

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**Th22a****RECORD PACKET COPY****STAFF REPORT: APPEAL**
NO SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Redondo Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-RDB-04-261

APPLICANTS: Michael & Kimberly Doyle

APPELLANTS: Robert & Linda Moffat, Jill & Tony Pietrini, Kevin Farr, and Shannon Gyuricza

PROJECT LOCATION: 801 Esplanade, City of Redondo Beach, Los Angeles County.

PROJECT DESCRIPTION: Appeal from decision of the City of Redondo Beach approving Local Coastal Development Permit No. 04-01 for a second story addition to an existing one-story single-family residence.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Redondo Beach Certified Local Coastal Program (LCP), 7/22/80.
2. City of Redondo Beach Local Coastal Development Permit No. 04-01 (Exhibit #6).
3. Coastal Development Permit 5-03-008 (807 Esplanade).
4. Coastal Development Permit 5-01-251-W (814 Esplanade).
5. Coastal Development Permit 5-03-016-W (900 Esplanade).
6. Returned Coastal Development Permit Application 5-03-527 (Doyle, 801 Esplanade).

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the appeals raise **no substantial issue** in regards to the locally approved development's conformity with the City of Redondo Beach Certified Local Coastal Program (LCP) and the public access policies of the Coastal Act. The local approval of the proposed project does not violate any view protection provisions of the certified LCP or the public access policies of the Coastal Act. Therefore, the Commission should reject the appeals as they do not raise a substantial issue, and the local approval of the residential addition should stand. **The motion to carry out the staff recommendation is on the bottom of Page Four.**

I. APPELLANTS' CONTENTIONS

Six appellants have appealed the Redondo Beach City Council's June 15, 2004 approval of Local Coastal Development Permit No. 04-01 (Exhibit #6). Local Coastal Development Permit No. 04-01 permits the applicants to add a second story to an existing one-story single-family residence (Exhibit #4). The project site, situated on the seaward side of Esplanade¹, is a 3,000 square foot blufftop lot that overlooks the public beach below (Exhibit #2). The proposed second story addition would reach 23 feet in height above the grade of the Esplanade sidewalk that abuts the eastern side of the project site (Exhibit #5). The existing house extends about thirteen feet above the sidewalk elevation. The northern property line of the project site abuts a City-maintained stairway that provides public access down the bluff face to the sandy beach, about eighty feet below the project site (Exhibit #2).

The project site and the abutting public accessway are situated at the western terminus of Knob Hill Avenue, a public street that descends Knob Hill as it approaches the site from the east (Exhibit #2). As one approaches the western end of Knob Hill Avenue from the east, there is a public view above the roof of the existing one-story house that consists of the sky and part of the sea. The appellants are objecting to the proposed second story because it would block more of this public view than is currently blocked by the existing single-story house.

All of the appellants contend that the local approval of the project is not in conformity with the certified City of Redondo Beach LCP. Specifically, the appellants assert that the LCP protects the public view of the sea that would be affected by the proposed second story addition. Another contention is that the local approval does not conform with Section 30251 of the Coastal Act because the proposed project would adversely affect a public view of the ocean. Additionally, the Pietrinis contend that the City failed to make the required coastal development permit finding that the proposed development, located between the first public road and the sea, is in conformity with the public access and recreation policies of the Coastal Act. Kevin Farr's appeal, in addition to all of the above contentions, asserts that the City failed to comply with the requirements of the California Environmental Quality Act (CEQA) when it approved the project.

II. LOCAL GOVERNMENT ACTION

On March 23, 2004, the City of Redondo Beach Planning Commission held a public hearing for the proposed addition to a single-family residence. After lengthy testimony regarding the proposed project's effect on the public view and the relevant view protection policies of the City's certified LCP, the Planning Commission approved Local Coastal Development Permit No. 04-01 finding that its approval of the proposed second floor addition would not violate any provision of the certified LCP.

Six individuals appealed the City Planning Commission's action to the City Council. On May 4, 2004, the City Council opened a public hearing on the matter. The public hearing was continued to June 8, 2004. On June 15, 2004, the City Council denied the appeals and approved of Local Coastal Development Permit No. 04-01 for the proposed second story addition (Exhibit #6).

¹ Esplanade, an eighty-foot wide two-way street, is the first public road inland of the sea (Exhibit #2).

On Friday, June 18, 2004, the City's Notice of Final Local Action for Local Coastal Development Permit No. 04-01 was received via first class mail in the Coastal Commission's South Coast District office in Long Beach. The Commission's ten working-day appeal period was established on Monday, June 21, 2004. On June 29, 2004, Commission staff received the first appeal from Robert and Linda Moffat. Subsequently, three more appeals (submitted by the Pietrinis, Kevin Farr and Shannon Gyuricza) were received prior to the end of the appeal period. The appeal period ended at 5 p.m. on July 2, 2004.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.² Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)].

Section 30603(a)(1) of the Coastal Act identifies the proposed project site as being in an appealable area by virtue of its location. The proposed project is located between the sea and the first public road paralleling the sea, and within three hundred feet of the beach.

Section 30603 of the Coastal Act states, in part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

² The Commission effectively certified the City of Redondo Beach LCP on September 11, 2003. This appeal is the first locally approved coastal development permit in Redondo Beach to be appealed to the Commission.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(2) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of no substantial issue. If there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will schedule a de novo public hearing on the merits of the application at a subsequent Commission hearing. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, in order to approve a project located between the first public road and the sea, findings must be made that the application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations ("14 CCR") further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. [14 CCR § 13117]

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue. The Commission's finding of substantial issue voids the entire local coastal development permit action that is the subject of the appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds cited for the appeal regarding conformity of the project with the City of Redondo Beach Local Coastal Program or the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

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

MOTION: *"I move that the Commission determine that Appeal No. A-5-RDB-04-261 raises No Substantial Issue with respect to the grounds on which the appeal has been filed."*

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

Resolution to Find No Substantial Issue for Appeal A-5-RDB-04-261

The Commission hereby finds that Appeal No. A-5-RDB-04-261 does not present a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

Local Coastal Development Permit No. 04-01, approved by the Redondo Beach City Council on June 15, 2004, would permit the applicants to add a 23-foot high, 835 square foot second floor onto an existing thirteen-foot high, 1,673 square foot single-family residence on a 3,000 square foot lot situated on the upper part of the coastal bluff that overlooks the public beach (Exhibit #4). The existing one-story (with basement) house is on the seaward side of the improved public street (Esplanade) that currently provides vehicular access to the site (Exhibit #2). The existing two-car garage would be maintained within the ground floor of the house.

Esplanade, the first public street inland of the sea, runs along the top of the coastal bluff parallel to Redondo State Beach (Exhibit #1). The Esplanade right-of-way includes improved sidewalks for pedestrians and two-to-three automobile lanes. Esplanade is lined on both sides with multiple-unit and single-family residences, except south of Avenue A where the west (seaward) side of the street is devoid of structures (Exhibit #2). Expansive unobstructed public views of the shoreline are available from the Esplanade, south of Avenue A to the southern boundary of the City.

The project site, situated between the public beach and Esplanade, is part of a row of one- and two-story single-family homes that line the top of the bluff on the western edge of the densely developed residential neighborhood. Multi-unit residential buildings occupy most of the properties located on top of the bluff north of the site and immediately inland of the site. The height limit for the site, as set forth by the certified LCP, is thirty feet. The proposed residential addition, which extends 23 feet above the elevation of the fronting sidewalk (Esplanade), would obstruct part of the public's view of the sea from Knob Hill Avenue, but would not obstruct any public view from Esplanade or the public beach stairway that abuts the northern edge of the project site (Exhibit #2).

B. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. 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 as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

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

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission find that **no substantial issue exists** for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

The primary issue raised by the appeals is the project's effect on the public's view of the sea. As previously stated, the proposed residential addition, which extends 23 feet above the elevation of the fronting sidewalk (Esplanade), would obstruct part of the public's view of the sea from Knob Hill Avenue, the public street that intersects with Esplanade in front (east) of the project site (Exhibit #2). As one approaches the western end of Knob Hill Avenue from the east, there is a public view above the roof of the existing one-story house that consists of sky and part of the sea. The appellants are objecting to the proposed second story because it would block more of this public view than is currently blocked by the existing single-story house. The proposed addition would not obstruct any public view from Esplanade, as the existing thirteen-foot high house already obstructs the public view of the sea and shoreline from Esplanade. The public view of the shoreline from the public stairway that abuts the northern side of the project site would not be affected by the proposed project (Exhibit #2).

Although the proposed project would affect the public view of the sea from Knob Hill Avenue, Commission staff recommends a finding of no substantial issue for the following reasons:

1. The locally approved development conforms with the City of Redondo Beach certified LCP because the LCP allows two-story buildings and does not protect the public's view over the existing residential development along Esplanade.

2. The affected view of the sea over the rooftop of the existing residential development is not a significant public view or coastal resource, and the view is already partially obstructed by existing residential development.
3. The twenty-foot wide public accessway that abuts the northern side of the project site provides a view corridor through the existing line of residential development and provides the public with a high quality public viewing area.
4. The locally approved development conforms with the public access policies of the Coastal Act because the proposed project would not adversely affect existing coastal access, and adequate public access to the shoreline is provided on the public stairway that abuts the northern side of the project site.

LCP Policies

The locally approved development conforms with the City of Redondo Beach certified LCP because the LCP contains no provisions that would protect the public's view over the existing residential development along Esplanade. The appellants, however, assert that the following provisions of the certified LCP identify and protect the public views of the shoreline in the Knob Hill area, where the project site is located:

Pedestrian Access (LCP ps. 60-61)

Pedestrian access to the shoreline, in the form of improved walkways and ramps both vertical and lateral, is provided throughout the Redondo Beach coastal zone....

An important part of the pedestrian system is the blufftop walkway. This walkway parallels the western perimeter of Esplanade Avenue on a coastal plain, fifty feet above the shoreline. The walkway extends north from the southern boundary of the coastal zone at Torrance City boundary to Knob Hill on the north. An unobstructed blufftop view of the ocean is provided to both pedestrian and automobile travelers along Esplanade. At Knob Hill, steps lead to a walkway midway between the shoreline and the blufftop walkway.

Coastal Recreation (LCP ps. 78-79)

The entire Redondo Beach shoreline is under public ownership. As a result, access to recreational opportunities is very good. The City of Redondo Beach offers a wide variety of coastal recreational opportunities including approximately 1.7 miles of public beach area, a blufftop walkway along the Esplanade to Knob Hill where pedestrian views of the beach are unhampered by residential development.

Beaches (LCP ps. 80-81)

...More than half of Redondo State Beach is open to direct public view from Esplanade which varies in elevation along its length and offers fine vantage points for viewing the beach and ocean. A major public access walkway extends south from the Pier complex to Knob Hill approximately half the distance of the beach.

LCP Policy Analysis

The above-stated descriptive text from the certified LCP describes the project area, the blufftop walkway and the "*unobstructed blufftop view of the ocean*" along Esplanade, but the LCP does not refer to (or protect) any public view over the existing residential development on the project site. The public view from Esplanade at the project site has been totally obstructed by the existing thirteen-foot high house for more than fifty years.³ Thus, the LCP states: "*More than half of Redondo State Beach is open to direct public view from Esplanade.*" That means about half of the view of the beach from Esplanade is obstructed by existing development.

Pedestrian views of the beach are obstructed by existing residential development on the Esplanade properties immediately north and south of the project site as well. As stated previously in this report, Esplanade runs along the top of the bluff parallel to Redondo State Beach, and is lined on both sides with multiple-unit and single-family residences, except south of Avenue A (and the project site) and where the seaward side of Esplanade is devoid of any structures (Exhibit #2). Only south of Avenue A to the southern boundary of the City are unobstructed public views of the shoreline available from the Esplanade.

Given the extensive and longstanding development along the seaward side of Esplanade north of Avenue A, the only interpretation of the LCP's reference to an *unobstructed blufftop view* that makes sense is that the LCP is referring to the view available (from the blufftop walkway along Esplanade) two hundred feet south of the project site where there is no blufftop development along the seaward side of Esplanade to obstruct views of the shoreline (Exhibit #2). The certified LCP includes specific development standards that limit development seaward of Esplanade on the non-residential lots [See Municipal Code Sections 10-5.1100 through 10-5.1117 Public and Institutional Zones/Development Standards: P-PRO (Parks, Recreation & Open Space)]. Therefore, the certified LCP protects the existing shoreline view from Esplanade south of Avenue A from being obstructed by new development, but it does not protect the public's view over the existing residential development along Esplanade.

