

CALIFORNIA COASTAL COMMISSION

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**Thu
15.5b**

Filed: June 29, 2006
49th Day: August 17, 2006
Staff: Ellen Lirley-SD
Staff Report: July 25, 2006
Hearing Date: August 8-11, 2006

**STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of San Diego

LOCAL DECISION: Substantial Conformance Review (SCR) authorizing changes to Coastal Development Permit (CDP) for 272 unit Planned Residential Development

APPEAL NO.: A-6-NOC-06-075

APPLICANT: Pardee Homes

PROJECT DESCRIPTION: Modifications to Planned Residential Development on 185.2 acre site to accommodate 113 single-family homes and 129 multi-family units (242 total) in 15 buildings, with associated revisions to street, drainage and landscaping improvements, and dedication of open space, including retirement of development rights on six parcels.

PROJECT LOCATION: North and south of Calle Cristobal, east and west of Camino Santa Fe, in the Mira Mesa Community Plan area, North City, San Diego, San Diego County. APNs 308-040-15; 311-020-43; 311-020-44; 31-020-45; 311-021-08; 311-021-10; 311-031-23; 311-031-24; 311-031-25

APPELLANTS: Kurt Diesel

Standard of Review: Certified City of San Diego Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The City's decision to utilize a staff-level substantial conformance review process rather than processing an amendment to the coastal development permit would normally raise a substantial issue, based on the extent and significance of the project revisions. Here, the substantial conformance review (SCR) was applied to a CDP that is still pending before the Commission on appeal. Although the revisions to the CDP should not have been

done through the SCR process, review of that SCR decision, on appeal, is not the appropriate way for the Commission to review the revisions that have been made to the development as originally approved by the City, and resulting from the Commission's action on LCP Amendment No. 3-03B (Crescent Heights). If the Commission finds substantial issue on the appeal of the original City decision (CDP Appeal No. A-6-NOC-05-050), the revisions approved by City staff can be incorporated into the development by the applicant for de novo review by the Commission. In this way, the SCR review would pertain to all other actions required by the City, except the CDP.

If the appellant were raising other relevant grounds regarding conformance with the currently certified LCP, substantial issue should be found on this appeal; however, the project elements that the applicant has indicated are not consistent with the certified LCP, are in conformance with the LCP as recently amended.

SUBSTANTIVE FILE DOCUMENTS: Appeal Form received June 29, 2006 in the San Diego Commission office; Certified City of San Diego LCP

I. Appellants Contend That:

The appellant contends that the use of the substantial conformance review process by the City to approve a significantly redesigned project precluded public review, since public notice and a public hearing is not required in this process. In addition, the appellant contends that the proposed development is inconsistent with the policies of the certified LCP, particularly a policy describing what constitutes very low density development. The policy identifies the appropriate density for very low density residential sites and provides examples of housing types that would meet this goal. The appellant further contends that the approved development does not integrate with the natural environment, preserve and enhance views, or protect areas of unique topography and vegetation, as also required in the same LUP policy. Finally, the appellant contends that the approved development will encroach upon an existing wildlife corridor, and cites an LUP policy providing for the protection of wildlife linkages. Specifically, the appellant calls out apparent inconsistencies with policies in both the Sensitive Resources and Open Space and Residential LUP components of the certified North City LCP Land Use Plan/Mira Mesa Community Plan.

II. Local Government Action:

The City initially approved a Coastal Development Permit (CDP) on July 11, 2003, for development of the subject property (which was appealed to the Commission on May 26, 2005). After the Coastal Commission certified City of San Diego LCP Amendment No. 3-03B (Crescent Heights) on March 17, 2005, the applicant began revising the project to be consistent with that action, which significantly modified the previous boundaries between developable area and open space. On October 11, 2005, the City accepted all

the Commission's suggested modifications, and the LCP amendment was effectively certified in February, 2006. The City then reviewed and approved the redesigned project pursuant to its substantial conformance process, which allows minor modifications to be adopted without formal review by either the Planning Commission or City Council. The process does, however, require public notice to adjacent and nearby property owners and interested parties, who may then request a copy of the Notice of Decision, which can be appealed to the Planning Commission. The City advised the appellant by letter on June 8, 2006, that the substantial conformance review was complete. A copy of that letter was received in the Commission's office on June 13, 2006.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas.

Section 30604(b)(1) of the Coastal Act states:

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.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the

development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). 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 certified LCP;
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 only 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 the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-NOC-06-075 raises NO substantial issue with*

*respect to the grounds on which the appeal has been
filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-NOC-06-075 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Findings and Declarations.

