may be required to be.

The property is not adjacent to the shoreline, will not affect marine resources, coastal waters, wetlands, any environmentally sensitive habitat area, archaeological or paleontological resources. As such, the proposed development, as conditioned can be found to be located in an existing developed area able to accommodate it.

2. **The permitted development will not 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. The development of the lot with a single-family home, conditioned to preserve scenic public views of the coast, does not change the designated land use of the property in compliance with current regulations and the adopted Brentwood-Pacific Palisades District Plan.

3. **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.

a. 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.

b. 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. This grant imposes this requirement under Condition No.12.

c. Public view preservation.

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

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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 proposed in this second application for the site, the second story of the dwelling would have blocked all or part of the 42-foot view corridor required in the first approval. In addition, the permitted second story behind the 42-foot view corridor in the first approval would still have blocked some of the remaining public view of the coastline to the southeast. This grant corrects that oversight. The instant grant is conditioned (Condition No.7) upon the elimination of a second story at the ground level, as follows:

7. *In order to maintain a public view corridor of the coastline, nowhere on the site within 42 feet of the westerly property line, shall any structure, including roof structures of any type, walls and fences, exceed an elevation point 4 feet higher than the elevation point of the closest finished grade of Resolano Drive. After the 42-foot point, the building height can be raised to 8 feet and continued at a right angle down Resolano Drive to the eastern house footprint shown on Exhibit C. No second story above ground level as viewed from Resolano Drive is allowed. A partial basement level below a one-story ground level is allowed.*

This condition means that after the 42-foot view corridor (where no at grade structure taller than 4 feet above the street can be built), a one-story 8-foot tall building limit would begin and the house could gradually increase in height (perpendicular to the 8-foot starting point) as the new house extends down the street. A partial basement can be built at the eastern part of the site. No second story above ground level as viewed from Resolano Drive is allowed. Any structure in the 42-foot view corridor must be lowered to not extend more than 4 feet above the street height.

Additionally, numerous references are made in the Brentwood-Pacific Palisades District Plan to mandate the preservation of such views. Redesigned as conditioned, the project will be in conformance with the intent and objectives of the Coastal Guidelines and the District Plan.

In summary, this grant is hopefully a better balancing than the previous approval of the valid interests of both the applicant and the neighbors/Area Planning Commission and Council Office concerns. The City would be at legal risk if no home was approved that meet all the City's hillside development standards and the intent of the Coastal Act. A re-evaluation of the central issue of the Coastal Act which applies to this site, the significant view of the Pacific Ocean westerly and northwesterly toward Malibu and the curving beach views to the southwest back towards Santa Monica, proves that this is the last public vista in the local hillside area to offer such a beautiful wide view of the coast. The nearby Santa Monica Park entrance about 200 yards up the hill to the east, offers only about half of the same view. Therefore, given the new concern in this approval to preserve as much of the entire view from the subject site as possible, a smaller home of one story at grade level becomes the building limit. The previously approved case, ZA 2001-5337(CDP), on this site granted a 42-foot wide view corridor one story with no at grade structure taller than 4 feet above the street to protect the western view of the ocean but allowed a second

level for the remainder of the site which blocked too much of the view towards the southeast beach back toward Santa Monica. Given the fact that on a typical weekend approximately 1,500 visitors drive by this site to get to the Santa Monica Mountain Park, and that there is only one other partial public view of the coast at the Santa Park entrance, it is a reasonable trade-off to allow a small, lower house to protect as much of the public view as reasonably possible.

Without this new compromise, the chances of community and City support for a new home at this location would be unlikely and only further delays and legal appeals would result.

This grant gives both the neighbors and the applicant some, but not all, of what they want. Hopefully, this decision is something both sides can live with in the spirit of a compromise.

4. **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.

5. **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 not so located.

6. **An appropriate environmental clearance under the California Environmental Quality Act has been granted.**

On September 16, 2002, a revised mitigated negative declaration was granted, under ENV-2001-5338-MND, which is adequate to satisfy the requirements of the California Environmental Quality Act of 1970, as amended (see Finding No. 9).

7. **Mello Act**

The project is automatically exempt from the Mello Act's requirements concerning inclusionary residential units as 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.

ADDITIONAL MANDATORY FINDINGS

8. **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)

9. 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) and determined that by imposing conditions the impacts could be reduced to a level of insignificance. On September 16, 2002, the City's environmental review staff responded in detail to a letter by an attorney for opposing neighbors who claimed there were procedural problems with the City's 2001 Mitigated Negative Declaration in light of the West Los Angeles Area Planning Commission's denial of the original case (ZA 2001-5337 CDP) partly on incomplete environmental grounds. This staff response is attached as Exhibit C to this determination.

The City's Mitigated Negative Declaration was re-evaluated from the first case filed on the site (ZA 2001-5337 CDP) and is hereby modified by adding to its original protective conditions.

Based on concerns raised by objecting neighbors and their counsel, the conditions of the City's Mitigated Negative Declaration has been supplemented by added protections in Condition No. 7 (lower building height to protect more of the view corridor), Condition No. 10 (greater downslope setback to reduce closeness of building mass for neighbors and to create a larger greenbelt landscape area), Condition No. 21 (preserve existing large tree), Condition No. 22 (require landscape which does not block scenic views) and Condition No. 23 (require open design fencing to protect scenic views). With the additions to this approval, the City's Mitigated Negative Declaration adequately addresses all the environmental concerns and gives greater weight to the importance of protecting the significant views from this site that the September 16, 2002 supplemental response did not fully acknowledge.

Several changes in the Planning Department September MND reconsideration letter are necessary:

- a) Project Description (p. 2) - At the public hearing of September 19, 2002, the applicant proposed two versions of a redesigned house. Version A was intended to protect the views of upslope neighbors and Version B was intended to meet Condition No. 7 view corridor protection first required in the earlier ZA 2001-5337(CDP) determination. Neither version is consistent with the original 2001 case or this case. Version A failed Condition No. 7 to meet the view corridor totally and Version B failed to meet the part of Condition No. 7 which required no part of any structure in the first 42 feet going downslope to the east be higher than 4 feet above Resolano Drive. The applicant and his architect misunderstood the previous intent of Condition No. 7 which was to severely limit any building but a sunken structure protruding only 4 feet above the street. This grant keeps Condition No. 7 and limits the house height so only a new lower one story at grade level style house can be built. The reconsidered MND evaluated both Versions A and B so a smaller, shorter house consistent with conditions is still covered by the MND.

- b) Public Views (p.2) - The Planning Department's MND reconsideration justification is accurate in explaining that private views have no legal status for City protection and that local motorists who live uphill driving downslope past the site will get only a fleeting 2-3 second view of the coastline and ocean (unless they stop their vehicle).

What is significant enough to justify greater view corridor protection than the original Condition No. 7, which preserved half of the ocean/coastal view, is the view for the general public who come to the Topanga Park trailhead just 200 yards to the north. About 6,000 people come up Resolano Drive each month to enter the park, according to public hearing testimony. On a typical weekend, 1,500 people drive into the upper 1/3 of a mile from the park entrance down Resolano Drive past this subject site. There is very little parking next to the park trailhead. Public visitors therefore, walk past the site going up and down Resolano as do mountain bikers and the occasional artist and bird watcher. It is this group of the public who do not live in the area but regularly go past the subject site each weekend that deserves the chance to see as much of the view straight out to the ocean and also the even prettier view looking back to the sweep of the beach and Santa Monica. This view is significant and worthy of greater protection. By some accounts, this view from the subject site represents "the last public vista of the Palos Verdes Peninsula, Catalina and Channel Islands along the access to this popular trail (to the Topanga State Park)." The revised Condition No. 7 in this grant which limits any new house to one story tall along the area beyond the original 42-foot view corridor does address the previous concern of the West Los Angeles Area Planning Commission. Except for this above modification of view corridor protection and project description, the reconsidered MND is accurate and appropriate when additional mitigation measures 10 (greater side yard setback), 21 (tree preservation), 22 (landscape) and 23 (fencing) are included as part of this grant.