The existing development on the seaward side of Esplanade includes the applicants' home and several other homes. One of the houses on the seaward side of Esplanade (807 Esplanade), two lots south of the project site, has a second story addition that was approved by the Commission prior to the certification of the Redondo Beach LCP [Coastal Development Permit 5-03-008 (Cusick)]. All of these existing residences prevent the viewing of the shoreline from the blufftop walkway along Esplanade.

The appellants quote the descriptive text of the certified LCP to support their assertion that the proposed development is inconsistent with the certified LCP. This is because the certified LCP, which allows a thirty-foot high house on the site, does not identify any protected view corridor over the project site. Although the implementing ordinances (LIP) portion of the certified LCP sets forth a statement of purpose that includes "maximize public access and public views of the coastline," this statement of purpose cannot support a finding that this specific project violates the certified LCP [Municipal Code Section 10-5.102(b)]. The certified LCP, in non-residential areas of the City, is specific in regards to which public views are protected from development. For instance, the LCP requires that public views be considered when development is proposed in the Harbor-Pier area, but that is one mile north of the project site. Also, as previously stated, the LCP development standards for the P-PRO zone

³ Los Angeles County Assessor records indicate that the blufftop house at 801 Esplanade was built in 1951.

(Parks, Recreation & Open Space) protect the public views over the public open space situated seaward of Esplanade, south of Avenue A (Exhibit #1). Therefore, the certified LCP protects the existing shoreline view from Esplanade south of Avenue A from being obstructed by new development, but it does not protect the public's view over the existing residential development along Esplanade.

In addition, the following Recreation Policies of the certified LCP protect the recreational facilities, such as coastal accessways, that provide the best shoreline views in the City:

- 1. All existing public recreational and visitor-serving facilities will be maintained, enhanced and preserved and, where possible, expanded.*
- 2. Lower-cost visitor-serving and recreational facilities will be protected, encouraged, and where possible, provided.*

Coincidentally, the public stairway that abuts the northern side of the project site is specifically identified and protected in the *Pedestrian Access* section of the certified LCP (ps.61 & LUP Table IX, p.62). The City record states that the twenty-foot wide public accessway was part of the lot at 801 Esplanade (project site) until the property owner granted it to the City sometime prior to the writing of the LCP. The City preserves and maintains this stairway as required by the certified LCP. In fact, the City is proposing to enhance the accessway next to the project site by removing the large ficus tree that currently interferes with shoreline views from Esplanade (Exhibit #6, p.8).

The certified LCP protects visual resources in other ways too. For example, the LCP building standards limit the height and bulk of buildings in order to protect the visual resources and character of Redondo Beach. In this case, the proposed 23-foot high addition complies with the thirty-foot height limit for the project area.

Two appeals (those submitted by the Pietrinis and Kevin Farr) also contend that the proposed project must be found to conform with the other Chapter 3 policies of the Coastal Act, and specifically Section 30251 which protects visual resources and public views of the ocean.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline 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 appellants assert that Section 30251 of the Coastal Act is adopted by reference as part of the certified Redondo Beach LCP because the certified LCP is intended to be consistent with, and be carried out in a manner fully in conformity with, the Coastal Act. They also point to Section 10-5.2218(a) of the implementing ordinances (LIP) portion of the certified LCP, which states:

"Approval, conditional approval, or denial of any Coastal Development Permit by the City of Redondo Beach shall be based upon compliance of the proposal with the provisions of the certified Redondo Beach Local Coastal Program and consistency with the policies of the Coastal Act."

The above-stated section of the LIP requires that an approval of a local coastal development permit shall be based on compliance with the certified LCP and the policies of the Coastal Act. This, however, does not constitute a substantial issue, as the proposed project does not violate the provisions of the LCP or the policies of the Coastal Act, including Section 30251. The proposed project will affect the view of part of the sea over the rooftop of the existing residential development, but this view is not a significant public view or coastal resource, and the view is already partially obstructed by existing residential development. The proposed second story is compatible with the surrounding residential development, and a public accessway provides an excellent view of the shoreline only a few inches from the project site. Therefore, a superior public view of the shoreline is provided from the public accessway that abuts the project site, and the locally approved development is consistent with Section 30251 of the Coastal Act.

Next, the Pietrini appeal contends that the City failed to make the required coastal development permit finding that the proposed development, located between the first public road and the sea, is in conformity with the public access and recreation policies of the Coastal Act. In fact, the City Council did make the requisite finding that the approved development is in conformity with the public access and recreation policies of the Coastal Act [See City Council Findings for CDP No. 04-01 (Exhibit #6, p.4)]. Since the approved development is limited to the already improved private residential lot, there will be no adverse effect on public access or recreation. The City's findings are correct and the appeals raise no substantial issue in this regard.

In any case, the certified LCP clearly identifies the project site for residential use with a thirty-foot height limit, and the LCP does not limit development to a single level in order to protect the public view over the rooftop. Therefore, the appeals raise no substantial issue in regards to the locally approved development's conformity with the City of Redondo Beach certified LCP.

Public Access

The appeals also do not raise a substantial issue in regards to the project's conformity with the public access policies of the Coastal Act.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Maximum public access is provided at the project site. The applicants are not permitted to interfere with the public accessway that abuts the northern side of the project site during or subsequent to construction. The City Council findings state: "The public access is not impacted by the proposed development" (Exhibit #6, p.4). Additionally, the conditions of the local coastal development permit require that the site shall be fully fenced prior to the start of construction, and that the streets and sidewalks adjacent to job sites shall be clean and free of debris (Exhibit #6, ps.5-6). Therefore, the locally approved development conforms with the public access policies of the Coastal Act because the proposed project would not adversely affect existing coastal access, and adequate public access to the shoreline is provided on the public stairway that abuts the northern side of the project site.

CEQA

One appellant (Kevin Farr) asserts that the City failed to comply with the requirements of the California Environmental Quality Act (CEQA) when it approved the project. 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 the certified LCP and Chapter 3 of the Coastal Act. The California Environmental Quality Act is not within Chapter 3. The Commission cannot accept an appeal on the grounds that the local government failed to comply with the requirements of CEQA. The grounds for appeal, as set forth by Coastal Act Section 30603(b)(1), are limited to an allegation that the development does not conform to the standards set forth in the certified LCP the public access policies of the Coastal Act. Therefore, the City's compliance with CEQA does not raise a substantial issue of the sort that can justify the Commission's de novo review of the local coastal development permit.

The Five Factors

Applying the five factors listed in the prior section further clarifies that the appeals raise no "substantial" issue with respect to the locally approved development's conformity with the City of Redondo Beach certified LCP and the public access policies of the Coastal Act, as it shows that the nature of the proposed project, the local government action, and the appeals do not implicate the LCP or public access policies to a level of significance necessary to meet the substantiality standard of Section 30625(b)(1).

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent (in this case) with certified LCP and the public access policies of the Coastal Act. Although the appellants assert that the City's findings lack a factual basis and are not supported by substantial evidence, the contrary is true. The City Council used photographs of the existing development in order to determine the extent of the project's effect on the public view, and it used the standards set forth by the certified LCP to make its decision. The City Council also considered different alternatives to the proposed

second story addition, including adding onto the ground floor on the western (seaward) part of the project site and denial of the addition altogether (Exhibit #6, p.2). The LCP's rear setback provisions disallow any new encroachment towards the beach on this blufftop lot, and the certified LCP includes no basis on which the City could support a denial of the proposed second floor addition. Also, since the project site is only thirty feet wide there is only one possible location for a new second floor. The City Council's consideration of the project's visual impacts and potential project alternatives provides the basis in fact and the legal support for its final decision. Ultimately, the determining factor in this case is whether the proposed project is consistent with the certified LCP and the public access and recreation policies of the Coastal Act, which it is (as explained above). Therefore, the City Council's conclusion regarding the consistency of the proposed development with the certified LCP is supported by substantial evidence and correct legal analysis.

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 the certified LCP and the public access and recreation policies of the Coastal Act, but only to decide whether the appeals of the local government action raise a substantial issue as to conformity with those standards. There is no question that the local decision correctly applied the certified LCP and the public access policies of the Coastal Act, and the appeals raise no substantial issue regarding conformity therewith.

The second factor is the scope of the development approved by the local government. Here, the proposed development approved by the local government is an addition to an existing single-family residence. This is a relatively minor project, especially in light of the fact that the existing house already obstructs the shoreline view from Esplanade, and the public access stairway provides excellent public access to the beach. Therefore, the scope of the development approved is minor, and the approval of the house addition does not rob the site of any resources or amenities promoted by the LCP or Chapter 3 of the Coastal Act.

The third factor is the significance of the coastal resources affected by the decision. The affected view of the sea over the rooftop of the existing development is not a significant public view or significant coastal resource, and the view is already partially obstructed by existing development. A significant public view, unaffected by the proposed development, is available from the public accessway that directly abuts the project site (Exhibit #2).

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. This factor is applied in order to avoid leaving decisions in place that could create a negative precedent for how the relevant provision of the LCP is to be interpreted. The local government's decision does have precedential value, since it is one of the first local coastal development permits approved by the City, and it is the first decision to be appealed to the Commission. Also, there are several other existing one-story homes along the seaward side of Esplanade in the project area, some of which could soon be applying for second floor additions that have a similar effect on the public's view of the sea that exists over the current rooftops. Therefore, it is important that the certified LCP be interpreted in the correct manner in regards to the right of homeowners in this neighborhood to build up to the thirty-foot height limit set forth by the certified LCP.

However, as is explained above, the City's decision to approve the proposed second floor correctly interprets the certified LCP as it applies to the project site. In addition, it is also

consistent with prior Commission precedent. A recent Commission action (6/23/03)⁴ approved the addition of a new second floor to the existing house at 807 Esplanade [Coastal Development Permit 5-03-008 (Cusick)]. This Commission-approved house addition has been built, and the resulting two-story residence has a greater impact on the public view than a one-story house (because it is now a larger building). Of course, whether one or two stories in height, each house on the seaward side of Esplanade already prevents the viewing of the shoreline from the Esplanade blufftop walkway. In addition, most other similarly situated properties at the western ends of the other east/west City streets that intersect with Esplanade (e.g. Topaz, Sapphire and Ruby Streets) are already developed with multi-story buildings that obscure the public's view of the shoreline from Esplanade (Exhibit #1). Therefore, the City's decision in this case to approve the proposed second floor addition is the correct decision, and the denial of the appeals supports the precedential value of the local government's decision for future interpretations of its LCP.

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 and neighborhood, but it does not raise any issues of regional or statewide significance.

Conclusion

In conclusion, the proposed development and the local coastal development permit for the proposed development conform to the requirements of the City of Redondo Beach certified LCP and the public access policies of the Coastal Act. The local approval of the proposed project does not violate any view protection provisions of the certified LCP or the public access policies of the Coastal Act. Therefore, the Commission finds that the appeals raise **no substantial issue** in regards to the locally approved development's conformity with the City of Redondo Beach certified LCP and the public access policies of the Coastal Act.

⁴ The City of Manhattan Beach did not obtain coastal development permit-issuing authority, pursuant to its certified LCP, until September 11, 2003.