1. Project Description/Permit History. The City of San Diego, in July, 2003, approved a coastal development permit for a Planned Residential Development (PRD) called Crescent Heights. A 272-unit residential development was approved by the City to be clustered on parts of three mesa top parcels which total approximately 101 acres of the total 185.2 acre site. The project also includes retiring six other parcels from development and preserving the land as open space in perpetuity. The City's actions included an LUP amendment to accommodate said development and rezoning of all properties to the necessary residential and open space zones. Two commissioners appealed the project (A-6-NOC-05-050), and the applicant waived the 49 days to hear the appeal. The substantial issue determination on that appeal is also scheduled for Commission action on the August meeting agenda and staff is recommending substantial issue be found.

In March, 2005, the Coastal Commission certified the LCP Amendment No. 3-03B (Crescent Heights) with suggested modifications. To respond to the suggested modifications, adopted by the City in October, 2005, the applicant redesigned the project to be consistent with the certified LCP, resulting in a reduction of both single-family and multi-family units and an increase in open space. The redesigned project was then approved by City staff through the substantial conformance review (SCR) process. This appeal pertains to the City staff's decision to make changes to the coastal development permit through the SCR process, and also addresses the appellant's concerns related to the revised project.

The redesigns approved by City staff through SCR included a reduction of 15 single-family residential units and 15 multi-family units. Changes in the single-family portion of the site relocated the proposed development further upland from the canyon rim onto the flat mesa, and included replacing extensive fill slopes for interior streets with

retaining walls to reduce steep hillside encroachments. In the original City CDP, improvements, including grading proposed for the street system and to create some building pads, extended over the bluff edge in several places, contrary to the policies of the certified LUP. The multi-family segments were significantly modified both to reduce encroachments beyond the canyon rim and to accommodate a 100-foot buffer around vernal pools within the Multi-Family North site, as required in the certified LCP. The increased buffer significantly modified the development footprint, resulting in one apartment building being relocated from the Multi-Family North site to the Multi-Family West site. As a result of these revisions, the project overall now includes approximately five acres more open space than the project originally approved by the City in 2003.

2. Policies and Regulations. The appellant contends that the City's substantial conformance review occurred without public notice or public hearing, thus precluding the public's right to attend and comment on major changes, including the addition of a multi-family structure and overall reconfiguration of the Multi-Family West component of the Crescent Heights development plan. The appellant is correct in that a public hearing was not held on the matter. However, a Notice of Future Decision was sent to all property owners within 300 feet of the development, including the appellant. The notice advised that a substantial conformance review was occurring at the City and advised that any concerned member of the public could request, in writing, a copy of the Notice of Decision. The notice allowed ten business days for such a request to be made. The notice also advised that the staff decision could be appealed to the Planning Commission within twelve business days of the decision date. Although at the time the appeal was filed, the appellant stated that no public notice had been given, a more recent telephone conversation with the appellant (July 19, 2006) indicated that a notice may have been received, but was not understood.

The project modifications did include reconfiguration of the Multi-Family West component such that the revised development will be located further north than originally approved by the City and also will extend further west. This reconfiguration of the developable area was done through the LCP amendment to preserve coastal sage scrub habitat. A seventh multi-family building was added to the Multi-Family West component, to replace a building that was deleted from the Multi-Family North component to increase the wetland buffer in that area to 100 feet and eliminate encroachments beyond the rim of Los Penasquitos Canyon. The reconfiguration of the Multi-Family West component results in development extending closer to the appellant's home and occurring between his property and Lopez Canyon. The specific development plans will be further addressed in the Commission's future review of the subdivision. The applicant has submitted a CDP application directly with the Commission because portions of the subdivision are located within an area of deferred certification. In addition, Appeal No. A6-NOC-06-50, which is also on the August meeting agenda, will provide the Commission with additional review authority if the Commission finds substantial issue.

Regarding the SCR process, the certified LCP includes the following regulations addressing changes to approved development:

Section 126.0112 of the Land Development Code states:

Minor Modifications to a Development Permit

A proposed minor modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit. If the revision is determined to be in *substantial conformance* with the approved permit, the revision shall not require an amendment to the *development permit*. Within the Coastal Overlay Zone, any *substantial conformance* determination shall be reached through a Process Two review.

Section 126.0113 of the Land Development Code states in part:

Amendments to Development Permits

(a) A proposed revision to an approved *development permit* that would significantly reduce the scope of the *development* or is not in *substantial conformance* with the approved permit requires an amendment to the approved permit or an application for a new permit. ...

(c) An application for an amendment to a *development permit* shall be acted upon in accordance with the same process as would a new application for the same permit. The application is subject to environmental review and will be evaluated in accordance with the State [of] California Environmental Quality Act (CEQA) Guidelines, Sections 15162-215164. The decision maker may revise existing conditions or impose new conditions. ...

(e) Within the Coastal Overlay Zone, a proposed change in use which will result in a change in intensity of use requires an amendment or a new Coastal Development Permit.

In addition, Section 126.0716 of the CDP regulations refers back to the above-cited regulations, and states:

Modifications and Amendments to a Coastal Development Permit

Minor modifications and amendments to a previously approved Coastal Development Permit issued by the City shall be decided in accordance with Sections 126.0112 and 126.0113.