Based on this September 16, 2002, supplemental response, as amended, I hereby adopt the City's Mitigated Negative Declaration No. ENV 2001-5338-MND. The records upon which this decision is based are with the Environmental Review Section in Room 763, 200 North Spring Street.

10. 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.

Jon Perica

JON PERICA
Associate Zoning Administrator
Direct Telephone No. (213) 978-1306

JP:lmc

cc: Councilmember Cindy Miscikowski
Eleventh District
Adjoining Property Owners
County Assessor

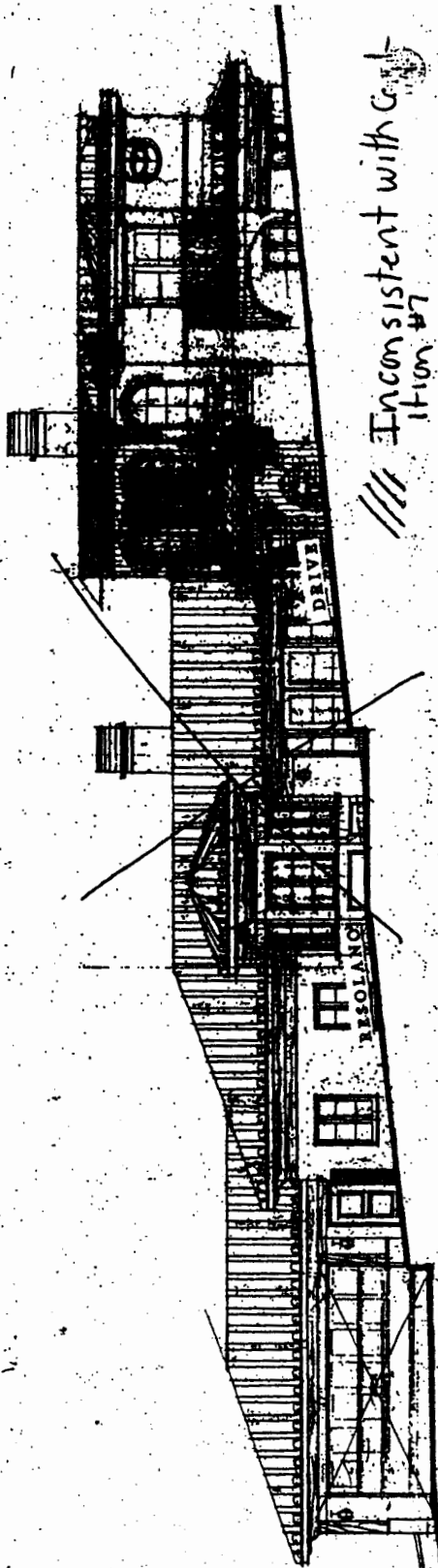
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Original front elevation
from Resolano Drive

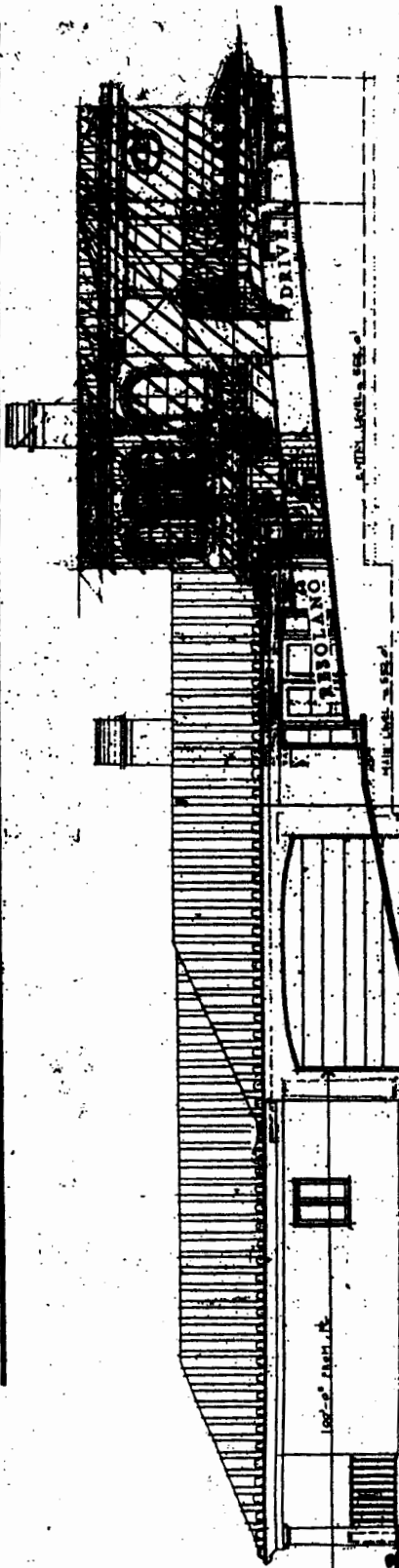


ORIGINAL PROPOSED FRONT ELEVATIONS SHOWING CHANGES

PROPOSAL "A"

Relocation of driveway
and garage

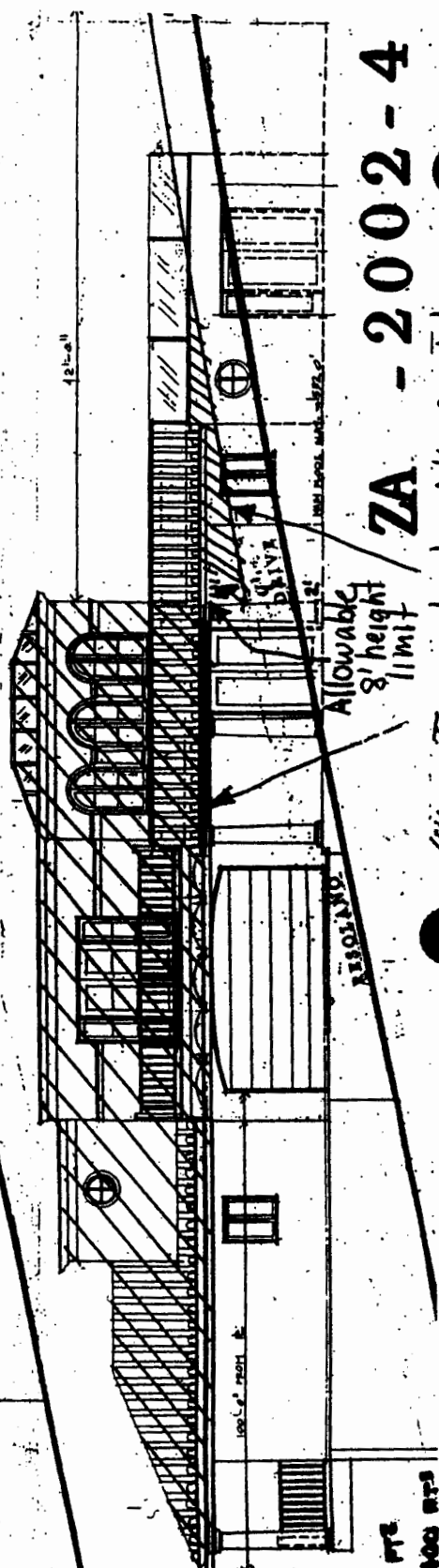
TOTAL FLR AREA = 4400 FT²
GARAGE FLR AREA = 400 FT²



PROPOSAL "B"

Relocation of driveway,
garage and second floor
moving second floor 42'
from the westerly E

TOTAL FLR AREA = 4400 FT²
GARAGE AREA = 400 FT²



ZA - 2002-4

/// = Inconsistent with Condition #

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

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May 22, 2003

RECEIVED
South Coast Region

MAY 22 2003

CALIFORNIA

VIA FAX & VIA FIRST CLASS MAIL

Mr. Chuck Posner
Coastal Program Analyst
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

**Re: CDP No. A-5-PPL-03-156 (Swepston)
649 N. Resolano Drive, Pacific Palisades**

Dear Chuck:

Please find enclosed an article which appeared yesterday on the front page of the California section of the Los Angeles Times regarding Allan Abshez and his questionable lobbying before the West Los Angeles Planning Commission ("WPC").