PACIFIC

KING
HARBOR

North

OCEAN

City
of

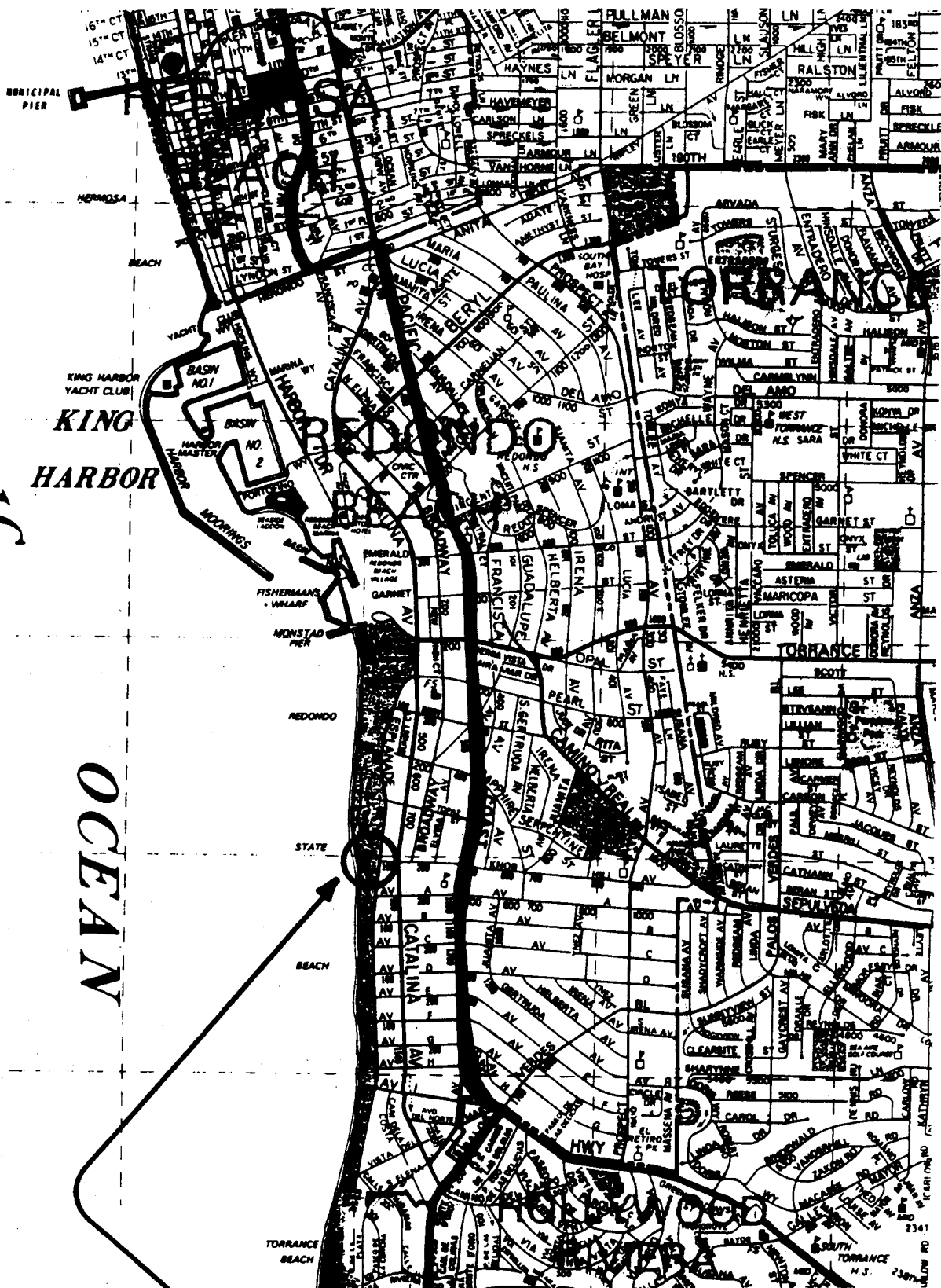
Redondo Beach

Project Site
801 Esplanade

COASTAL COMMISSION
A5-RDB-04-261

EXHIBIT # 1

PAGE 1 OF 1



7509

SHEET 1

2004

SCALE 1" = 80'

Project Site
801 Esplanade

OCEAN

PACIFIC

CODE
8055FOR PREV. ASSMT. SEE:
7509-1

CONDOMINIUM
TRACT NO. 45296
M. B. 1157 - 82 - 83

TRACT NO. 2546
M. B. 26-4-5

TRACT NO. 10209
M. B. 177-2-3

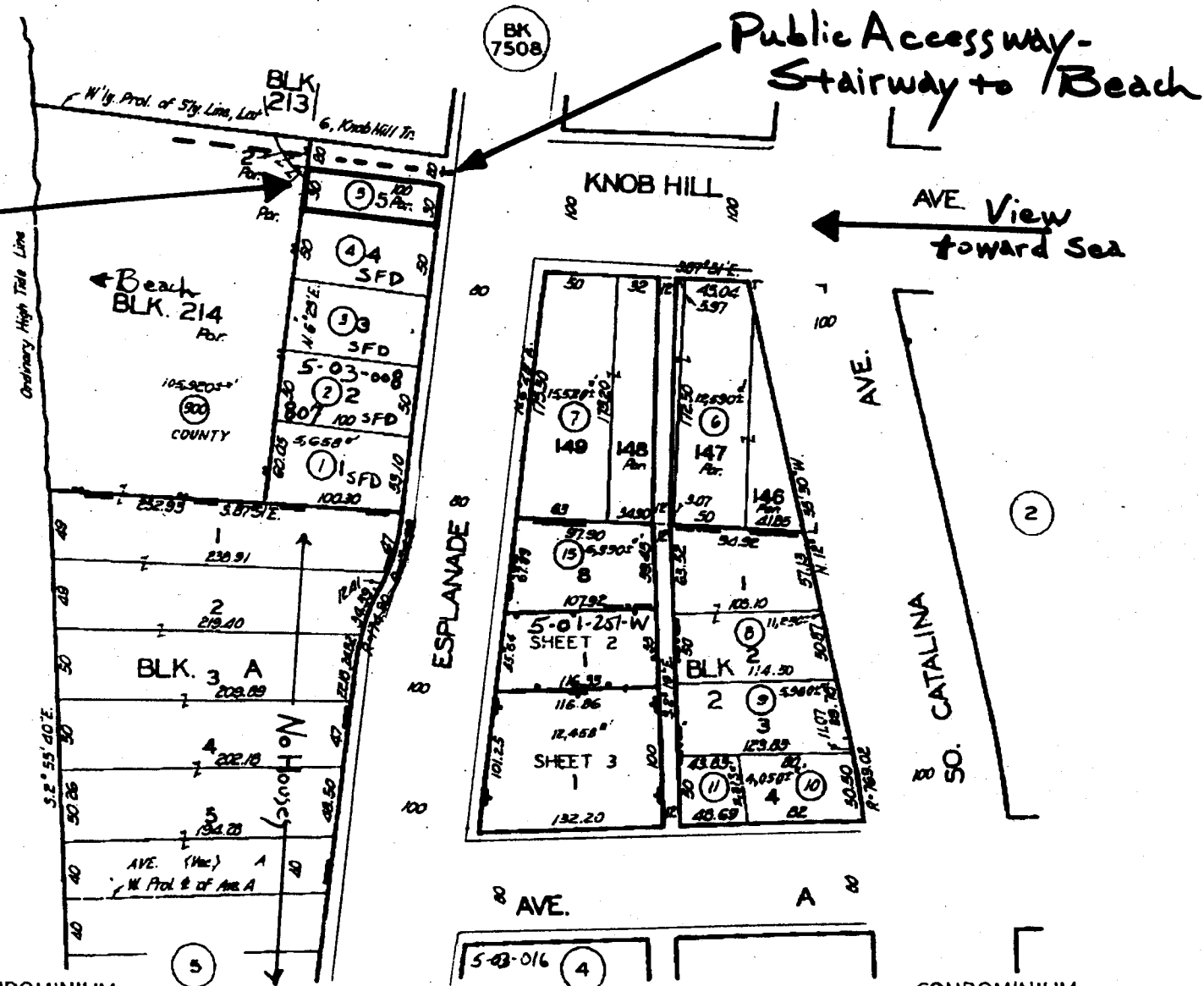
NOB HILL TRACT
M. B. 5-73

TOWNSITE OF REDONDO BEACH
M. R. 39-H7

CONDOMINIUM
PARCEL MAP
PM 311-80-81

COASTAL COMMISSION
AS-RDB-04-261

EXHIBIT # 2
PAGE 1



[illegible]

801 Esplanade

SITE PLAN

Beach

COASTAL COMMISSION
A5-RDB-04-261

EXHIBIT # 3

PAGE 1 OF 1

JUL 7 2004

CALIFORNIA
STAT...

FOIA(b)(7)
- CASE 4:03-cv-00001

U

1st Floor exists

~~KBluff~~

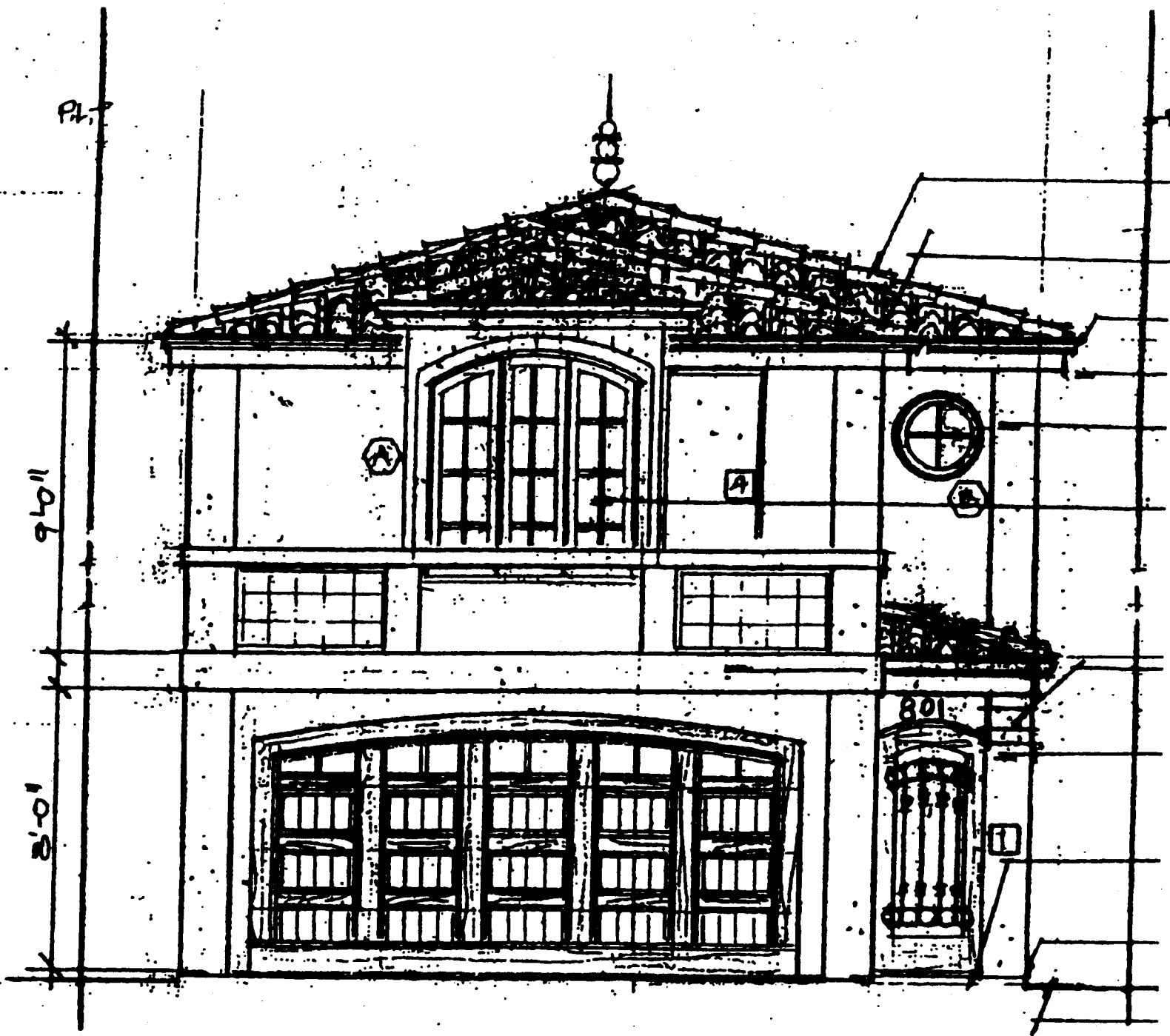
Beach

801 Esplanade

COASTAL COMMISSION
AS-RDB-04-261

EXHIBIT # 4

PAGE 1 OF 1



FRONT ELEVATION

ESPLANADE/ EAST

801 Esplanade
Proposed 2nd Floor Addition

COASTAL COMMISSION
AS-RDB-04-261

EXHIBIT # 5

PAGE 1 OF 1

JUN 18 2004

CALIFORNIA
COASTAL COMMISSION

Planning, Transit, and
Enforcement Services Department
Municipal Enforcement Division
Code Enforcement

415 Diamond Street, P.O. Box 270
Redondo Beach, California 90277-0270
www.redondo.org

June 16, 2004

tel 310 372-1171 Ext. 2454 North
tel 310 372-1171 Ext. 2454 South
fax 310 372-8021

RECEIVED
South Coast Region

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

JUN 18 2004

CALIFORNIA
COASTAL COMMISSION**NOTICE OF DECISION**

Notice is hereby given that on June 15, 2004 the City Council of the City of Redondo Beach denied an appeal and approved the following request for a Coastal Development Permit.