The City originally approved a development of 128 single-family residences and 144 multi-family units (272 total). The multi-family units would consist of 15 buildings of seven or ten units each. The project currently approved by the City through substantial conformance review includes a mix of 113 single-family residences and 129 multi-family

apartment units (242 total), with the multi-family components still consisting of fifteen separate buildings with seven or ten units each, but with seven, seven-unit buildings where the original approval only had two. Thus, the revised plans reduce the overall project by thirty units, with a reduction of 15 each in single-family and multi-family units, and a corresponding approximately five-acre increase in open space. In addition, the revised project pulls most development off of steep hillside areas and out of sensitive habitat, and also increases the vernal pool buffers in the Multi-Family North component.

Because the scope of revisions is significant, the City should have reviewed these changes as an amendment to the previously approved City coastal development permit, rather than through a staff-level substantial conformance review. The substantial conformance review process should be used only for very minor project changes, but the project modifications here far exceed that standard. The City does not agree with this position, and believes the process was correctly applied. The LCP does not clearly specify how to proceed if a project is modified while an appeal of the CDP for the project is still pending before the Commission. Ultimately, whatever differences in interpretation may exist between the City and Commission staff, the use of the SCR process does not, by itself, raise a substantial issue. If the Commission finds substantial issue regarding the appeal of the City's approval of the CDP for the project (A-6-NOC-05-050), the applicant may modify the project description to conform to the revisions that the City recently reviewed. The Commission would then have a fully adequate opportunity to evaluate the project as revised on de novo review. Given the other pending appeal of the City's approval of the CDP for the project, this appeal of the City's substantial conformance review – which is merely a determination by the City that the project revisions substantially conform with the CDP that the City previously approved – is not the appropriate procedure for reviewing the revised project.

In addition to concerns with the City's use of the substantial conformance review process, the appellant also maintains that the proposed development is inconsistent with Policy #1 on Page 77 of the certified Mira Mesa Community Plan, which states:

Very low density: 0-4 dwelling units per gross acres. This density range is proposed for Lopez Ridge and the northeastern corner of the community near Canyon Hills Park. This range is generally characterized by clustered detached single-family or attached multifamily units (such as duplexes and townhomes) built on large hillside parcels that contain relatively small areas suitable for buildings. Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. The maximum four units per acre is not likely to be achieved except on lots that have large areas in slopes of less than 25 percent.

The project approved by the City includes seven apartment structures west of Camino Santa Fe (15 multi-family structures altogether, but the appellant is only concerned with the seven west of Camino Santa Fe) that the appellant maintains are inconsistent with this policy endorsing only duplexes or townhomes. The appellant also maintains that the project approved by the City is inconsistent in that the proposed development of large

multi-family apartment buildings does not appear to integrate well with the natural environment, does not appear to preserve and enhance views, and does not appear to protect areas of unique topography and vegetation.

The area adjacent to the Multi-Family West component, located west of Camino Santa Fe, is adjacent to single-family residential development and open space. The Multi-Family North component, located north of Calle Cristobal, is adjacent to attached single-family development and open space. Thus, seven- and ten-unit apartment buildings such as those approved by the City could be out of character with existing development and the surrounding open space areas. Moreover, the appellant maintains that if density were calculated on each building site separately, the proposed multi-family units would greatly exceed a density of 0-4 dwelling units per acre, as called for in the certified LUP.

The development approved by the City, however, was based on LCP provisions that encourage development to be clustered in the most developable areas of the site, thus preserving larger areas of open space. The “site” in this case consists of nine separate lots, all with steep hillside and biological resource constraints. By clustering all development on portions of three of those lots, six lots can be retired from development altogether, and significant portions of the other lots can be maintained as open space. Based on the total 185.2 acres, the proposed development reaches a density of less than three dwelling units per acre (dua), thus within the LUP requirement of 0-4 dua.

Although not originally proposed by the applicant, multi-family units were a requirement of the City intended to address the City’s severe housing shortage. Although the immediately adjacent development north of the Multi-Family West site consists of single-family residences, multi-family development is compatible with the community as a whole, which includes attached units further north and larger multi-family structures further east. The cited policy language gives duplexes and townhomes as examples of potential housing style, but does not mandate that only these housing types can be used in this community. In general, larger multi-family structures can be found fully compatible with adjacent open space areas, depending on their design and visibility. Therefore, the project approved by the City conforms to the cited LUP policy with respect to density, community character and housing style.

Finally, the appellant contends that the project approved by the City is also inconsistent with the Sensitive Resources and Open Space System component of the certified LUP, particularly the goal on Page 25 of the LUP that states that the community-wide open space system:

Preserves sensitive resources, including plant and animal habitats, and wildlife linkages.