This is the same Allan Abshez that has represented the adjacent opposing neighbor to Mr. Swepston's project. As I have continually maintained, and as the staff report and action of every reviewing agency of the project in the City has concurred, with the exception of the WPC, the applicant's proposed single family home, as well as the original application for the larger home, met the requirements of the Coastal Act. The project on appeal, as evidenced in the attached Elevation B as proposed before the WPC, provided the 42 foot continuous viewing corridor and relocated the location of the objectionable garage.

If the Commission finds "no substantial issue" it will be merely "rubber stamping" the totally unreasonable denial of the WPC and failing to perform its responsibility under the Coastal Act. The applicant can not received a "fair trial" before the WPC and the Commission is the only agency that can hear this appeal. Forcing the applicant to file another lawsuit against the City and

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PAGE **1** OF **5**

Mr. Chuck Posner
Re: CDP No. A-5-PPL-03-156 (Swepston)
May 22, 2003

Page 2

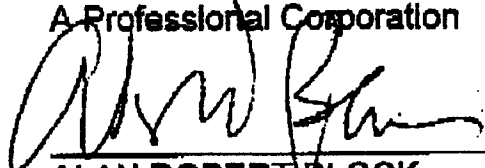
Commission is not the answer.

I respectfully request that you discuss this matter with Debra before our meeting next Thursday.

Mr. Swepston is only requesting for a "fair and impartial" review of his project. The Commission, under the law, is mandated to provide him the same.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation


ALAN ROBERT BLOCK

ARB:aw

Enclosures
cc: Debra Lee
Chuck Daum

COASTAL COMMISSION

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CALIFORNIA

LOS ANGELES EDITION

Wednesday, May 21, 2003

latimes.com/california

Lobbying by L.A. Panel Member Raises Questions

Allan Abshez's work is legal, but it 'doesn't pass the smell test,' says City Atty. Rocky Delgadillo.

By PATRICK MCGREEVY
Times Staff Writer

If Allan Abshez had stepped down from Los Angeles' Central Area Planning Commission within the last 12 months, city ethics laws would bar him from lobbying city planners on behalf of a company that is seeking to expand a Westwood cemetery. But Abshez is allowed to lobby for the firm because those re-

strictions don't apply to a person in his position: He's an active member of the commission.

For the past year, Abshez has represented Service Corp. International at hearings before the City Planning Commission, which approved the cemetery expansion, and the West Los Angeles Area Planning Commission, which will vote this month on the controversial design for a new mausoleum.

City Atty. Rocky Delgadillo has reviewed Abshez's activities as a paid lobbyist and has concluded that he is acting legally in his dual role. He concluded that state law permits Abshez to

[See Lobbying, Page B9]

[Lobbying, from Page B1]

lobby all city planners except the members of his own Central Area Planning Commission.

But Delgadillo said the case raises concerns about city laws that restrict lobbying by former commissioners but fail to regulate the actions of current ones.

Partly because of Abshez, some ethics advocates are recommending that the city impose additional restrictions on lobbying by sitting city officials.

Having a commissioner lobby City Hall, Delgadillo said, "doesn't pass the smell test."

"Commissioners are privy to sensitive information," have inside knowledge about policy makers and "have intimate access to the decision-makers," Delgadillo said in a written statement.

"It would appear to be unfair for someone to benefit financially, even if it were technically legal, from the work they do as a city commissioner," Delgadillo added.

Abshez, who was appointed to the Central Area Planning Commission by Mayor James K. Hahn in April 2002, said he does

not see any conflict of interest in advocating for a client in front of the citywide and West Los Angeles commissions.

"The fact that I am an area planning commissioner had no weight on what they did," said Abshez, a partner in the law firm of Irell and Manella.

Still, residents fighting to limit expansion of Pierce Brothers Westwood Village Memorial Park, as well as some city officials and ethics watchdogs, say the company gained an unfair advantage by exploiting a loophole in city ethics laws.

"He's got a huge conflict of interest," said Tamar Hoffs, a filmmaker and president of Friends of Westwood Village Memorial Park, which is fighting the project. "He is making big pots of money from this company that I'm sure is not unaware of the fact that he has privilege from being a commissioner."

During an April 30 hearing, West Los Angeles Planning Commissioner Elvin W. Moon publicly objected that Abshez appeared as a paid lobbyist before a city planning commission.

"He interfaces with the same

COASTAL COMMISSION

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L.A. Planning Commissioner Lobbies City Planners

'It certainly doesn't make sense to say you can't lobby after you leave office but you can while you are in office.'

Robert Stern, Center for Governmental Studies

staff. They have to work with him just like they work with us. I think that's a conflict," Moon said.

Another city commissioner said he had complained to the city Ethics Commission about Abshez's activities. "I think it's outrageous," said the commissioner, who asked not to be identified for fear of jeopardizing his appointment by Hahn.

Robert Stern, president of the Center for Governmental Studies, a nonprofit organization in Los Angeles that researches political ethics issues, also questioned the logic of allowing Abshez to lobby other commissioners.

"It certainly doesn't make sense to say you can't lobby after you leave office but you can while you are in office," he said. "If the

[ethics] commission "feels it is important to impose a ban on lobbying after someone leaves office, it certainly is as important to impose a ban while he is a sitting commissioner."

In fact, the Ethics Commission recommended in 1996 that the city prohibit commissioners from serving as paid lobbyists at City Hall, but the measure was never acted on by the City Council. Abshez is one of five lobbyists appointed to city commissions.

Ethics Commission President Miriam Krinsky said the issue should be revisited by the panel.

"You have more power to lobby while sitting on a commission than you do after you step down. That strikes me as odd," Krinsky said. "It certainly sounds like a loophole worth serious consideration."

Westwood Village Memorial Park is famous as the final resting place of Marilyn Monroe, Walter Matthau, Jack Lemmon, Natalie Wood, director Billy Wilder and other Hollywood stars.

SCI bought the cemetery at 1218 Glendon Ave. in 1996. Last year, it proposed building two mausoleums — one of them 18 feet high — to hold 475 caskets.

A spokesman for SCI said the company hired Abshez to help shepherd the project through the permit process because it has used his law firm, Irell and Manella, for some years and Abshez is experienced in planning issues. "We hired him because he is an expert in this type of matter," said CSI spokesman Terry Hemeyer.

The cemetery's neighbors complained that the additions would be too close to homes and that their design would not be consistent with existing mausoleums. Nonetheless, the project was approved in July by the City Planning Commission after the panel heard testimony from Abshez.

The Friends group appealed the decision, arguing that the

plans conflict with the cemetery's designation as a city historical monument. The group seeks to shift the front of the mausoleum away from homes and save several trees on the property.

That appeal is pending before the West Los Angeles Area Planning Commission, which is expected to vote today.

On Friday, the City Council approved a recommendation by Westside Councilman Jack Weiss to extend the hold on building permits by 60 days. The Cultural Heritage Commission had urged a six-month extension. Weiss said he supported an extension to give the two sides time to work out a compromise on remaining issues.

Weiss is a former attorney at Irell and Manella for whom Abshez held a political fund-raiser. In all, Abshez has directly contributed \$8,000 to city politicians in the last five years, including Hahn and Weiss.

Weiss said he was not influenced by whether involved parties are political supporters. "All I'm looking at is the merits," he said.