Applicants: Michael and Kimberly Doyle
801 Esplanade, Redondo Beach, Ca. 90277

Owner: same as above

Location: 801 Esplanade, Redondo Beach

Case No.: PC 04-19

CDP #: CDP 04-01

Project Description: Said approval is to permit a second story addition to a single-family dwelling in the Single-Family Residential (R-1) zone.

In granting this Coastal Development Permit, the following findings were made:

- a. The proposed development is in conformity with the Certified Local Coastal Program because it is consistent with the Single-Family Residential (R-1) zone and associated development standards and procedures and criteria for modifications. The proposed development is a maximum of 23 feet in height above the sidewalk grade at Esplanade, which is 7 feet below the maximum height limit. The Certified Local Coastal Program has been determined by the Coastal Commission to be consistent with the Coastal Act including the protection of scenic and visual qualities of coastal areas pursuant to the policies of Section 30251 of the Coastal Act. The City's LCP protects scenic and visual qualities by prohibiting development and providing unrestricted views on the west side of Esplanade in the P-PRO zone from the south border of the city to just north of Avenue A. The Land Use Plan also includes public view policies applicable to the Harbor-Pier area. The LCP does not include view policies or regulations that would support a finding that the development of the second floor addition at 801 Esplanade is not in conformity with the LCP.

COASTAL COMMISSION
AS-RDB-04-261EXHIBIT # 6PAGE 1 OF 8

- b. The proposed development, which is located between the sea and the first public road paralleling the sea, is in conformity with the public access and public recreation policies of Chapter 3 of Division 20 of the Public Resources Code (commencing with Section 30200). The proposed development does not impact public access to the shoreline or any public recreational facilities. The property at 801 Esplanade was originally 50 feet in width, but a prior owner granted the north 20 feet of the lot to the City for purposes of providing a public access to the beach. The public access is not impacted by the proposed development, and the public access also provides a view corridor.
- c. The decision-making body has complied with any CEQA responsibilities it may have in connection with the project, and in approving the proposed development, the decision-making body is not violating any CEQA prohibition that may exist on approval of projects for which there is a less environmentally damaging alternative or a feasible mitigation measure available. The project is Categorically Exempt from the provisions of CEQA pursuant to Section 15301(e) (additions to existing structures). The proposed addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition.
- d. In addition to the above, the property owners have designed the project to limit the height and reduce the appearance of mass and bulk. There are no feasible alternatives for adding floor area elsewhere on the site. Due to a recorded deed restriction, the property owners are not permitted to add any floor area 60 feet westerly of the front property line unless the obstruction is below street level. For coastal bluff properties such as this (unlike other properties), no encroachment into the rear setback is permitted for patios, balconies, and other accessory structures, and any encroachment of the home further west into the bluff would not be in conformity with the LCP.

The project is located in the Appealable Area as defined in the Local Coastal Program of the City of Redondo Beach. All appeals must be received by the Coastal Commission's South Coast District Office within ten (10) working days of the date on which the Coastal Commission received this Notice of Decision.

If you have any question concerning this matter, please contact me at (310) 372-1171 x2488.



Randy Berler
Planning Director

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 8

RESOLUTION NO. CC-0406-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DENYING THE APPEAL OF THE PLANNING COMMISSION DECISION AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 04-01 TO PERMIT A SECOND STORY ADDITION TO A SINGLE FAMILY DWELLING ON PROPERTY LOCATED AT 801 ESPLANADE WITHIN A SINGLE-FAMILY RESIDENTIAL (R-1) ZONE IN AREA 1 OF THE COASTAL ZONE.

WHEREAS, an application was filed on behalf of the owner of the property located at 801 Esplanade for approval of an Exemption Declaration and consideration of a Coastal Development Permit (CDP No. 04-01) to permit a second story addition to a single-family dwelling on property located within a Single-Family Residential (R-1) zone in Area 1 of the Coastal Zone; and

WHEREAS, notice of the time and place of the public hearing before the Planning Commission where the Exemption Declaration and the application for a Coastal Development Permit (CDP No. 04-01) would be considered was given pursuant to State law and local ordinances by publication in the Beach Reporter, by posting the subject property, and by mailing notices to property owners within 300 feet of the exterior boundaries of the subject property and to residents within 100 feet of the subject property excluding roads; and

WHEREAS, the Planning Commission of the City of Redondo Beach considered evidence presented by the applicant, the Planning Department, and other interested parties at the public hearing held on the 23rd day of March, 2004, with respect thereto; and

WHEREAS, following the public hearing, the Planning Commission adopted Resolution No. 9213 granting approval of CDP No. 04-01; making all the required findings for approval of CDP No. 04-01 pursuant to Section 10-5.2218(c) of the Local Implementation Plan (LIP); finding that the project is Categorically Exempt from the preparation of environmental documents pursuant to Section 15301(e) of the Guidelines of the California Environmental Quality Act (CEQA); finding that the project will have a "de minimis" impact on fish and game resources pursuant to Section 21089(b) of the Public Resources Code; and providing conditionals of approval for the project; and

WHEREAS, the decision of the Planning Commission was appealed by six individuals, including as reasons for appeal that the proposed addition will have a significant impact on a public view; that the approval is not in conformity with the Certified Local Coastal Program and the California Coastal Act; that the second story addition does not qualify as a minor addition exempt from the California Environmental Quality Act (CEQA); and that there are feasible building alternatives that will not block the view; and

WHEREAS, the City Council held a public hearing on the appeal of the Planning Commission decision on May 4, 2004 with notice provided as required by Section 10-5.2216 of the LIP, and the public hearing was continued on June 8, 2004, at which time the City Council of the City of Redondo Beach considered evidence presented by the applicant, the appellants, the Planning Department, and other interested parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY FIND AS FOLLOWS:

SECTION 1. FINDINGS:

1. In accordance with Section 10-5.2218(c) of the Redondo Beach Municipal Code, the applicant's request for a Coastal Development Permit is consistent with the findings set forth therein for the following reasons:
 - a. The proposed development is in conformity with the Certified Local Coastal Program because it is consistent with the Single-Family Residential (R-1) zone and associated development standards and procedures and criteria for modifications. The proposed development is a maximum of 23 feet in height above the sidewalk grade at Esplanade, which is 7 feet below the maximum height limit. The Certified Local Coastal Program has been determined by the Coastal Commission to be consistent with the Coastal Act including the protection of scenic and visual qualities of coastal areas pursuant to the policies of Section 30251 of the Coastal Act. The City's LCP protects scenic and visual qualities by prohibiting development and providing unrestricted views on the west side of Esplanade in the P-PRO zone from the south border of the city to just north of Avenue A. The Land Use Plan also includes public view policies applicable to the Harbor-Pier area. The LCP does not include view policies or regulations that would support a finding that the development of the second floor addition at 801 Esplanade is not in conformity with the LCP.
 - b. The proposed development, which is located between the sea and the first public road paralleling the sea, is in conformity with the public access and public recreation policies of Chapter 3 of Division 20 of the Public Resources Code (commencing with Section 30200). The proposed development does not impact public access to the shoreline or any public recreational facilities. The property at 801 Esplanade was originally 50 feet in width, but a prior owner granted the north 20 feet of the lot to the City for purposes of providing a public access to the beach. The public access is not impacted by the proposed development, and the public access also provides a view corridor.
 - c. The decision-making body has complied with any CEQA responsibilities it may have in connection with the project, and in approving the proposed development, the decision-making body is not violating any CEQA prohibition that may exist on approval of projects for which there is a less environmentally damaging alternative or a feasible mitigation measure available. The project is Categorical Exempt from the provisions of CEQA pursuant to Section 15301(e) (additions to existing structures). The proposed addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition.

- d. In addition to the above, the property owners have designed the project to limit the height and reduce the appearance of mass and bulk. There are no feasible alternatives for adding floor area elsewhere on the site. Due to a recorded deed restriction, the property owners are not permitted to add any floor area 60 feet westerly of the front property line unless the obstruction is below street level. For coastal bluff properties such as this (unlike other properties), no encroachment into the rear setback is permitted for patios, balconies, and other accessory structures, and any encroachment of the home further west into the bluff would not be in conformity with the LCP.
2. The plans, specifications and drawings submitted with the applications have been reviewed by the City Council and by the Planning Commission, and are approved.
3. The City Council hereby finds that the proposed project will have a "de minimis" impact on fish and game resources pursuant to Section 21089(b) of the Public Resources Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 2. The City Council hereby denies the appeal, affirms the decision of the Planning Commission approving the Exemption Declaration and approving CDP No. 04-01, pursuant to the plans and applications considered by the City Council at the public hearing, and subject to the following conditions:

1. The approval of a Coastal Development Permit shall allow for the remodel of an existing single-story residence with an attached garage and semi-subterranean level, and the construction of a second story addition with a 2 foot, 6 inch side setback, as approved by Modification No. M-03-01, with a maximum building height of 23 feet above the Esplanade sidewalk grade, and in substantial compliance with the plans submitted in conjunction with the Coastal Development application.
2. The applicant shall provide on-site erosion protection for the storm drainage system during construction, to the satisfaction of the Engineering Department.
3. The applicant shall provide a Site Specific Urban Stormwater Mitigation Plan (SSUSMP) for approval by the Engineering Department prior to the issuance of a building permit.
4. The applicants and/or their successors shall maintain the subject property in a clean, safe, and attractive state until construction commences. Failure to maintain the subject property may result in reconsideration of this approval by the Planning Commission.
5. The site shall be fully fenced prior to the start of construction.

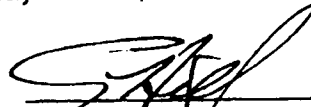
6. All on-site litter and debris shall be collected daily.
7. Construction work shall occur only between the hours of 7 a.m. and 6 p.m. on Monday through Friday, between 9 a.m. and 5 p.m. on Saturday, with no work occurring on Sunday and holidays.
8. Material storage on public streets shall not exceed 48-hours per load.
9. The project developer and/or general contractor shall be responsible for counseling and supervising all subcontractors and workers to ensure that neighbors are not subjected to excessive noise, disorderly behavior, or abusive language.
10. Barriers shall be erected to protect the public where streets and/or sidewalks are damaged or removed.
11. Streets and sidewalks adjacent to job sites shall be clean and free of debris.
12. The Planning Department shall be authorized to approve minor changes.
13. In the event of a disagreement in the interpretation and/or application of these conditions, the issue shall be referred back to the Planning Commission for a decision prior to the issuance of a building permit. The decision of the Planning Commission shall be final.

SECTION 3. The approval of the Coastal Development Permit shall become null and void if not vested within 36 months after the date of approval by the City Council.

SECTION 4. That the decision of the City Council is final unless an appeal to the Coastal Commission is received by the Coastal Commission's South Coast District Office within ten working days of the date on which the Coastal Commission received the "notice of decision" specified in Section 10-5.2220 of the LIP.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution, shall enter the same in the Book of Resolutions of said City, and shall cause the action of the City Council in adopting the same to be entered in the official minutes of said City Council.

PASSED, APPROVED, AND ADOPTED this 15th day of June, 2004.