The appellant contends that the portion of the proposed development located west of Camino Santa Fe (i.e., Multi-Family West) will eliminate an existing wildlife corridor that is used by a significant number of wildlife species to move from a north-south trending side canyon to the bottom of Lopez Canyon, which is an east-west trending

canyon south of the project site. In particular, buildings 3-7 would cover the site of this existing wildlife corridor. Thus, the appellant contends that development of this area would eliminate this particular wildlife route and would be inconsistent with the Mira Mesa LUP goal stated previously that calls for wildlife linkages to be preserved. However, the north-south trending side canyon extends all the way down to Lopez Canyon itself, and, in its northerly extent, it ends at Calle Cristobal. The certified LUP does not identify this side canyon, or the subject property, as a wildlife corridor, nor does the side canyon connect with any other open space area to the north. Wildlife can access the larger canyon directly from the side canyon, without having to cross the shoulder of land that buildings 3-7 will occupy.

In summary, the primary issue raised in the appeal is the City's use of the substantial conformance review procedure to approve the recent project revisions. This procedural argument does not raise a substantial issue because the Commission has the authority to review the project revisions in the context of its de novo review of the previously appealed CDP. With regard to other grounds raised by the appellant, the siting of the Multi-Family West development, as shown on plans approved by City staff through SCR, is consistent with the certified LCP, as amended. Therefore, the Commission finds that this appeal does not raise a substantial issue.

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Kurt Diesel

Mailing Address: 6615 Maycrest Lane

City: San Diego

Zip Code: 92121

Phone: 858-455-5811

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of San Diego

2. Brief description of development being appealed:

Redesigned subdivision of 185.2 acres to accommodate a mix of 113 single family residence, 15 buildings of multi-family units and open space.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

East and west of Camino Santa Fe, north and south of Calle Cristobal, North City (Mira Mesa Community), San Diego (San Diego County)

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

EXHIBIT NO. 1
APPLICATION NO.
A-6-NOC-06-075
Appeal Form
<i>8 pages</i>
California Coastal Commission

APPEAL NO: *A-6-NOC-06-075*DATE FILED: *6/29/06*DISTRICT: *San Diego***RECEIVED**

JUN 29 2006

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☐ Planning Commission
☒ Other

6. Date of local government's decision: June 8, 2006

7. Local government's file number (if any): 99-0639

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Pardee Homes
Attention: Carlene Matchniff

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COASTAL REGION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

For many months in 1999, my family and other prospective buyers, awaited Pardee's release of the phase of Pacific Ridge homes that Pardee intended to develop on the cul-de-sac and the south side of Maycrest Lane (as it was later named). During this protracted waiting period, we, prospective buyers, often met with Pardee's realtors, Patty and Terri, who were stationed at Pardee's Pacific Ridge model home office, to receive updates on the progress of the release of this phase. At that time, Patti and Terri informed us that the reason for the delay was that Pardee was waiting for approval from the City of San Diego to develop the adjacent land/mesa (currently the site of Pardee's planned 7 multifamily apartments, west of Camino Santa Fe), and that upon such approval, Pardee intended to knock down the small hill, that, on the one side, sloped down onto the Maycrest Lane lots, and that, on the other side, sloped down onto this adjacent land/mesa. Patty and Terri informed us that this adjacent land/mesa was in escrow between Pardee and the Pipe Fitter's Union, and that the purchase was contingent upon the City of San Diego approving this land/mesa for development.

Finally, after many months, Pardee released this phase for development and sale, at which time Patty and Terry told all the prospective buyers that Pardee would not be purchasing and developing the adjacent land/mesa (currently the site of Pardee's planned 7 multifamily apartments, west of Camino Santa Fe) because it is environmentally sensitive and legally protected and, therefore, permanently off limits to any future development. As a result, Patty and Terri informed us that the hill would not be knocked down on our prospective lots since the other side of the hill was part of this adjacent environmentally sensitive and off-limit property (land/mesa). When we, thereafter, purchased our homes on Maycrest Lane in 2000, Pardee's master disclosure confirmed Patty and Terri's representations; that is, on page 7, section 21, paragraphs 1 and 2, the master disclosure indicates that the land owned by the Pipe Fitters Union, **east** of Camino Santa Fe, was eligible for future development, yet the disclosure made no mention, once so ever, of the land/mesa adjacent to Maycrest Lane, located **west** of Camino Santa Fe (currently the site of Pardee's planned 7 multifamily apartments, west of Camino Santa Fe).

Despite Pardee's realtors' representations that this land would not be developed and Pardee's failure to mention their intentions to develop this land in their master disclosure, we later came to find out—through a voicemail message from Pardee's engineer, Anthony Dieli, with Rick Engineering, and through a letter I received from Pardee's attorney, John Ponder, with Sheppard Mullin, et al.—that, as stated by Mr. Ponder, "Pardee (had) been processing plans to develop the Crescent Heights project for approximately four years." Mr. Ponder's letter was dated 2003, thereby indicating that Pardee had been processing plans to develop this land/mesa since 1999; that is, before and during the time that Pardee's

realtors made these misrepresentations and provided the Maycrest Lane home buyers with the above mentioned master disclosure that failed to disclose Pardee's intentions to develop this land/mesa.