COASTAL COMMISSION

EXHIBIT #

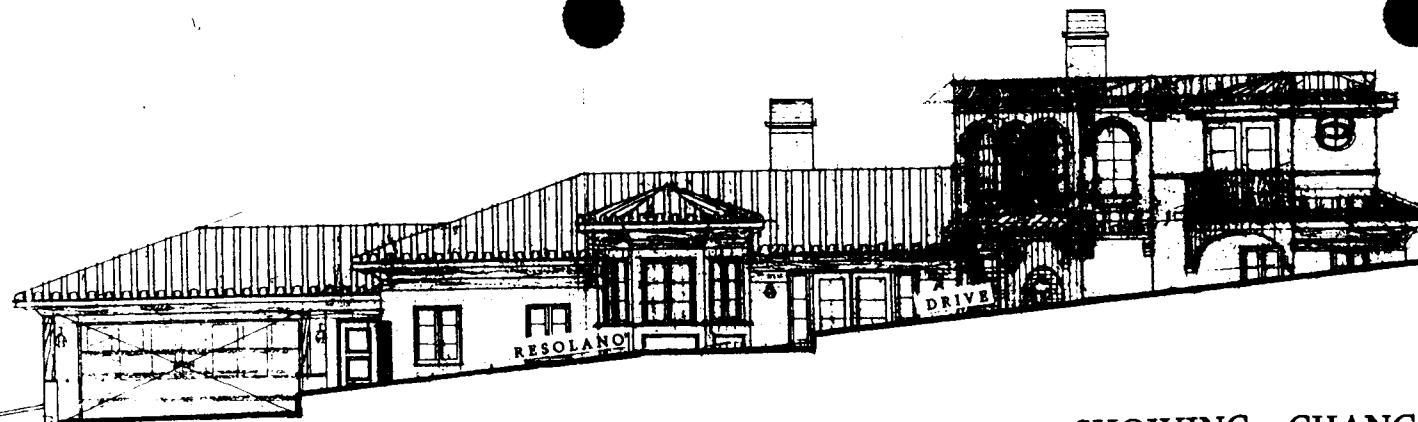
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OF

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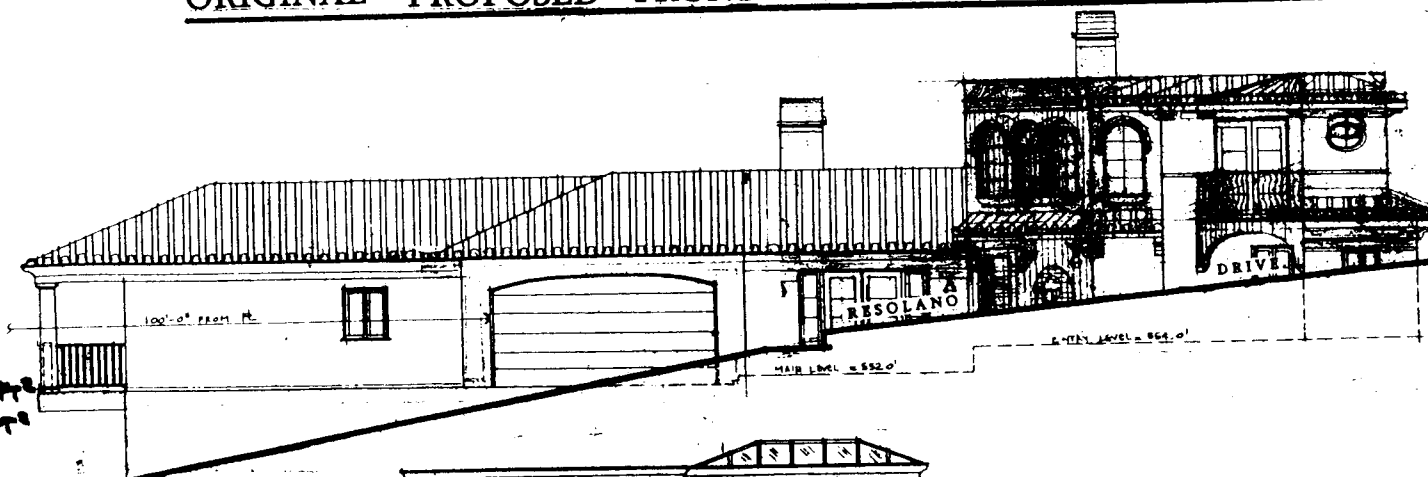
Original front elevation
from Resolano Drive



ORIGINAL PROPOSED FRONT ELEVATIONS SHOWING CHANGES

PROPOSAL "A" -
Relocation of driveway
and garage

TOTAL FLR AREA = 4100 FT²
GARAGE FLR AREA = 400 FT²



PROPOSAL "B" -
Relocation of driveway,
garage and second floor
moving second floor 42'
from the westerly E

TOTAL FLR AREA = 4100 FT²
GARAGE FLR AREA = 400 FT²



ZA - 2002 - 4162

COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF 5

FORWARD ARCHITECT
ALAN SWEETSON
PACIFIC PALMS, CA 90777

NEW SINGLEFAMILY CONSTRUCTION
THE SWEETSON RESIDENCE
FOR THE COASTAL COMMISSION
PACIFIC PALMS, CA 90777

840 NEWPORT CENTER DRIVE, SUITE 400
NEWPORT BEACH, CA 92660-6324
TELEPHONE (949) 760-0991
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IRELL & MANELLA LLP

A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

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LOS ANGELES, CALIFORNIA 90067-4276

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South Coast Region

MAY 27 2003

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
South Coast Area
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, California 90802-4416
Attention: Mr. Chuck Posner

May 22, 2003

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MAY 27 2003

CALIFORNIA
COASTAL COMMISSION

Re: A-5-PPL-03-156; 649 N. Resolano Drive; **Hearing Date: June 11, 2003;**
Agenda Item 8B (A-5-03-156)

Honorable Commissioners:

We are writing on behalf of our clients, Marc and Louise Shmuger to respectfully request that you uphold the decision of the West Los Angeles Area Planning Commission denying the above referenced Coastal Development Permit.

We note that Coastal Commission staff had insufficient time to obtain and review the City's files in this matter, and that a continuance was therefore granted by the Coastal Commission. We hope that you have reviewed the file and been able to listen to the tape of the February 19, 2003 proceedings of the West Los Angeles Area Planning Commission denying the Applicant's Coastal Development Permit.

The appeal filed by the applicant and appellant misstates the record and the basis for City of Los Angeles' decision. The City's decision largely speaks for itself, and is attached hereto. Set forth below is a brief summary of the multiple reasons why the City's decision should be upheld.

In denying the Applicant's initial Coastal Development Permit application last year, the West Los Angeles Area Planning Commission ("West LA APC") and the City's Associate Zoning Administrator found that the proposed project was deficient in multiple respects and that a "major redesign" of the proposed project was necessary to bring the project into conformance with the City of Los Angeles Local Coastal Program, which is comprised of the City's general plan, zoning, hillside and coastal development policies and regulations. See Los Angeles Municipal Code Section 12.20.2.B defining the City's Local Coastal Program.

COASTAL COMMISSION
A5-PPL-03-156

EXHIBIT # 9
PAGE 1 OF 3

California Coastal
Commission
May 22, 2003
Page 2

At its February 7, 2003 hearing on the Applicant's prior appeal, the Coastal Commission upheld the City's denial of the Applicant's initial Coastal Development Permit application. The Coastal Commission found that there was no substantial issue for the Applicant's appeal to the Coastal Commission. The Coastal Commission also found that there is "a high degree of factual and legal support for its decision that the development is inconsistent with the Coastal Act." The Coastal Commission expressly found that the proposed development "would negatively affect public views" and "create hazardous traffic and pedestrian situations." The Coastal Commission expressly found that "the affected public view and the threat to public safety are significant."