Gregory C. Hill, Mayor

ATTEST:

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF REDONDO BEACH) SS

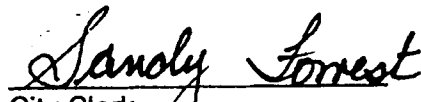
I, Sandy Forrest, City Clerk of the City of Redondo Beach, California, do hereby certify that the foregoing Resolution No. CC-0406-62 was duly passed, approved and adopted by the City Council of the City of Redondo Beach, California, at a regular meeting of said City Council held on the 15th day of June, 2004, by the following roll call vote:

AYES: Bisignano, Cagle, Szerlip, Schmalz, Parsons

NOES: None

ABSENT: None

ABSTAIN: None



City Clerk

APPROVED AS TO FORM:



City Attorney



Planning, Transit, and
Enforcement Services Department
Planning Division

415 Diamond Street, P.O. Box 270
Redondo Beach, California 90277-0270
www.redondo.org

tel 310 372-1171
tel 310 318-0637
fax 310 372-8021

July 8, 2004

Chuck Posner
Coastal Program Analyst
South Coast District
California Coastal Commission
200 Oceangate
Long Beach, CA. 90802-4302

RECEIVED
South Coast Region

JUL 12 2004

COASTAL COMMISSION

Re: Removal of tree in public access area north of 801 Esplanade

Dear Mr. Posner:

In response to your request for information, it is the intent of the City to remove the ficus tree located in the 20-foot wide public access to the beach immediately north of 801 Esplanade. The removal of the tree is in accordance with direction provided to staff by the City Council at a public hearing on June 8, 2004 relating to the appeal of a Coastal Development Permit for 801 Esplanade (although it is not a condition of the Coastal Development Permit). The removal of the tree will result in a clear view corridor through the entire width of the public accessway.

The removal of the tree would occur prior to approval of an occupancy permit for the addition at 801 Esplanade. It is unknown at this time what may replace the ficus tree at this location (i.e. alternative landscaping or public art that does not impact the view through the public access). The City's 2004-2009 Capital Improvement Program includes a proposed project to enhance the pedestrian environment along the entirety of Esplanade and future improvements to the public access adjacent to 801 Esplanade should be coordinated with that process.

If you have any further questions, please contact me at 310.318.0637.

Sincerely,

Randy Berler, Director
PLANNING, TRANSIT AND ENFORCEMENT SERVICES DEPARTMENT

COASTAL COMMISSION

cc: Louis N. Garcia, City Manager

EXHIBIT # 6
PAGE 8 OF 8

Anthony Pietrini
Jill Pietrini
724A Elvira Avenue
Redondo Beach, CA 90277
(310) 543-1093

RECEIVED
South Coast Region
JUL - 2 2004
CALIFORNIA
COASTAL COMMISSION

June 2, 2004

Via Hand Delivery

The Honorable Gregory C. Hill, Mayor
And Honorable Members of the City Council
CITY OF REDONDO BEACH
415 Diamond Street
Redondo Beach, CA 90277

**Re: Appeal of PC No. 04-19/CDP No. 04-01
801 Esplanade, Redondo Beach, CA**

Dear Sirs:

This letter is written on behalf of ourselves and to request a reversal of the approval of the Coastal Development Permit ("CDP") for the real property located at 801 Esplanade, Redondo Beach, CA ("the Property"). We begin our appeal by stating that we do not have a private view of the ocean from our house. We live at 724A Elvira Avenue, Redondo Beach, CA. We share a public view of the ocean down Knob Hill Avenue and across the Esplanade with hundreds of other Redondo Beach residents and visitors. This is the view that the City of Redondo Beach ("the City"), through the Redondo Beach Planning Commission ("Planning Commission"), seeks to eradicate through the proposed addition of another story to the Property.

In short, the decision of the Planning Commission must be reversed because it is contrary to the Local Coastal Plan ("LCP") implemented by the City in 1980 and approved by the California Coastal Commission ("Coastal Commission"), and is contrary to the express purpose and provisions of the California Coastal Act, Cal.Pub.Res.Code § 30001, *et seq.* Specifically, the Planning Commission erroneously held that the City is "not in the view business" and did not have to consider the impact on the public view that the proposed remodel to the Property would have. As this is clearly an erroneous conclusion of law, the Planning Commission's decision must be reversed.

¹ The distinction between a private view and a public view is not of any legal significance. See, *Ocean View Estates Homeowners Assn. v. Montecito Water District*, (2004) 116 Cal.App.4th 396, 401. In *Ocean View*, the court held that even though "there is no common law right to a private view, [this] is not to say that the [agency] is relieved from considering the impact of its project on such [private] views." *Id.* at 402.

COASTAL COMMISSION
AS-RDB-04-261

EXHIBIT # 7
PAGE 1 OF 12

I. RELEVANT FACTS²

In 2003, the Property owners Michael and Kimberly Doyle ("the Doyles") applied to the City of Redondo Beach ("the City") for a modification to the setback on the Property from the required 3' setback to a setback of 2'6". That modification was approved by the City, without a hearing and without posting a sign on the Property³. Accordingly, most of the residents affected by the setback modification (such as ourselves) were not notified of the Doyles' application for a modification and were therefore precluded from objecting to it.

Later in 2003, the Doyles applied to the Coastal Commission for a CDP for the Property to allow them to add another story to the Property⁴. As shown by Exhibit 2 hereto, the Property sits adjacent to the public stairs leading to Redondo Beach, a staircase that is heavily used by the public. Indeed, the lower end of the structure on the Property sits on top of the retaining wall for the upper walkway on the bluff that begins at Knob Hill Avenue and goes north to the Redondo Beach Pier.

On September 11, 2003, the City's LCP was certified by the Coastal Commission giving the City jurisdiction over CDPs in the coastal zone area in Redondo Beach. *Staff Report*, pg. 2. The Doyles' application to the Coastal Commission was refused because the City had taken over responsibility for the review and approval or denial of CDPs in its coastal zone areas.

At some time before the Hearing, the City posted signs at the Property advising the public of the proposed CDP and noticing a hearing on the CDP to be held on March 23, 2004. The Hearing was held on March 23, 2004 before the Planning Commission, and many residents appeared and testified as to their disapproval of the proposed addition to, and remodel of, the Property based on the impact to the public view and to the private views of some of the residents.

The Planning Commission was confused, at best, as to the process for reviewing a CDP and was not advised properly by the City Attorney's Office. As noted by several

² Some of the facts set forth herein are stated in the Staff Report relating to the Property ("the Staff Report") made in advance of the March 23, 2004 hearing relating to the City's approval of the CDP for the Property ("the Hearing"). A true and correct copy of the *Staff Report* is attached hereto as Exhibit 1.

³ As stated at the Hearing, the modification to the setback on the Property was invalid because there was not proper notice to residents affected by the modification. Even if there were proper notice, the setback still would not be proper for two reasons. *First*, the Property is not unique such that if the normal setback of 3 feet were applied, the Property would be at a disadvantage. The Property has existed since 1951 without a modification to the current setback requirement of 3 feet, and there is no evidence to suggest that holding the Doyles to the current setback requirements would put them at a disadvantage now. *Second*, granting the setback modification amounted to granting the Doyles a privilege. The setback modification enhances the value of the Property to the Doyles because it allows them to build a larger house on the Property to the detriment of other residents.

⁴ Currently, the Property has 2+ stories - 1 story at street level and 1 story below street level on the Esplanade bluff and an exterior deck below the first story below the bluff. True and correct copies of photographs of the Property looking east from the ocean are attached hereto as Exhibit 2.

COASTAL COMMISSION

Planning Commissioners, this was a situation of first impression and they were looking to the City Attorney and the Planning Commission's staff to advise them. Unfortunately, both staffs were unprepared for the issues that were presented under the Coastal Act, and they misinformed the Planning Commission of the standard of review the CDP for the Property. One Planning Commission staff member, Anita Kruger, went so far as to note, based on her *personal (and subjective)* observation only and while standing directly in front of the Property that "I walked around Knob Hill, Esplanade, Catalina, and I looked. I couldn't see the ocean because that [P]roperty already has a garage." *Transcript* of the Hearing, pg. 3. A true and correct copy of the transcript of the hearing ("Transcript") is attached hereto as Exhibit 3. Ms. Kruger's subjective observation is belied by the facts. The ocean is clearly visible from Knob Hill, both below Pacific Coast Highway ("PCH") and above PCH driving west from Prospect Street. *Photographs* of the ocean view from Knob Hill are attached hereto as Exhibit 4.

Specifically, the Planning Commission was told by City Attorney Web and Planning Staff Randy Berler that the City was not required to consider the public view affected by the proposed addition to, and remodel of, the Property because the public view was not mentioned in the LCP. The colloquy between the Planning Commission and City Attorney Web and Planning Commission staff member Randy Berler is illustrative of this erroneous reading of the LCP and the Coastal Act, and the fact that neither the City Attorney nor the Planning Commission staff was prepared enough to accurately advise the Planning Commission:

Commissioner Eubanks: ... What about the preamble (referring to the Coastal Act) – the vision statements. Any general policies that were stated in the preamble that address any views or protection of them?

Staff Berler: I'm not aware of ... I have not seen it.

Commissioner Eubanks: ... The other question I have is, and I've think heard it and I just want to hear it specifically, we are bound only by and are compelled to follow our local coastal program. We are also not held to the higher standard of the local Coastal Act? Is that correct?

City Attorney Web: Unless and again, I'll defer to planning staff, unless there are – unless it's incorporated into the local coastal plan and in further just to answer a question that I hesitated on before I wanted to check. It appears in looking at the municipal law handbook that even on the appeal, depending on the type of appeal to the Coastal Commission, they would look at conformity to the certified LCP or violation of the public access policies of the Coastal Act. So again, I would defer to the planning staff as to, unless it's incorporated in the local coastal plan.

Commissioner Eubanks: So, to be more exploit in the language, that maybe everyone will understand. If we believe that our certified local coastal program is a little remiss in actually matching the Coastal Act, it's not within our purview to

COASTAL COMMISSION

say, you know what, we're going to make a determination that our certified [plan] in deference to the Coastal Act.

City Attorney Web: Again the language is "shall" so it indicates in 30504(b) that you – if you find that the proposed development is in conformity with the certified local coastal plan, then you ought to issue it. ...

Commissioner Eubanks: The other thing, just as a comment and I believe that when the Coastal Commission reviewed our certified coastal program, again they're looking more in general. They are not looking in any specific site or any specific view or so when they approve our certified local coastal program, they are doing it in a much more broader sense *and in effect, we've opted out of the whole view business in the City of Redondo Beach.* Whether I agree with that or not is really immaterial. The fact is that we have. *And the Coastal Commission basically gave us a bye on that and said okay.* Yeah, no problem. Not looking at any specific impacts. *That would be a fair assessment?* (emphasis added)

Staff Berler: Yes.

Transcript, pgs. 23 to 24.

Commissioners Bloss and Cartwright received the same poor and inaccurate advice:

Commissioner Bloss: I guess another way, I mean, I think a lot of this is new to us in terms of that and I think the purpose of having staff here is to explain to use what the law is and how it fits together, ... I guess in terms of, you know, property rights, what I'm hearing is that we cannot deny this project based on a view thing because that's not part of the requirements within our coastal plan to do so. ...

Commissioner Cartwright: I have also made the same determination based upon the evidence put forth to us that we don't have the means to deny this because the local coastal program does not address public views and I want to ask the question again to make sure that it absolutely does not address any public view issue and so we don't have the mechanism to deny based upon that. I want to make sure that that in fact is the case. So, we've talked about it, but I want to get sort of a further response from staff that there is nothing in our local coastal program which specifically references view, per se.

Staff Berler: I have not found anything that references that. The implementing ordinance definitely does not, and I've looked through the policies of LUP and I have not found anything that provides such a finding.

Transcript, pg. 26. See also, the Staff Report, pg. 2 ("It should be noted for the record that the City of Redondo Beach does not have a view preservation ordinance".)

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Had the Planning Commission properly considered the views that would be affected by the proposed addition to, and remodel of, the Property, the evidence clearly established that Knob Hill is a view corridor and that the views would be impacted. Such evidence includes:

- ♦ Testimony by several residents, including ourselves, regarding the view.
- ♦ The petition of 350+ residents objecting to the proposed addition to, and remodel of, the Property. (That petition has now grown to 1300 signatures.)
- ♦ The photographs that were shown by the Planning Commission staff where the ocean is clearly visible from Knob Hill.
- ♦ The comments of the Commissioners and the Planning Commission Staff themselves:

"The street view could be considered a public corridor view, sure." Randy Berler, *Transcript*, pg. 18;

"... I would say that that I think we've heard compelling evidence from Ms. Moffat, specifically, that this is a significant public view." Commissioner Eubanks, *Transcript*, pg. 19;

"I think it is a significant view corridor down Knob Hill, and I hate to see that broken up." Commissioner Eubanks, *Transcript*, pg. 25; and

"I guess we gotta slow down on this a little bit and discuss it. ... The public view thing on the Coastal Commission. That's the houses in front of Knob Hill, and the way I read it here, is that in the California Coastal Act, it talks about public views." Commissioner Aspel, *Transcript*, pg. 17.