Months after moving in to our newly constructed homes on Maycrest Lane, we discovered that Pardee was, contrary to earlier representations, in fact intending to develop this adjacent land/mesa, west of Camino Santa Fe. Thereafter, many of the area's (Pacific Ridge's) concerned homeowners met with Pardee's Crescent Height's project manager, Ms. Carlene Matchniff, during in-home meetings and Mira Mesa Community Planning Group meetings. During these initial meetings, Ms. Matchniff disclosed Pardee's plan to develop the entire adjacent-to-Maycrest Lane land/mesa, located west of Camino Santa Fe. After subsequent complaints from homeowners, however, about the threat such a development would have on the wildlife, the environmentally sensitive preserve area, and the views, privacy and property values of the homes that were sold by Pardee with their representation that this land would never be developed, Ms. Matchniff came back to future meetings with a revised plan. In the revised plan, Pardee omitted the development originally proposed for the western (roughly) half of this land/mesa, as this half was directly in the view paths of the affected Maycrest lane homes. In all subsequent Mira Mesa Community Planning Group meetings, Pardee repeatedly assured us that they intended to appease our concerns and absolutely did not intend to develop the western (roughly) half of the mesa, and they continued to present this revised plan supporting such. Eventually, this revised plan was approved by the Mira Mesa Community Planning Group, at which time, Pardee informed us that they planned to thereafter submit it to the San Diego City Council for approval.

At around that same time, providing us with even greater assurance that our views, privacy and property values were secure, Ms. Matchniff, accompanied by one of Pardee's engineers from Rick Engineering, visited the homes of two of the concerned Maycrest Lane residents; that is, my family (lot 49), and Mr. and Mrs. Roccoforte (lot 51), to provide a visual demonstration, which was to included photo-simulations, of how Pardee's revised plan would minimally affect our views and privacy. Also around that time, as an even further confirmation of Pardee's commitment not to develop the western (roughly) half of this land/mesa, Pardee's attorney, John Ponder, sent me (Kurt Diesel) a letter, dated May 7, 2003, stating that "Pardee worked with the Mira Mesa Planning Group, and its subcommittee to review this project and obtain input...(and) on numerous occasions ...met with you (Kurt Diesel) and your neighbors...and worked diligently to address any potential concerns regarding perceived impacts...on your residences...Pardee made extensive efforts to limit any visual impacts of the proposed Crescent Heights project, including...reducing the footprint to minimize impacts...and reduce visibility of the proposed residential units. We believe that the results of our efforts are reflected in the photo-simulations which depict little or no visibility from the surrounding area."

As a result of all of Pardee's ongoing reassurances, we all moved forward with total peace of mind these past couple of years, only to find out recently that Pardee, in fact, had submitted, and received the City of San Diego's approval of, an entirely different plan. The plan that Pardee submitted instead, that was approved by the City in July 2003, included substantial new development plans (including multifamily apartments identified in that 2003 plan as buildings 3 and 4) for the western half of the land/mesa west of Camino Santa Fe, the area that Pardee repeatedly previously assured us that they did not intend to develop. Further, after the City's approval of this different view intrusive plan and the California Coastal Commission's subsequent recommendations on boundaries, Pardee revised their plan again, and made major configuration changes to the size and locations of the apartments buildings, and took the bold initiative to add one multifamily apartment unit (identified as building 5 in the current plan) on the

westernmost edge of the land/mesa, thereby pushing a plan for developing the entire land/mesa west of Camino Santa Fe; thereby, totally breaching their commitment to the community and maximizing the adverse effects on the nearby residents' views, privacy and property values and the wildlife and environmentally sensitive surrounding vegetation on the west end of the mesa.

Moreover, Pardee submitted and received approval of these major changes—including major configuration changes and the addition of this one multifamily apartment unit—through the city substantial conformance review, which was held without public notice and hearing, thereby precluding the public their legal right to attend and comment on these undisclosed-to-the-public major changes.

Also, Pardee's 7 multifamily apartments are planned for development west of Camino Santa Fe in an area that the Mira Mesa Community Plan has designated as "very-low-density" residential. On page 76, the "Residential Densities" section of the Mira Mesa Community Plan, prefaces their recommendations for each density range, with the opening sentence, "the following density ranges and building types are proposed to meet the goals of (the) plan." In other words, the Mira Mesa Community Plan provides guidelines for both the density of units and the "building types". According to the Mira Mesa Community Plan, development in very-low-density areas should be limited to "clustered detached single family or attached multifamily units (such as duplexes and townhomes)". Therefore, Pardee's planned 7 multifamily apartment units are not of the same type recommended by the Mira Mesa Community Plan for very-low-density areas, and are, therefore, not in conformance with the plan.