The Applicant submitted two alternative designs for the City's consideration. In response, a new Associate Zoning Administrator, Jon Perica, evaluated the application. He disapproved both alternative designs, and again found a "major redesign" would be necessary to ensure that the project was consistent with the City's Local Coastal Program. See December 4, 2003 decision of Zoning Administrator John Perica (hereinafter, the "December 4th Decision"). *See Ex. #7*

In his December 4th Decision, Mr. Perica found that neither of the two alternative designs submitted by the Applicant responded to the July 16, 2002 decision of the West Los Angeles Area Planning Commission (which was upheld by the Coastal Commission on February 7, 2003).

He stated that both designs impinged on the 42-foot view corridor requested by Associate Zoning Administrator, Anik Charron, in her initial April 19, 2002 decision. He also found that in order to preserve the public coastal vista from Resolano Drive, the house should be limited to one-story, and that the Applicant could redesign the project to provide a daylight basement if it desired to do so. See December 4th Decision, pages 13, 14, 15, 16, 17, and 18. Mr. Perica also found that the driveway proposed in both alternative designs would have to be relocated to the upper portion of the property. See December 4th Decision, page 15. *See Ex. #7*

Notwithstanding his complete disapproval of the plans submitted and his requirement for a "major redesign," Mr. Perica characterized his decision as an "approval" with guidelines for development.

On February 19, 2003, the West Los Angeles Area Planning Commission ("West LA APC") overturned Mr. Perica's December 4th Decision. The West LA APC found Mr. Perica's approach improper in that the plans submitted by the Applicant had clearly been rejected requiring a "major redesign." The West LA APC agreed that a major redesign was necessary for the reasons described by Mr. Perica, but that an "approval" could not be granted until plans were submitted, subjected to environmental review, and subjected to

COASTAL COMMISSION

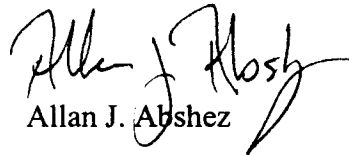
California Coastal
Commission
May 22, 2003
Page 3

public hearing. The West LA APC also found that the plans submitted to Mr. Perica were incomplete, that additional geologic information was necessary because the area was subject to active landslides, and that the proposed mitigated negative declaration was inadequate in that it did not address the plans submitted by the Applicant, and had not evaluated impacts to public coastal vistas and traffic hazards consistent with the West LA APC's previous decision.

The West LA APC's denial of the Applicant's Coastal Development Permit was therefore proper, and consistent not only with the West LA APC's decision of July 16, 2002, but also with the Coastal Commission's decision of February 7, 2003.

The Applicant has never submitted any plans that respond to the requirements of the Zoning Administrators who have reviewed the case, the West LA APC, or the Coastal Commission. Thus, there is no substantial issue for the Applicant's appeal to the Coastal Commission, and the same should be denied.

Very truly yours,


Allan J. Abshez

AJA

cc: Mr. Marc Shmuger
Councilwoman Cindy Miscikowski

COASTAL COMMISSION

EXHIBIT # 9
PAGE 3 OF 3

MIRAMAR HOMEOWNERS' ASSOCIATION

Wednesday, June 11, 2003 8B

Appeal No. A-5-03-156

Case No. ZA-2002-4168 (CDP)

Audrey Ann Boyle

Co-Chair, Miramar Homeowners' Association

Opposed to the Appeal

May 22, 2003

Commissioners
California Coastal Commission
South Coast Area
P. O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Honorable Commissioners:

The Miramar Homeowners' Association strongly urges you to deny the appeal.

The Addendum 1 attached to the appeal is filled with inaccuracies.

In the first paragraph it is stated that the subject property is "surrounded by two-story single family residences. Most of the homes in the area are three-story and most are substantially larger than the proposed residence." This is simply not true. There are three homes adjoining the subject property, **two are one story homes under 2500 square feet**, the third home is two stories. Paseo Miramar is one hill with several small side streets off it. Taking the entire hillside neighborhood into consideration, there are **14 three-story homes, 22 two-story homes and 33 one-story homes**. Of the 69 homes in the hill **only 12 would be larger than the proposed 4400 square foot project** proposed by the appellant.

In paragraph three of Addendum 1 the appellant states his application incorporated, "conditions of the Zoning Administrator's earlier approval into the revised project." The revision included minor changes but by no means met the conditions put in by the Zoning Administrator. The Zoning Administrator's requirement for project height in the northern 42 feet was either ignored or misinterpreted. To this day we have not seen any plans incorporating either of the Zoning Administrator's conditions.

On page two, paragraph one the Addendum states the lot is, "substantially identical to that existing on all of the surrounding properties, many of which have been developed with similar single family homes with Commission approval." The only thing true

COASTAL COMMISSION
A5-PPL-03-156

EXHIBIT # 10
PAGE 1 OF 3

about that statement is that many were approved with Commission approval. As stated in paragraph one above, **this project is not similar let alone substantially identical to surrounding properties.** The fragment of the lot the proposed structure would occupy would be the second smallest in the entire neighborhood. The only lot smaller is a home the neighborhood fought against. It was built by a developer prior to the hillside ordinance. That is the only property with which this project would share any similarity.

The appellant goes on in the Addendum to challenge the West Los Angeles Area Planning Commission (WAPC). The Commission was correct in its decision. The danger to the residents living above the property and the approximately 6000 hikers per month who use Resolano Drive to access the trailhead is very serious. We do not believe there is a location on the steep, "S" curved substandard street where a driveway could be located which would not produce a potentially fatal accident. The bikers who go down the street are at excessive speeds. There is no way they could avoid an accident with a car egressing from a driveway on this fragment of a lot. Many neighbors have expressed true fear at the thought of a driveway on that property. In this day and age, the people should not have the City or the State allowing additional fears to be imposed on its citizens. The safety of the residents and the hikers and bikers who regularly use this very narrow steep street should be of utmost concern to the Commission, not the profits of one developer.

The public view is a treasure for the hikers and bikers who walk and ride this road. Other than up on the trail, this is the last site for the public to enjoy the Santa Monica Bay view. After scaling the steep hill of Resolano Drive it is a serene location to catch one's breath and enjoy the view before proceeding up to the trailhead. Paseo Miramar is adjacent to Los Liones Canyon and many hikers make the circle part of their hike. This is also a site where, in the past, many artists would set up their canvases to paint the spectacular view.

In February or March of 2002, the Miramar Homeowners' Association contacted the Coastal Commission to request that the eight foot high double green screen be removed that the Appellant had erected around the property at that time. After repeated phone calls I was told the Commission just did not have the staff to enforce this type of violation. In February of this year I wrote you regarding the first hearing on this property and requested you again to have the screening removed. At the hearing you stated this would be looked into. The screening is still there. As a result, 2003 will be the second Fourth of July the public will not be able to view the fireworks from this popular location. I ask again if this can be rectified. The fence is one thing, the screening is not necessary.

One other point, the appellant refers to this as a "pie shaped lot" as though it was always this way. That is not true. This site is a portion of Lot 9. In the mid-1960s 758

COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 3

MIRAMAR HOMEOWNERS' ASSOCIATION

Paseo Miramar was built on the larger portion of Lot 9. The originally intended lot was rectangular and over 24,000 square feet. There is also the issue of the CC&Rs of the tract. They state, "one single family residence per lot". Therefore a separate single family residence on this fragment of Lot 9 would be in violation of the neighborhood CC&Rs.

Once again, we urge you to deny this appeal. Thank you for your time and consideration.

Sincerely,



Audrey Ann Boyle
Co-Chair, Miramar Homeowners' Association
752 Paseo Miramar
Pacific Palisades, California 90272
(310) 230-2493

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EXHIBIT # 10
PAGE 3 OF 3

MATTHEW BOYLE
752 Paseo Miramar
Pacific Palisades, California 90272-3025
(310) 454-3092

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MAY 28 2003

CALIFORNIA
COASTAL COMMISSION

Wednesday, June 11, 2003 8B
Appeal No. A-5-03-156
Case No. ZA-2002-4168 (CDP)
Matthew Boyle
Homeowner, Neighbor
Opposed to the Appeal

May 30, 2003

Commissioners
California Coastal Commission
South Coast Area
P. O. Box 1450
299 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Honorable Commissioners:

Addendum 1 attached to the referenced Appeal contains several incorrect and misleading statements. I respectfully request you give due consideration to the following upon making your decision.