As shown below, the Planning Commission was not properly advised and relied upon an erroneous reading of the LCP and the Coastal Act. In a 3-2 decision, the Planning Commission approved the CDP for the Property based on the City Attorney's and the Planning Commission staff's misreading (or failure to thoroughly read) the LCP and the Coastal Act.

II. STANDARD TO BE APPLIED TO CDPS

In order to properly approve the CDP, the Planning Commission had to make three inclusive findings, based on evidence:

1. That the proposed development is in conformity with the Certified Local Coastal Program.

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2. That the proposed development, if located between the sea (or the shoreline of any body of water located within the coastal zone) and the first public road paralleling the sea, is in conformity with the public access and public recreation policies of Chapter 3 of Division 20 of the Public Resources Code (commencing with Section 30200).
3. That the decision-making body has complied with any CEQA responsibilities it may have in connection with the project, and that, in approving the proposed development, the decision-making body is not violating any CEQA prohibition that may exist on approval of projects for which there is a less environmentally damaging alternative or a feasible mitigation measure.

City Ordinance 10-5.2218(c); *Accord*, Cal.Pub.Res.Code § 30600.5(c).

These requirements are inclusive, in that all must be met before a CDP can be approved. The failure to find any one of the three elements requires a denial of a CDP. City Ordinance 10-5.2218(d).

As shown below, the City misread the LCP, which does in fact provide for public views and in particular on Knob Hill, and misread the Coastal Act and its mandatory provisions that apply to the City in reviewing any CDPs. Thus, the City did not have sufficient evidence to support the first or the second element of the City's own ordinance implementing the Coastal Act.⁵

III. THE LOCAL COASTAL PLAN DIRECTLY ADDRESSES THE PUBLIC VIEW AND SPECIFICALLY THE VIEW ON KNOB HILL

The Planning Commission staff repeatedly stated, even when asked if they were "absolutely" certain, that the LCP did not make any reference to public views. Having read the entire LCP, it is clear that the Planning Commission did not take the time to do so themselves.⁶ If they had, the Planning Commission staff would have noted the following multiple references to the public view and recreation policies in the LCP:

⁵ The City also did not have sufficient evidence to prove the third element relating to CEQA, as more fully discussed in the appeal letter submitted to the City by Attorney Ellen Berkowitz, on behalf of resident Kevin Farr and other City residents.

⁶ The newness of the review of CDPs by the City and probably the workload of the City Attorney and the Planning Staff may have contributed to the failure to read the LCP in detail before the Hearing. Nonetheless, the Planning Commission decision based on such failure to read the City's own LCP is still erroneous and must be overturned, as it sets a dangerous precedent in the City, namely, that the City is not required to consider public views for any properties for which a CDP is sought because the City "is not in the view business."

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IV. SHORELINE ACCESS

B. Pedestrian Access

Pedestrian access to the shoreline, in the form of improved walkways and ramps both vertical and lateral, is provided throughout the Redondo Beach Coastal Zone. ...

An important part of the pedestrian system is the blufftop walkway. This walkway parallels the western perimeter of Esplanade Avenue on a coastal plain, fifty feet above the shoreline. *The walkway extends from the southern boundary of the Coastal Zone at the Torrance city boundary to Knob Hill on the north. An unobstructed blufftop view of the ocean is provided to both pedestrian and automobile travelers along Esplanade. At Knob Hill, steps lead to a walkway midway between the shoreline and the blufftop walkway.*

LCP, pgs. 60-61 (emphasis added).

V. COASTAL RECREATION

... The entire Redondo Beach shoreline is under public ownership. As a result, access to recreational opportunities is very good. *The City of Redondo Beach offers a wide variety of coastal recreational opportunities including approximately 1.7 miles of public beach areas, a blufftop walkway along the Esplanade to Knob Hill where pedestrian views of the beach are unhampered by residential development⁷.*

LCP, pgs. 78-79 (emphasis added).

B. Beaches

... *More than half of the Redondo State Beach is open to direct public view from Esplanade which varies in elevation along its length and offers fine vantage points for viewing the beach and ocean. A major public access walkway extends south from the Pier complex to Knob Hill approximately half the distance of the beach.*

⁷ The LCP was written in 1980, at a time when the Property and the adjacent other four blufftop houses had already been built. LCP; Staff Report, pg. 1. Accordingly, the LCP took into consideration the low profile of those five properties south of Knob Hill and the one property immediately north of the beach stairway at the end of Knob Hill. It is no coincidence that all five of those properties were single-story properties from the street level, although each property has at least one story on the bluff below. See, Photographs of the Property, Exhibit 2.

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... The beach is a major attraction, having value to considerably more people than just the citizens of Redondo Beach. Approximately 3.2 million persons visited the beaches in 1978. *It is a State resource, which attracts swimmers, surfers, fishermen, and perhaps in the greatest numbers of all, viewers.*

LCP, pgs. 80-81 (emphasis added).

Therefore, to state that the LCP does not reference the issue of public views is plain wrong. The LCP clearly does, and even goes so far as to specifically address the area in question – namely, Knob Hill and the Esplanade. Further, the LCP defines views as part of the “coastal recreation” of the public. LCP, pgs. 78-79.

Accordingly, the addition to, and remodel of, the Property, which unequivocally will diminish the public view at Knob Hill and the Esplanade, fails to meet the first element of the CDP approval test established by the City and the Coastal Act. As such the CDP for the Property should have been denied on that basis alone. However, the CDP should have also been denied based on the failure to meet the second element of the CDP approval test – namely, compliance with the Coastal Act.

IV. THE PROPOSED DEVELOPMENT ON THE PROPERTY IS NOT IN CONFORMITY WITH THE COASTAL ACT

In a convoluted exchange, the Planning Commission opined that certain provisions of the Coastal Act, specifically those sections requiring the protection of ocean views, were not binding on the City. This is because, according to City Attorney Web, unless the LCP expressly incorporated the applicable provisions of the Coastal Act into the LCP, the City was without power to consider those provisions of the Coastal Act. This again is a plain misreading of the statute and the LCP, and is also illogical.

A. The Coastal Act Requires Consideration And Protection Of Ocean Views By The City

The Coastal Act was enacted by the legislature in 1976, in response to a proposition passed by California voters in 1972 (Proposition 20). LCP, pg. 1. The purpose of the Coastal Act is stated throughout the statute. *See*, Section 30001(b) (“The Legislature hereby finds and declares ... that the permanent protection of the state’s natural and scenic resources is a paramount concern to present and future residents of the state and nation.”).

To achieve that purpose, the Coastal Act requires cities (including Redondo Beach) to comply with the provisions of the Coastal Act. *See*, Section 30003 (“All public agencies and all federal agencies, to the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of this division.”). And the public is to be included in decisions affecting coastal development. *See*, Section 30006 (“The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation, and development.”)

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The Coastal Act is to be liberally construed to achieve its purposes and objectives. See, Section 30009.

The Coastal Act further incorporates all of the requirements of Chapter 3 (including Article 6) into local coastal plans:

Section 30200. Policies as Standards; Resolution of Policy Conflicts

Consistent with the coastal zone values cited in Section 30001 and the basic goals set forth in Section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with Section 30500), and the permissibility of proposed developments subject to the provisions of this division are determined. ...

Accordingly, the Coastal Act expressly requires cities, such as Redondo Beach, to abide by all of the policies and provisions set forth in Chapter 3 of the Coastal Act, not certain provisions as the Planning Commission ultimately found, based on faulty advice from the Planning Commission staff and the City Attorney.

Included in Chapter 3 is Article 6 relating to development. The relevant section of Article 6 is Section 30251, which states, in germane part:

Section 30251. Scenic and Visual Qualities

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. ...

The Planning Commission erroneously found that it was not required to follow Section 30251 because it was not expressly incorporated by reference or restated in the City's LCP. Further, the City Attorney told the Planning Commission that this section of the Coastal Act did not apply based on certain headings of the statute. *Transcript*, pg. 20. There is no authority for this position under the rules of statutory construction, and it is directly contrary to Section 30200 of the Coastal Act.

Further, it is illogical that the provisions of a state statute are discretionary to the city implementing that statute, or that a city can pick and chose which sections of the statute it will follow and which ones it will not. The City of Redondo Beach is bound by all provisions of the Coastal Act, as the City has no power to trump the State Legislature or the voters who passed Proposition 20, which spawned the Coastal Act.

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**B. The LCP Incorporates The Policies Of The Coastal Act And Is
The Local Implementation Of Those Policies**

The Coastal Commission granted authority to coastal cities to create local coastal plans that would implement the policies of the Coastal Act. This much is clear from the City's LCP:

The LCP must reflect the coastal issues and concerns of a specific area, such as in Redondo Beach, but must also be consistent with the state-wide policies of the Coastal Act.

LCP, p. viii.

The LCP is defined by the Coastal Act as being the local government's land use plans, zoning ordinances, zoning district maps, and where required, other implementing actions applicable to the coastal zone. The LCP is intended to implement the policies and provisions of the 1976 Coastal Act at the local level.

LCP, pgs. 1-2.

If there were any ambiguity as to the LCP being the arm of the Coastal Act (which there is not), the City was required to amend its LCP in 2001 in response to its proposed amendment to the LCP with respect to the Harbor/Civic Center area. The proposed amendment in 1999 was done apparently to accommodate the significant changes that the proposed Heart of the City project required. In particular, the Coastal Commission rejected the City's 1999 proposed amendment to the LCP, and required certain changes to be made in the LCP. Those changes were memorialized in City Resolution No. CC-0104-20. In that resolution, the City Council found, in relevant part, that:

2. The proposed amendment to the Coastal LUP is intended to be carried out in a manner that is fully in conformity with the Coastal Act.
3. The proposed amendment to the Coastal LUP is consistent with the policies of the Coastal Act, including but not limited to: the protection and provision of public access; the protection and encouragement of facilities that provide public recreation; the protection of the marine environment; *the protection of the scenic and visual quality of coastal areas*; and the reservation of land along and near the coast for priority uses, including coastal development, visitor serving uses and recreation.

City Resolution No. CC-0104-20, pgs. 1-2.

Thus, the LCP incorporates the requirements of the Coastal Act, including Section 30251, which requires the City to protect the scenic and visual qualities of coastal areas.

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**C. Even If The LCP Did Not Specifically Address The Policies Of
The Coastal Act, Courts Have Required Cities To Consider
And Protect Views**

Even if there were no express references to enforcing the policies of the Coastal Act in the LCP, courts require cities and counties, in reviewing CDPs to consider and protect views of the public and property owners.

In *Bel Mar Estates v. California Coastal Commission*, (1981) 115 Cal.App.3d 936, the appellate court affirmed the denial of a CDP⁸ because of: (a) the increase of traffic that the development would bring to PCH; (b) the development would destroy the scenic view of the ocean from the canyon; and (c) the development would destroy the natural habitat of the area. *Id.* at 941-42. In affirming the denial of the CDP and of the writ of mandate, the appellate court noted that the development's destruction of the natural and scenic canyon "fell within the provisions of section 30251 of the [Coastal Act]." *Id.* at 941.

Similarly in *Paoli v. California Coastal Commission*, (1986) 178 Cal.App.3d 544, the CDP was denied because the property owner refused to agree to an open-space easement to preserve the public view as a condition for issuance of the CDP. In so holding, the appellate court held that:

The importance of preserving the rural character of this highly scenic portion of the Mendocino coast is recognized in Public Resources Code section 30251, 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, [and] to be visually compatible with the character of surrounding areas ..."

Id. at 551-52.

And in *La Costa Beach Homeowners' Association, supra*, the appellate court affirmed the issuance of a CDP based on a barter-for exchange between the Coastal Commission and the property owners. The CDPs were going to be issued, again relying upon and citing Section 30251 of the Coastal Act, as long as the property owners agreed to certain public view corridors on each property. *La Costa Beach Homeowners' Association*, 101 Cal.App.4th at 815-16. The property owners instead purchased a contiguous 80 foot parcel of land a short distance north of their properties, which was undeveloped, and deeded it to the City of Malibu in exchange for issuance of CDPs without public view corridor restrictions. The court found that the purpose of Section

⁸ The County of Los Angeles had approved the CDP, and the Coastal Commission denied it. The property owner then appealed the decision by the Coastal Commission to Los Angeles Superior Court by a writ of mandate. The trial court denied the writ of mandate to overturn the Coastal Commission's denial of the CDP, and the property owner appealed the trial court's denial of the writ of mandate and the decision of the Coastal Commission to the California Appellate Court for the Second District.