Further, the Mira Mesa Community Plan goals for "very-low-density" areas, as also stated on page 76, "is to integrate development with the natural environment, preserve and enhance views and protect areas of unique topography and vegetation." The development of Pardee's large proposed 7 multifamily apartments clearly do not integrate well with the natural environment, clearly do not preserve and enhance the views, nor do they protect the surrounding areas of unique topography and vegetation. Therefore, Pardee's proposed 7 large multifamily apartments are clearly in opposition to all of these Mira Mesa Community Plan goals.

Another important issue is the adverse impact Pardee's planned multifamily apartments, west of Camino Santa Fe, will have on the surrounding environmentally sensitive vegetation and wildlife. The western (roughly) half of the mesa, directly upon which the apartments (identified as buildings 3, 4, 5, 6 and 7 in the current plan) are planned for development, is used extensively by an abundance of wildlife (i.e. deer, coyote, mountain lions, etc.) as a thoroughfare between the large north-south trending canyon (south of and below the proposed Sunset Pointe development) and the main east-west trending Lopez Ridge canyon that runs under the Camino Santa Fe bridge. Therefore, development in the area west of Camino Santa Fe, directly upon which the apartments identified as buildings 3, 4, 5, 6 and 7 (in the current plan) are planned, would be inconsistent with the Mira Mesa Community Plan's goal to preserve "wildlife linkages" as stated on page 25 of the Mira Mesa Community Plan.

Further, the westernmost edge of the land/mesa below the multifamily apartment (identified as building 5 in the current plan) west of Camino Santa Fe, has eroded and become a vertical cliff in some places, and even worse, the cliff has inverted back underneath the mesa over a large section, making the westernmost portion of the land/mesa west of Camino Santa Fe unsafe for development, later public use, and development here could cause irrevocable harm to the environmentally sensitive areas below this cliff.

The planned height and location of the apartments (identified as building 5 and 6 in the current plan) intended for construction on the outer edge of the mesa, west of Camino Santa Fe, would make the apartments visible from the location of the planned trail in Lopez Canyon at the point that is located nearest to the proposed development. As a result, these structures will not meet the development criteria #5 on page 106 of the Mira Mesa Community Plan.

In 2000, at a time when Pardee was processing plans to develop the land/mesa west of Camino Santa Fe (currently the site of Pardee's planned 7 multifamily apartments), Pardee developed and sold all of their adjacent land, which later became Maycrest Lane. However, instead of developing and selling all of Maycrest Lane, Pardee could have chosen to maintain some of the Maycrest Lane land for later use in building an access road to these adjacent multifamily apartments. In other words, by developing and selling all of Maycrest Lane, Pardee chose to box in the land/mesa that is currently the site of their 7 planned multifamily apartments, and, as a result, Pardee is planning to build an access road to these apartments over environmentally sensitive vegetation instead.

Based on these multiple above mentioned inconsistencies with the Mira Mesa Community Plan and Pardee's deliberate misrepresentations to community members, thereby improperly influencing the community member's input and responses to the approval of Pardee's plans, I urge the California Coastal Commission to, based on their authority if this appeal is granted, minimally require that Pardee omit the multifamily apartments west of Camino Santa Fe, identified as buildings 4, 5 and 6 in the current plan. Further, I recommend that other community members, be informed of these and other major changes that were made through a covert process so that these community members can exercise their legal right to respond and input accordingly.

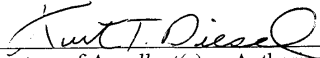
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JUN 29 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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