1. **Statement:** "It is surrounded by two-story single family residences. Most of the homes in the area are three-story and most are substantially larger than the proposed development."
Facts: The property is surrounded by Resolano Drive and three single- family residences. Two of the residences are single-story and less than 2500 square feet; the third is a two-story residence.
The "area" of Paseo Miramar and its branching side streets contains 69 homes, only 14 of which are three-story.
2. **Statement:** "The applicant and appellant thereafter submitted a second Coastal Development Permit ("CDP") application to the City, No.ZA2002-4168(CD).....and incorporating conditions of the Zoning Administrator's earlier approval into the revised project".
3. **Facts:** The height limitation of the northern 42 feet of the proposed development specified by the first Zoning Administrator was incorrectly shown on the drawing. This error required the second Zoning Administrator to restate it in his decision. No drawings correctly complying with the Zoning Administrators' requirements have been made available for public review.

In addition to the above, the increase in the hazard that a driveway from the project would introduce to the present sub-standard configuration of Resolano Drive is a matter of great concern. A more detailed description of this matter is contained in the attached letter I wrote to Los Angeles Councilwoman Cindy Miscikowski. The neighbors to the project site and all the visitors to Topanga State Park who must pass the property will greatly appreciate your continued concern for their welfare

Yours truly,.

Matthew Boyle

COASTAL COMMISSION
AS-PPL-03-15

EXHIBIT # 11
PAGE 1 OF 3

MATTHEW BOYLE
752 Paseo Miramar
Pacific Palisades, California 90272-3025
(310) 454-3092

February 27, 2003

Honorable Cindy Miscikowski
Councilwoman, Eleventh District
City Hall
200 N. Spring Street #415
Los Angeles, CA 90012

Reference: 649 Resolano Drive, Pacific Palisades, CA

Dear Councilwoman Miscikowski:

My February 11, 2003 letter respectfully requested you to consider using the authority of your office to initiate a procedure that would deny a permit for the proposed construction on the referenced site. The basis for the prohibition is the danger that access and egress to and from the development would inflict upon the users of already hazardous Resolano Drive. Your disappointing February 19th letter to Commissioner Rodman, advocating continuance of the project, totally ignored the presence of the well-documented threat. I am hopeful that this letter may induce you to reconsider your position in light of the following redundant, but unfortunately necessary, recapitulation.

- The increase in danger is cited in the form of letters and testimony in the files of four hearings. The residents who are forced to use Resolano Drive pleaded to the City for protection.
- The increase in danger is described by Zoning Administrator Anik Charron on Page 11, Physical Setting, paragraphs 2 and 3 and Page 12, Circulation, traffic hazards, paragraphs 1, 2 and 3 in her April 19, 2002 decision. .
- The increase in danger is described by ZA Jon Perica on Page 12, Physical Setting, third paragraph and Page 14, Circulation, traffic hazards in his December 4, 2002 decision.
- The increase in danger is described by the West Los Angeles Area Planning Commission on Page 2, Findings 2A second paragraph and Page 3, Section C2, second paragraph in its July 16, 2002 decision.
- The Planning Department's response to the problem was to attempt to mitigate the danger by relocating the driveway. Where public safety is the issue, and a more effective means is available, mitigation is an insufficient remedy. In this instance, the City has the opportunity, the obligation and the responsibility to prevent the danger by simply refusing to issue a permit.

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF 3

MATTHEW BOYLE
752 Paseo Miramar
Pacific Palisades, California 90272-3025
(310) 454-3092

- The February 7, 2003 Staff Report to the California Coastal Commission on the Applicant's failed Appeal states on Page 7 "It is not clear if the proposed project's impacts on public safety can be mitigated."
- In the last paragraph on Page 20 of his decision, ZA Jon Perica observes that the City would be at legal risk if no home were approved. On the other side of the matter it is undeniable that accidents and consequent litigation will result if the City disregards the warnings cited above. The former risk would be a one-time matter. The latter risk would last indefinitely. If the City denies the permit in recognition of its responsibility for public safety the Applicant may sue. If the Court were to decide that the residents' claims of danger were subordinate to the desire of the Applicant, the project and the permit application process would proceed. However, by having attempted to deny the permit, the City would not be vulnerable to accusations of negligence for being unmindful of the public welfare. If the Court were to decide in the City's favor the matter, of course, is ended.

The residents of Tract 10175 and Vista Pacifica and all who may be exposed to the danger would greatly appreciate your assistance in this important matter.

Yours truly,

COASTAL COMMISSION

EXHIBIT # 11
PAGE 3 OF 3

DEPARTMENT OF
CITY PLANNING
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

PLANNING COMMISSION

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PRESIDENT

JORGE JACKSON
VICE-PRESIDENT

SUSAN HUBBARD-OAKLEY
JOSEPH KLEIN
JAVIER O. LOPEZ
MITCHELL B. MENZER
ROBERT L. SCOTT
CHESTER A. WIDOM

GABRIELE WILLIAMS
COMMISSION EXECUTIVE ASSISTANT
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CITY OF LOS ANGELES
CALIFORNIA



JAMES K. HAHN
MAYOR

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INFORMATION
(213) 978-1270

FILE NO.: ENV 2001-5338-MND/ZA-2002-4168-CDP

DATE: September 16, 2002

TO: Jon Perica, Associate Zoning Administrator
Emily Gabel-Luddy, Associate Zoning Administrator
Hadar Plafkin, City Planner *HP*
Environmental Review Unit

FROM: Nicholas Hendricks *NH*
Environmental Review Unit

RE: COMMENTS ON PROPOSED MND 2001-5338
PROJECT LOCATION: 649 Resolano

PROJECT DESCRIPTION: Coastal Development Permit for the construction of a 4,400 square foot single-family residence on a 9,343 square foot lot in the RE 15-1-H zone.

Comments on the proposed MND 2001-5338 were submitted by Allan J. Abshez, Attorney, on behalf of Marc and Louise Schmuger, opponents/residents. The comments are hereby acknowledged and addressed by the Environmental Review Unit. The Environmental Review Unit has prepared a response in accordance with the Los Angeles City CEQA Guidelines as follows:

- Based on the Comments submitted by Mr. Abshez, the EIR staff has prepared a response to reflect those issues identified in the Determination of the West Los Angeles Area Planning Commission for the purpose of establishing justification for the conclusions of the Environmental Analysis which are contrary to many elements and issues cited in the Commission's Findings.

Attachments

Photographs and Assessor Parcel Map

Comment Letter (MND): to the EIR Unit, received September 4, 2002

Comment Letter to the West Los Angeles Area Planning Commission received June 10, 2002

Determination Report: West Los Angeles Area Planning Commission, July 16, 2002.

Response to Comments :

COASTAL COMMISSION
AS-PPL-03-156

EXHIBIT # 12

The MND was prepared under the constraints of "Substantial Evidence" as required by the California Environmental Quality Act Guidelines Section 15064 and Public Resources Code Section 21082.2. Such evidence is contained and referenced in the record and such evidence has been in the record since the original MND filing. The EIR staff has performed an environmental analysis which identified issues in the Commissions Determination Report. Based on the evidence in record, reasonable assumptions predicated upon facts, and expert opinion, the EIR staff has concluded that the overall impact on the environment is less than significant. In areas where potentially significant impacts have been identified, those impacts will be mitigated to less than significant levels. The following items establish the basis for the Environmental Assessment and conclusions:

- ▶ **Project Description** in the Reconsideration of MND 2001-5338 is reflective of the proposal "A" and "B" which are essentially the same. The differences between the two are minor design concepts corresponding to the view corridor requirement imposed by the Associate Zoning Administrator and new proposed driveway access. Regardless of the two design proposals, environmental impacts will not change or increase from what has been previously analyzed. Pursuant to CEQA Guidelines section 15071 (a), the project description is adequate and complete. Furthermore, the MND has been circulated for public review providing public access to all facts and elements of the proposed project. The Reconsideration MND (Environmental Case No. ENV-2001-5338[Reconsideration]) includes a new Initial Study Checklist, attachments, copies of official documents, West Los Angeles Area Commission Findings, AZA Approval and Conditions, comment letters, and pertinent data to support the use of a Mitigated Negative Declaration.