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30251 was served because the public was dedicated 80 feet of beachfront property in lieu of having three separate public view corridors ranging from 24 feet, 20 feet, and 36 feet on each respective property.

Thus, the case law further supports the position that the City of Redondo Beach must also consider and protect the views along and to the ocean at Knob Hill and the Esplanade, and elsewhere.

D. The Second Element Of City Ordinance 10-5.2218 Is Not Met Because The Proposed Development Is Not In Conformity With The Public Recreation Policies Of Chapter 3 Of The Coastal Act

The Planning Commission admittedly did not consider the public recreation policies of Chapter 3 of the Coastal Act, which includes Section 30251, even though it was required to do so, and the City's own LCP defines public views as public recreation. "The City of Redondo Beach offers a wide variety of coastal recreational opportunities including approximately 1.7 miles of public beach areas, a blufftop walkway along the Esplanade to Knob Hill where pedestrian views of the beach are unhampered by residential development." LCP, pgs. 78-79.

As shown by the ample evidence presented at the Hearing and the findings of the Commissioners themselves, the view down Knob Hill will be eradicated if the CDP for the Property is ultimately approved and the addition to, and remodel of, the Property is completed as planned. This result is contrary to the LCP, contrary to the Coastal Act, and most important, contrary to public opinion.

V. CONCLUSION

For the reasons stated above and at the Hearing, we respectfully request the City Council to reverse the decision of the Planning Commission and deny the CDP in its entirety. Alternatively, the City Council should reverse the decision of the Planning Commission and remand the matter back to the Planning Commission to consider the impact of the addition to, and remodel of, the Property in light of the public view and the private views that will be impacted by the Doyles' proposed addition to, and remodel of, the Property. Thank you for your consideration of this matter.

Sincerely,



Jill Pietrini

cc: Kevin Farr
Linda Moffat
Ellen Berkowitz, Esq.

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June 1, 2004

Client-Matter: 26540-030

BY HAND DELIVERY

The Honorable Gregory C. Hill, Mayor
and Honorable Members of the City Council
City of Redondo Beach
415 Diamond Street
Redondo Beach, California 90277

Re: 801 Esplanade/PC No. 04-19/CDP No. 04-01

Dear Mayor Hill and Members of the Redondo Beach City Council:

We are writing on behalf of our client, Kevin Farr, and the many Redondo Beach residents and visitors, known as The Friends of Knob Hill, who are all concerned about the potential loss of their public view. If the above-referenced Coastal Development Permit ("CDP") is granted, and a second story (from street level) addition at 801 Esplanade (the "Project") is permitted, a precious scenic and visual resource, enjoyed by hundreds of people every day, will be lost forever. Unfortunately, the Planning Commission (the "Commission"), at its March 23, 2004 hearing (the "Hearing") decided that the destruction of the public's view should not be considered, and voted (by a 3-2 margin) to approve the Project. We appealed the Commission's erroneous decision, and hope this City Council reverses it. This letter details the legal basis of our appeal.

Specifically, the Project should be denied because the required findings are not supported by substantial evidence. The Project does not conform to the policy in the City's Local Coastal Program ("LCP") regarding public views, nor does the Project further the California Coastal Act (the "Coastal Act") requirements with regard to the protection of public views. The Commission also failed to comply with the requirements of the California Environmental Quality Act ("CEQA") because the categorical exemption does not apply to this Project. Therefore, a thorough environmental review is required for this Project.

I. THE REQUIRED FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Section 10-5.2218 of the Zoning Ordinance for the Coastal Zone, which implements the City's Coastal Land Use Plan under the LCP, (the "LCP Implementing Ordinance"),

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AS-RDB-04-261

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states that a Coastal Development Permit shall not be approved unless the decision-making body makes three affirmative findings. The LCP Implementing Ordinance further requires that these findings must include "the factual basis for any legal conclusion."¹

Findings are required by law when the City acts in an adjudicative or quasi-judicial capacity by applying a fixed rule, standard or law to a specific parcel of property.² This generally includes variances, use permits, and other development approvals, such as Coastal Development Permits. Where findings are required, the findings must be written, they must support the City's decision, and substantial evidence in the administrative record must support the findings.³ Courts have held that the purpose of a findings requirement is "to bridge the analytic gap between the raw evidence and ultimate decision or order."⁴ Findings that are merely a recitation of statutory language are generally insufficient as a matter of law.⁵

The staff report to the Commission for the Project made cursory findings that essentially recite the required language without any evidentiary support or discussion. The Commission adopted each of these findings verbatim. The "findings," and the lack of evidentiary support for them, are discussed in turn.

A. CONFORMITY WITH THE LCP.

The first required finding under Section 10-5.2218 of the LCP Implementing Ordinance is that the proposed development is in conformity with the Certified LCP. The Commission was advised that conformity with the LCP required only an analysis of whether the Project complies with certain zoning provisions of the LCP. Staff reported that the LCP "allows for the development of a two-story single family residence on the subject property,"⁶ and the Commission apparently concluded that the Project therefore met this conformity finding.

Contrary to staff's advice, however, the zoning designation is not the end of the conformity analysis. In order to conform to the LCP, the Project must meet *all* of the regulations and policies of the LCP. There are two provisions of the LCP that involve issues

¹ Redondo Beach Municipal Code, Title 10, Chapter 5 §10.5.2218(b).

² See *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal. App. 3d 175, 181.

³ *Topanga Assn. For a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506, 517, note 16.

⁴ *Id.* at 515.

⁵ *City of Carmel v. Board of Supervisors* (1977) 71 Cal. App. 3d 84, 91.

⁶ Staff Report, Redondo Beach Planning Department, Agenda Item 19, dated March 23, 2004, p. 3 of 5.

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related to public views. Neither staff nor the Commission was advised that it must analyze these public view provisions before it could adopt a finding of compliance with the LCP. Both of these requirements, along with the perplexing statements made at the Hearing about the absence of public views, are discussed in this section.

1. THE PUBLIC VIEW.

At the Hearing, City Planner Anita Kruger stated that she "walked around Knob Hill, Esplanade, Catalina and [she] looked...[but] couldn't see the ocean..." She therefore concluded that "[t]he public view will not be impacted..." if the Project were approved.⁷ Nothing could be further from the truth.

Ms. Kruger apparently did not walk down Knob Hill from the Pacific Coast Highway, or she would have experienced the spectacular view that can be seen in the photographs attached to this letter (Exhibit A), and which was the subject of testimony from many community members at the Hearing. From Pacific Coast Highway to the Esplanade, travelers of all types – those on foot, in vehicles, on bikes – enjoy the sights for which Redondo Beach is famous: the beautiful ocean and the horizon beyond. Currently, Redondo Beach community members have submitted petitions to the City Council with more than 1,300 signatures attesting to the significance of the public view down Knob Hill and their disapproval from building at this site.⁸

After observing photographs and hearing public testimony about the view, both the staff and several members of the Commission acknowledged that an important public view exists down the Knob Hill corridor. In response to a question by Commissioner Eubanks, Acting Director Randy Berler admitted that "[t]he street view could be considered a public view corridor."⁹ A short time later, Commissioner Eubanks stated that the Commission had heard "compelling evidence" from the neighbors that "this is a significant public view;" he also stated that he would "hate to see the view blocked." Notwithstanding the acknowledgement of the public view, the Commission failed to consider the view in reaching its decision.

⁷ Testimony from March 23, 2004 Planning Commission hearing.

⁸ Personal observations on nontechnical issues such as views can constitute substantial evidence. See *Ocean View Estates Homeowners Assn. v. Montecito Water District* (2004) 116 Cal. App. 4th 396, 401.

⁹ Testimony from March 23, 2004 Planning Commission hearing.

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2. THE LCP REQUIRES THE CITY TO CONSIDER PUBLIC VIEWS OF THE COASTLINE.

Section 10-5.102(b) of the LCP Implementing Ordinance states that one of the specifically enumerated purposes of the LCP is to “[m]aximize public access to and *public views* of the coastline.”¹⁰ Because staff focused only on compliance with the zoning provisions in the LCP Implementing Ordinance, there was no mention of this objective in the staff report. Moreover, there was no discussion about how the Project would conflict with this policy objective at the Hearing.

The discussions at the Hearing related to public views involved a confused analysis of various findings, CEQA issues, policies of the California Coastal Act (the “Coastal Act”), and public access requirements, among others – but did not focus on the fact that the LCP itself requires the City to maximize public views. The Commission heard and acknowledged repeated evidence about the serious obstruction of the Knob Hill ocean view if the second-story is permitted. Nevertheless, staff advised the Commission to disregard this evidence because the public view was not something to be considered under the LCP – even though the LCP specifically cites maximization of public views as one of its purposes.

By ignoring both the evidence of public views and the legal requirements to consider the public view, the Commission reached the erroneous conclusion that the Project conforms to the LCP, based solely on a discussion of the zoning issue.

3. THE LCP REQUIRES THE CITY TO COMPLY WITH COASTAL ACT POLICIES.

Another objective of the LCP is to “carry out the California Coastal Act.”¹¹ Moreover, Section 10-5.2218(a) of the LCP Implementing Ordinance states that approval of a Coastal Development Permit by the City “shall be based upon compliance with the provisions of the [LCP] and consistency with the policies of the Coastal Act.

The Coastal Act, California Public Resources Code Section 3000 *et. seq.*, was enacted by the California Legislature in 1976 as a comprehensive scheme to govern land use planning for the entire coastal zone of the state. Among other things, the Legislature found that “the permanent protection of the state’s natural and scenic resources is a paramount concern”

¹⁰ Redondo Beach Municipal Code, Title 10, Chapter 5, § 10-5.102(b) (emphasis added).

¹¹ See *id.* at § 10-5.102(a) (emphasis added).

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and that "existing developed uses and future developments that are carefully planned and developed consistent with the policies of [the Coastal Act] are essential to the economic and social well-being of the people of this state."¹²

Section 30251 of the Coastal Act specifically reinforces the importance of public views and requires that the effect on a public view be considered when approving a development permit within the coastal zone. That section provides:

"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..."

This provision applies whether the City has a certified LCP or not.¹³ Section 30200 of the Coastal Act makes it clear that, in addition to providing standards for judging the adequacy of an LCP, the policies in Chapter 3 of the Coastal Act (which includes Section 30251) "constitute the standards for judging the permissibility of development within the coastal zone."

When the Commission began to discuss the Project's effect on the Knob Hill view corridor, the Commissioners focused on a different finding required under Coastal Act Section 30604(c). That finding relates *only* to the Project's conformity with the public access and public recreation policies under the Act. Apparently, the Commissioners confused this finding with the *separate* requirement that the Project conform to the LCP. After a somewhat disjointed discussion, the Commission was instructed that it could not consider public views, because the Section 30604(c) finding does not require consideration of scenic and visual resource qualities. Accordingly, the Commission was advised that the requirements of Coastal Act Section 30251 regarding scenic and visual resources had no bearing on this matter.

As discussed above, the Commission was advised that conformity with the LCP required it to consider only the zoning issues applicable to R-1 Zones. The Commissioners were not told that conformity with the LCP also requires it to "carry out the Coastal Act policies," and that one of those policies is the protection of views under Section 30251. As a

¹² Cal. Pub. Res. Code § 30001.

¹³ Big Creek Lumber Co. v. County of Santa Cruz (2004) 115 Cal. App. 4th 952, 974.

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result, the Commission ignored public views, and approved the Project without consideration of all of the obligations under the LCP.

B. CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF THE COASTAL ACT.

The second required finding is that the Project conforms to the public access and public recreation policies of the Coastal Act. Although it is fairly clear that the proposed Project will not impact public recreation opportunities, the staff report should have discussed the potential impact of the construction on public access. Section 30211 of the Coastal Act states that development "shall not interfere with the public's right of access to the sea." However, adjacent to the northern boundary of the Project are the public steps leading from the Esplanade at Knob Hill down to the beach. There is no discussion in the staff report about construction operations or restrictions on construction staging, which could temporarily block public access to the steps.