Signature of Appellant(s) or Authorized Agent

Date: 06-28-06

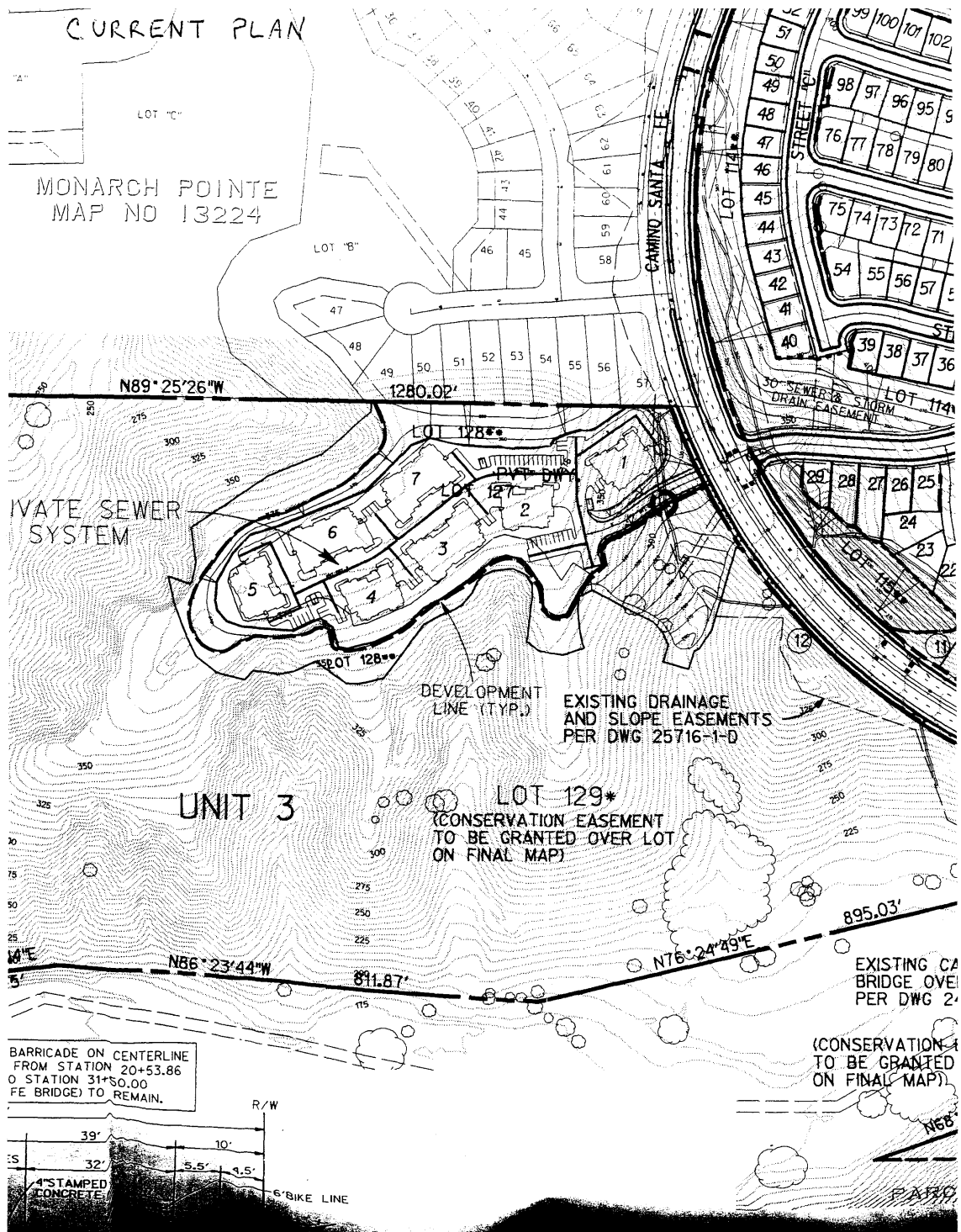
Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

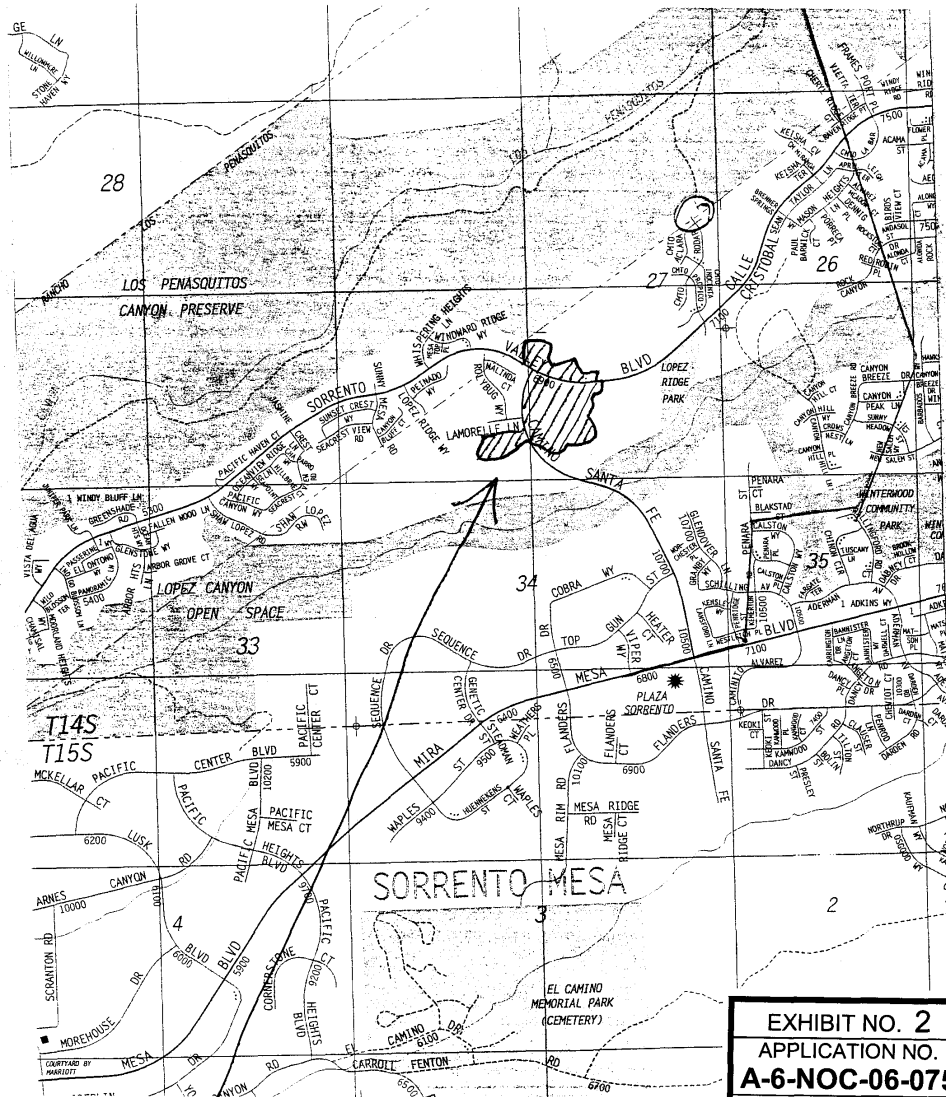
I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____