Commission Findings

1. **The Commission determined** that "the Zoning Administrator did err or abuse her discretion."

The Environmental Review Staff reviewed the Zoning Administrator's Conditions of Approval and supporting documentation and found that the evidence referenced and used in the Zoning Administrators report to determine the adequacy of the MND is consistent with the facts represented in the record; such facts constitutes substantial evidence. Reliance on opposition arguments as implemented in the Findings, is not consistent with CEQA standards of review indicated in CEQA Guidelines Sections 15064, 15065, 15074(a)(b), and Public Resources Code Section 21082.2.

2. N/A (Formal statement regarding the following Findings)

2.A. **The development is not in conformity with Chapter 3 of the California Coastal Act of 1976.**

Public Views:

Commission determined that "public views of the coastal area will not be preserved by the redesigned project."

Environmental Review Unit found evidence contrary to the Commissions Finding based on the following facts:

COASTAL COMMISSION

- ▶ Resolano Drive is not designated as a Scenic Road in the Community Plan (See Community Plan Map 129P117 and corresponding legend in the Brentwood-Pacific Palisade Community Plan).
- ▶ There is no public parking, sidewalks, or safe pedestrian oriented vantage points on any section of Resolano Drive directly in front of, or adjacent to the project site.
- ▶ The steep grade and blind curve on Resolano Drive make public viewing dangerous from any point on Resolano Drive.
- ▶ Resolano Drive runs in a southeasterly direction going downslope from the upper portion of the street. Thus, occupants of vehicles traveling in the downslope direction are forced to look southeasterly down Resolano Drive; this view point is perpendicular to the views across the project site. The view through the project site is a southwesterly view. (See images 4, 5, 7, 20, 27, & 28 - Photos taken by the Environmental Review Unit and attached to the Reconsideration MND)
- ▶ View Impact arguments are related to private views based on the above mentioned facts. There are no legal protections of private views beyond what is expressed through uniformly applied development policies adopted by the City of Los Angeles (Hillside Ordinance/Planning and Zoning Code). Development standards such as zoning, height restrictions, setbacks, and lot coverage are intended to provide for such protections.
- ▶ Both homes, 625 and 633 Resolano Drive, are built on the same slope (downslope) of the project site and have views facing in a southerly direction. These southerly views are of the Pacific Ocean: the very views described in the Commission Findings as not being preserved; these views will not be obstructed by the proposed project because the project is behind and upslope (north) of these homes. The project's roof line elevation (approximately 572.00 ft) is consistent with the height of the adjacent home on the northwesterly adjoining lot (752 Paseo Miramar - roof elevation 574.70 ft). The home across the street on the northeasterly corner of Paseo Miramar and Resolano Drive (758 Paseo Miramar), have windows facing south/southwest at elevations from 582 feet to 583 feet. (See project topographic survey and photographs)
- ▶ Project proposals "A" and "B" as described in the reconsideration include project modifications decreasing floor area and a "view corridor" as directed in the Associate Zoning Administrator's "Conditions of Approval" (Condition No. 7) dated April 20, 2002. This condition is unique and remarkable, considering that the adjacent structures have no view corridors and in fact obstruct views. Therefore, project has been conditioned beyond what has been required of other adjoining developments.

COASTAL COMMISSION

Vehicular Access:

Commission determined that "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 Environmental Unit found that the project will not exacerbate hazardous situations because project revisions (as conditioned in the AZA's Approval, Condition No's. 2, 8, and 16) and Mitigation Measure XD d., will reduce safety hazards to less than significant levels. Project may not commence until such conditions and mitigation measures have been performed to the satisfaction of the Department of Transportation, Bureau of Engineering, and the City Planning Department.

Furthermore, the proposed driveway is located towards the top of the slope. At this point, the proposed driveway access is visible and closer to the intersection of Resolano Drive and Paseo Miramar (See Photo Image No. 4). Vehicular traffic proceeds onto Resolano Drive downslope from the stop sign at the intersection of Paseo Miramar and Resolano Drive; there are no visual impediments at this point. The existing hazards from the blind curve occur beyond and immediately downslope from the driveway access point (See Photo Image No. 5). It is reasonable to assume, that based on this fact, speed gains from moving vehicles would occur at a greater rate beyond the existing blind curve and well beyond the proposed driveway access point.

Based on existing hazards without the project and with existing developments with driveway access on Resolano (immediately behind and downslope from the blind curve - i.e., 633 Resolano Dr.) the argument that "absolute certainty for numerous fatal accidents" is not supported by the record: there have been no reports of numerous fatal accidents occurring at alarming rates on Resolano Drive as a result of Drive access near blind curves. Therefore, the key point in implementing a safe driveway access is: line of site and position of the driveway. The current proposed driveway would be visible on the downhill approach from the intersection of Resolano Drive and Paseo Miramar. Based on the expertise of the Department of Transportation and the Bureau of Engineering, it can be reasonably assumed, that these safety issues will be addressed by the above Departments through **required mitigation** as indicated in the MND.

Hazards resulting from vehicular traffic moving upslope is not significant because vehicles are moving upslope (thus, impeding speed gains), are farther away from the driveway access point, and are not impacted by the blind curve (See Photo Image No's. 5 and 7). Based on this fact and the Conditions and Mitigation Measures imposed on the project, any potential impact will be less than significant. Existing hazards will not be exacerbated by the proposed project. (See Assessors Parcel Map and project plans, and photographs)

Geologic Stability:

The Commission determined that "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."

The Environmental Review Unit has concluded that potentially significant impacts to Geological Resources will be mitigated to less than significant levels based on the facts referenced in the "Approval Conditions for Soils and/or Geology Reports" both in the original and reconsideration MND. The Commission erred in relying on project opponents unsubstantiated opinions regarding geological conditions. Geotechnical information was provided in the record prior to the Commission hearing. This is further established by the Geological assessment approved by the Department of

Building and Safety, Grading Division - dated 12/05/01. This fact has been verified and is referenced in the AZA's Approval, subcategory "Issues", page 14, No. 3 and the Response to Comments dated January 29, 2002 (Original Proposed MND). The assumption by project opponents has been because the site is adjacent to a landslide area, that the site itself is also a landslide area. Opponents also contend that because the lot is a non-conforming lot, that a landslide hazard will occur as a result of the project. This opinion does not constitute substantial evidence and is contrary to Building and Safety's approval and review of the Soils and Geology report. The project site is not designated as a Seismic Hazard site in the Seismic Hazards Map, Topanga Qaudrangle, for landslide hazards.

There are three homes on the same slope; two of the homes are on non-conforming lots, none have caused significant impacts to Geological Resources. The expert opinion of qualified professionals (Mr. Hsu, Geotechnical Supervising Engineer, Department of Building and Safety), indicates that slope stability will be enhanced by the project. Therefore, the original assessment and the reconsideration are accurate, reflect the facts contained in the record, and are based on the expert opinion of qualified professionals. This constitutes "substantial evidence" as expressed in CEQA Guidelines Section 15064 and Public Resources Code Section 21082.2.

Hillside Ordinance:

The Commission determined that "The project will not be in compliance with all the applicable requirements of the Hillside Ordinance."