Moreover, there is no discussion in the staff report about the possible impact that construction could have on the structural integrity of the steps leading to the ocean. The Project is located immediately adjacent to a steep public stairway and uphill from a public retaining wall, both of which show significant signs of cracking and soils slippage. We have included photographs of these public facilities as Exhibit B to this letter. These cracks are clearly the result of soils subsidence, which could be caused by insufficient foundation for the existing residence at 801 Esplanade. The addition of a second story (from street level) to the residence could exacerbate the impact to the adjacent public property. The Commission should have discussed this issue before concluding— without analyzing any evidence submitted by the community — that the Project would not impact public access.

C. COMPLIANCE WITH THE CEQA.

The third required finding is two-fold. First, the decision-making body must find that it has complied with any CEQA responsibilities it may have in connection with the Project. Second, the decision-making body must find that it is "not violating any CEQA prohibition that may exist on approval of projects for which there is a less environmentally damaging alternative or feasible mitigation measure available." This finding stems from the CEQA mandate that public agencies must not approve projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or

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avoid those effects.¹⁴ For several reasons, the Commission's finding regarding compliance with CEQA was in error.

1. A CATEGORICAL EXEMPTION DOES NOT APPLY TO THIS PROJECT.

The staff report asserts compliance with CEQA by claiming the Project is "categorically exempt" from CEQA. CEQA provides a categorical exemption for various classes of projects that the Secretary for Resources determines *generally* will not have a significant impact on the environment.¹⁵ However, these exemptions are not absolute. There are six enumerated exceptions to the categorical exemption outlined in CEQA. If one of these exists, the categorical exemption is not applicable to the project.¹⁶

Although CEQA typically does not require findings for a categorical exemption, they are required in this instance because the LCP Implementing Ordinance requires an affirmative finding that the approval of the project complies with CEQA. As a result, the City is required to support its determination of the categorical exemption with a written finding that is supported by substantial evidence. Thus, the City must affirmatively explain why the exceptions to the categorical exemption do not apply.¹⁷

Moreover, there is some confusion in the City's documents as to which categorical exemption the City planners are attempting to apply to this Project. The Notice of Decision on Modification to change the setback requirements for the Project alleges that the Project is categorically exempt pursuant to 15301 (Class 1) of the CEQA Guidelines.¹⁸ Similarly, the Staff Report to the Commission also claims that the Project is categorically exempt under Section 15301 (Class 1) of the CEQA Guidelines, and the Exemption Declaration reiterated

¹⁴ See *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal. 4th 105, 134; Pub. Resources Code §21002.

¹⁵ Pub. Res. Code §21084; CEQA Guidelines §15300 *et seq.*

¹⁶ Pub. Res. Code §§21084(b), (c) (e); CEQA Guidelines §15300.2.

¹⁷ *Association for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal. App. 4th 720, 731; *Topanga*, supra, 11 Cal. 3d 506. In *Ukiah*, the court recognized that *Topanga* findings are not normally required to support a categorical exemption because CEQA does not require findings or a public hearing for this determination and because the CEQA determination is separate from the underlying development approval. However, where the underlying approval is statutorily required to incorporate CEQA findings, these findings must be supported by substantial evidence. (See also James Longtin, Longtin's California Land Use §11.51 (2nd ed. 1987).)

¹⁸ Notice of Decision on Modification and Exemption Declaration, City of Redondo Beach, February 26, 2003 [sic].

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this conclusion.¹⁹ However, the Notice of Public Hearing for the Commission meeting as well as the Notice of Public Hearing for the upcoming City Council meeting both assert a *different* categorical exemption under Section 15303 (Class 3) of the CEQA Guidelines for the same Project. In any event, neither exemption is applicable.

a. NEITHER THE CLASS 1 NOR THE CLASS 3 EXEMPTIONS APPLY TO THE PROJECT .

Section 15301 provides a "Class 1" exemption for, among other things, minor alterations to existing structures involving negligible or no expansion of use. An example includes an addition that will not result in an increase in more than fifty percent (50%) of the floor area of the structure before the addition. We have reviewed the architectural plans for the Project at the City, and based upon the calculations provided by the applicant's architect, the Project is dangerously close to the 50% threshold that would render the Class 1 exemption inapplicable on its face. In fact, the plans and notes in the file contain some confusing language about the need to reduce the basement floor area by 44 square feet. If the actual floor area of the basement is 44 square feet less, then the Project appears to add more than 50% of the pre-existing floor area.

Section 15303 provides a "Class 3" exemption for construction of new small facilities or structures, such as single-family residences. However, this categorical exemption applies only to new construction: it does not apply to remodels and additions, such as that proposed here.

b. THERE ARE TWO APPLICABLE EXCEPTIONS TO THE CATEGORICAL EXEMPTION.

Regardless of the confusion on the asserted categorical exemptions, the categorical exemptions also do not apply because there are exceptions to both Classes of categorical exemptions. CEQA Guidelines Section 15300.2(a) states that a Class 3 exemption does not apply where the project is located in a particularly sensitive environment. Additionally, CEQA Guidelines Section 15300.2(c) states that no categorical exemption may be used for an activity where there is a reasonable possibility that the activity will have a significant effect

¹⁹ Staff Report, Redondo Beach Planning Department, Agenda Item 19, dated March 23, 2004; Exemption Declaration, 801 Esplanade Avenue, dated March 23, 2003 [sic].

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on the environment due to unusual circumstances. Both of these exceptions apply for largely the same reasons.

As we describe in Part A of this letter, Knob Hill Avenue leading down the hill to the public stairway contains a remarkable public view. This significant public view creates an unusual circumstance that renders the categorical exemption inapplicable to the Project. CEQA recognizes the importance of significant views in analyzing environmental impacts. In *Ocean View Estates Homeowners Association v. Montecito Water District*, the court recognized that "[a]ny substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA."²⁰ The court noted that just because "there is no common law right to a private view, [this] is not to say that the [agency] is relieved from considering the impact of its project on such views."²¹ In fact, the court clarified that when there is an impact to a *public* view, rather than a private view, there "is more involved", because the agency must consider the overall aesthetic impact to the community.²²

As discussed above, the impact on the public view is unquestionable. Given the photographs, the number of signatures collected on petitions objecting to the potential loss of the public view, the testimony from community members, and the statements of certain Planning Commissions, there is ample evidence in the record that the Project will negatively alter the aesthetics of the area. Because the Project would adversely impact a unique public resource, the Project cannot be treated as categorically exempt under CEQA.

There is another "unique circumstance" regarding the Project that renders the categorical exemption inapplicable. As discussed in Part B, above, both the public stairway to the beach and the public retaining wall show significant signs of cracking and soils slippage, evidencing some soils subsidence. The addition of a second story (from street level) as the Project proposes could exacerbate the impact to the adjacent public property. Although we assume the City would require a geotechnical report and engineering study prior to issuing building permits, this analysis should be completed before the City grants the Coastal Development Permit. In fact, CEQA *requires* the City to review the potential impact of the Project on the stability of the adjacent public property before granting the CDP. The existence of the cracks creates a reasonable possibility that the Project will have a

²⁰ *Ocean View Estates Homeowners Assn*, *supra* 116 Cal. App. 4th at 401; See also *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1988) Cal. App. 3d 485.

²¹ *Id.* at 402.

²² *Id.*

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significant effect on the environment due to unusual circumstances. As such, the categorical exemption is inapplicable and the City must analyze the potential impact.

2. LESS ENVIRONMENTALLY DAMAGING ALTERNATIVES MAY BE AVAILABLE.

The staff report ignored any discussion of less environmentally damaging alternatives. Apparently, because the Planning staff (erroneously) determined the Project was categorically exempt, it apparently also determined (erroneously) that it did not need to discuss feasible alternatives in detail. Where a project may result in a significant impact to the environment – as the Project would, because of its obstruction of the public view – CEQA requires the City to consider “a reasonable range of *potentially* feasible alternatives that will foster informed decisionmaking and public participation.”²³ An alternative cannot be simply disregarded because it would be more expensive or less profitable.²⁴

The only discussion relating to potential alternatives at the Hearing was staff's statement that the property is “deed restricted from having any building within 60 feet of the rear property line.”²⁵ We have reviewed the grant deed for the subject property, and the restriction actually states that no building, structure or obstruction can extend beyond 60 feet west of the Esplanade property line, “*unless said building or obstruction is below the street level.*”²⁶

We understand that the street level of the house at 801 Esplanade already extends westward nearly 60 feet from the Esplanade property line, and that the deed restriction may prevent the owners from building any farther west *on that floor or above*. However, the subterranean floor of the residence (below the street level) includes a rather large deck that could presumably be enclosed without violating the deed restriction. Alternatively, with some excavation of the bluff, additional floors could be added below the existing subterranean floor. Moreover, the City could grant a variance that would allow the owners to build closer to the western property line.

²³ CEQA Guidelines §15126.6 (*emphasis added*).

²⁴ *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal. App. 3d 1167, 1180-1181.

²⁵ Transcript of March 23, 2004 Planning Commission hearing.

²⁶ Grant Deed, Lot #445 Knob Hill Tract Redondo Beach, recorded May 12, 1950, *emphasis added*. (“This property is hereby granted with the specific restriction that no building, fence, tree, shrub or any structure, plant or obstruction shall extend beyond sixty (60) feet west of the Esplanade property line, unless said building or obstruction is below the street level.”).

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The 801 Esplanade property is unique in its location, which provides both a burden and a benefit to its owners. It is located at the focus of a dramatic public view corridor, so the owners have an obligation to the community to seek alternatives to disrupting the public's coastal view. But the owners of the property also enjoy the public open space to the north, where no building can ever obstruct their view and sunlight. Windows along this side of the house could make interior bedrooms attractive and marketable. Moreover, the property enjoys a spectacular slope that ensures that every level will have a panoramic view of the ocean. While we recognize the owners and their architect have worked hard in their design of the Project, there appear to be unexplored feasible alternatives to the proposed Project, including building west on the existing subterranean level or adding additional down-slope floors. The City has failed to analyze those alternatives as required by law.

II. THE CITY COUNCIL MUST DENY THE COASTAL DEVELOPMENT PERMIT.

The LCP provides that an application to a CDP may be denied if makes one of three findings, which are essentially the contrary of any of the three findings discussed above.²⁷ For the reasons discussed in Part A, above, the City should find that Project *does not* comply with the LCP because it does not consider public views, either under the express requirement to "maximize public views" or the LCP's admonition to "carry out the policies of the Coastal Act," which includes compliance with Coastal Act Section 30251 regarding protection of scenic resources. While it is possible the City would not find that the Project violates the public access and public recreation policies of the Coastal Act, that issue should at least be discussed in some meaningful manner.

With regard to CEQA, the Commission relied on the erroneous conclusion that the Project was categorically exempt. It therefore did not discuss the Project's significant environmental impacts to aesthetics (i.e., the public view) nor did it require a geologic analysis to determine the potential impacts from soils subsidence. Further, the Commission did not meet its obligations under CEQA to discuss feasible alternatives. Until the proper CEQA analysis is performed, the City cannot approve the Project.

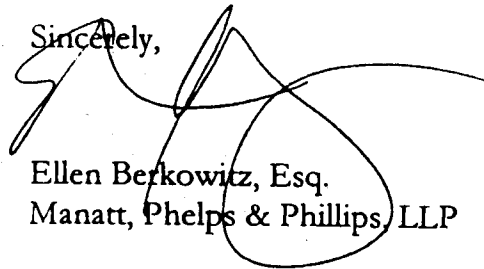
For the many reasons explained above, we urge the City Council to deny the CDP for 801 Esplanade.

²⁷ Redondo Beach Municipal Code, Title 10, Chapter 5 §10-5.2218(d).

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We remain hopeful that there will be an equitable solution to enable the property owners to expand their private space that is not at the expense of the entire community of Redondo Beach. However, we will not hesitate to pursue all available remedies, including rights of appeal, to protect the public's view.

Sincerely,

A handwritten signature in black ink, appearing to be "Ellen Berkowitz", written over the typed name and firm name.

Ellen Berkowitz, Esq.
Manatt, Phelps & Phillips, LLP

cc: Kevin Farr, Appellant
Linda Moffat, Friends of Knob Hill

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