The Environmental Review Unit has found that there is no legitimate reason to assume that the project will not conform to the Hillside Ordinance because: the project must comply with the Hillside Ordinance as a matter of law. The project proponent has not requested to deviate from this requirement. Project permits cannot be granted until the project conforms to the development standards and conditions imposed by the City.

Project Plans and Community Input - New Public Hearing:

The Commission determined that the "original project plans were not approved. There should be new public hearing with an opportunity for the community to provide input on the revised plans that were not approved."

The Environmental Review Unit does not participate in plan approvals. The environmental unit analyzes projects based on design elements and the "Project Description". Project plans are not approved prior to the decision-maker's determination. In fact, approving plans prior to a decision-maker's determination would prejudice the ability of the decision-maker to condition design modifications and would compromise public participation, preclude environmental protection (mitigation measures), and negate the authority of the decision-maker. Project Plan approvals are performed by Building & Safety after the discretionary process; plan approvals are based on the discretionary actions (conditions and mitigation measures) imposed by the decision-maker. Therefore, it is unreasonable to require plan approvals prior to a decision-makers determination.

The Commission determined that "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."

The Environmental Review Unit has performed and complied with all disclosure and public participation requirements pursuant to CEQA Guidelines Section 15073. Both the original and reconsideration MND have been publicly circulated and comments were received. Project opponents and proponents have attended public hearings, written comments, Council Office - 11th district has participated, and proper notifications have been executed pursuant to CEQA Guidelines.

2. 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."

Non-conforming Lot:

The Commission determined that "the property is a substandard non-conforming lot, which has always been regarded as undevelopable."

The Environmental Review Unit found that the above statement is not consistent with the record based on the following:

- ▶ Division of Land Map No. 1617
- ▶ Planning Department Approval letter dated February 26, 1965
- ▶ Assessors Parcel Map 4416-019
- ▶ Land Use Designation and Zoning
- ▶ Geotechnical evaluation and Approval Conditions for Soil and/or Geology Reports by the Department of Building and Safety
- ▶ State of California Seismic Hazard Zone Map and Reports, Topanga Quadrangle
- ▶ Engineering Maps
- ▶ Street Access
- ▶ Existing Infrastructure
- ▶ Adjoining Developments on non-conforming lots on the same slope with similar soil and geological conditions
- ▶ The subject parcel is not designated as an open space lot or Homeowners Association lot

The above listing of evidence constitutes "substantial evidence" as expressed in CEQA Guidelines section 15064.

Zoning Criteria - Environmental Protection:

The Commission determined that "The City's minimum zoning criteria do not address protection necessary to mitigate the impact of developing such lots. The City must 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."

The Environmental Review Unit found that the minimum zoning criteria for this project is adequate and provides for a uniformly applied development and land use standard that has been adopted by the City and was analyzed in the District Plan Draft EIR CF 76-1923 and Plan Update

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EAF 97-0223/CPC 95-0351 (See Public Resources Code Section 21083.3(b)(d)). The minimum zoning criteria has clearly been executed on adjoining non-conforming lots without the consequences of significant adverse impacts on the environment. The Lead Agency has scrutinized this project above and beyond what other developments on adjoining non-conforming lots have been subjected to; site specific impacts have been evaluated and will be mitigated.

Furthermore, the Lead Agency has imposed conditions and mitigation measures which clearly remedy or reduce any potential impacts to less than significant levels. Thus, the minimum zoning criteria along with the actions of the decision-maker have resulted in an increased level of scrutiny by the Lead Agency with resulting conditions and mitigation measures that exceed previous standards applied to projects on Resolano Drive.

- 2.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 making this determination."

1) Parking

The Commission determined 5 parking spaces would be required based on Hillside Ordinance requirements. (For a 4,700 square foot structure)

The Environmental Review Unit has found that 4 parking spaces will be required based on the project's reduced size (4,400 square feet). Based on the requirements and standards that exist for both the original and modified project, environmental impacts on Coastal Resources will not occur because the project must comply with the standards expressed in the Hillside Ordinance.

2) Road Construction Improvements

The Commission determined that the project may be subject to road improvements. Commission indicates: "Resolano Drive has numerous "blind curves" which creates hazardous conditions for motorists. Dedication and improvements do not appear to alleviate this condition.

The Environmental Review Unit has found that the project may in fact be subject to such requirements. Such improvements may not necessarily remedy the hazardous conditions on Resolano Drive. This conclusion is consistent with the Commission's Findings.

3) Public view preservation

The Commission determined that "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,

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the redesigned project will not be in conformance with the intent and objectives of the Coastal Guidelines and the District Plan.”

The Environmental Review Unit has concluded that the project will not have significant impacts on Coastal Resources (Public Views). The property as others on Resolano offer expansive views from the property itself - a private view. A public scenic vista is not reasonable at this location. (See photo images and page 2, Public Views)

2.D Not applicable for discussion

2.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 Commission determined that “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.”

The Environmental Review Unit found that one blind curve impacts the project site (See Assessors Parcel Map and Photo Images). However, based on the Coastal Act and CEQA Guidelines, a nexus does not exist relating to the Commission’s finding of “questionable access” and those requirements expressed in Chapter 3 of the Coastal Act. For example, public access and public recreation policies of the Coastal Act will not be compromised by the project because the project will not impede, obstruct, or otherwise interfere with access to any public coastal resource or recreation area. Furthermore, the project will not encroach upon a public right-of-way, or interfere with any reasonable access-way to a public coastal resource. The project is not subject to any easement that secures public access through the property, except for that portion of Resolano Drive which has been improved or is subject to street dedication and improvements. Therefore, access is not “questionable” and the statement “numerous blind curves creates hazardous conditions” is irrelevant because the project will not interfere with public access to coastal resources or public recreation areas.

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

The Commission states: “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.”

The Environmental Review Unit prepared an MND which reflects qualified expert opinion and substantial evidence pursuant to CEQA Guidelines Sections 15063, 15064, 15065, 15070, and 15071. The Commission’s determination of inadequacy is not consistent with CEQA Guidelines section 15074(a)(b) which requires a decision-making body to consider the whole record and substantial evidence as a basis for determining the adequacy of an MND. The evidence provided in this response clearly identifies the evidence used in the preparation of the original MND and Reconsideration MND.

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2.G Mello Act Compliance - No issues or arguments relating to the Mello Act.

2.H Flood Hazards - No issues or arguments relating to flood hazards.

2.I Commission determined: "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]."

Environmental Review Unit found that the MND is adequate based on substantial evidence in the record. Such evidence was not considered in the Commission's determination. (See Response to Finding 2.F in this document)

2.J Commission determined: "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 Section 711.2."

The Environmental Review Unit has concluded that the evidence in the record supports Finding 2.J. Furthermore, based on CEQA Guidelines Section 15065 (Mandatory Findings of Significance), the project will not:

- Substantially degrade environmental quality.
- Substantially reduce fish or wildlife habitat.
- Cause a fish or wildlife habitat to drop below self sustaining levels.
- Threaten to eliminate a plant or animal community.
- Reduce number, or restrict range of a rare, threatened, or endangered species.
- Eliminate important examples of major periods of California history or prehistory.
- Achieve short-term goals to the disadvantage of long-term goals.
- Result in environmental effects that are individually limited but cumulatively considerable.
- Result in environmental effects that will cause substantial adverse effects on human beings.

CONCLUSION:

The EIR unit, as a "staffing function", has the responsibility to analyze projects based on the standards and guidelines expressed in the California Environmental Quality Act and Public Resources Code, as well as the California Coastal Act. The EIR unit must disclose the facts and make conclusions which are predicated upon facts, as part of the record, regardless of the opinion of the Area Planning Commission or project opponents. None of the actions of the EIR unit precludes the ability of decision-makers to adopt or amend an MND, or require the preparation of an Environmental Impact Report.

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