A-6-NOC-06-075



Site

EXHIBIT NO. 2
APPLICATION NO.
A-6-NOC-06-075
Location Map

California Coastal Commission

EXHIBIT NO. 3
APPLICATION NO.
A-6-NOC-06-075
Site Plan
 California Coastal Commission



THE CITY OF SAN DIEGO

RECEIVED

JUN 13 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

June 8, 2006

Mike While, P.E.
Rick Engineering Company
5620 Friars Road
San Diego, CA 92110-2596

Dear Mr. While:

Subject: **Crescent Heights**, Substantial Conformance Review, VTM/HR/CDP/RZ/PRD
Permit No. 99-0639, PTS #88530
Mira Mesa

Dear Mr. While:

Development Services Department has completed their third evaluation of your revised request for Substantial Conformance Review (SCR) regarding Crescent Heights as described in your submitted SCR drawings, submitted May 26, 2006.

The proposed project is located within the Mira Mesa community and is subject to VTM/HR/CDP/RZ/PRD Permit No. 99-0639. City staff assigned to review your application have determined all previous issues have been resolved and are recommending approval of the SCR. I am therefore, at this time, approving your Substantial Conformance Review. The drawings you submitted will be stamped approved as conforming and dated June 8, 2006. When submitting applications for the final map and construction permits I recommend you provide a copy of this letter and a copy set of the approved plans for the reviewers so they may see the approved changes to the project. A copy of the plan set will be provided to you promptly for your use and records.

If you have any questions regarding this letter, please contact my office at (619) 446-5231.
Thank you.

Sincerely,

John S. Fisher, RLA
Development Project Manager
Development Services





THE CITY OF SAN DIEGO

Date of Notice: March 29, 2006

NOTICE OF FUTURE DECISION

DEVELOPMENT SERVICES DEPARTMENT

Job Order Number 42-5561

PROJECT TYPE/NUMBER:	SUBSTANTIAL CONFORMANCE REVIEW/88530
PROJECT NAME:	<u>CRESCENT HEIGHTS SCR</u>
APPLICANT:	MIKE WHILE
COMMUNITY PLAN AREA:	MIRA MESA
CITY PROJECT MANAGER:	John Fisher, Development Project Manager
MAILING ADDRESS:	1222 First Ave., MS 302, San Diego, CA 92101-4155
PHONE NUMBER:	(619) 446-5231

As a property owner, tenant, or person who has requested notice, you should know that the Development Services Department Staff will make a decision to either approve, conditionally approve, modify or deny an application for a Substantial Conformance Review to existing Vesting Tentative Map No. 9691 to allow for a reduction in project size and project impacts to sensitive habitat based on changes required by the California Coastal Commission action and supported by the City Council. The property is located at the southeast corner of Camino Santa Fe and Calle Cristobal.

The decision by City staff will be made **without** a public hearing no less than *eleven (11)* business days from the Date of Notice. If you want to receive a "Notice of Decision", you must submit a written request to the City Project Manager listed above no later than *ten (10)* business days from the Date of Notice.

The decision of the Development Services Department Staff can be appealed to the **Planning Commission**. An appeal must be made within *twelve (12)* business days after the decision date. Appeal applications are available at the Development Services Department, 1222 First Avenue, Third Floor, Project Management Reception, San Diego, CA 92101.

This project is undergoing environmental review.

You may contact **Ted Brengel** of the **Mira Mesa Community Planning Group** at (619) 985-4094 to inquire about the community planning group meeting dates, times, and location for community review of this project.

If you have any questions about the project after reviewing this information, you can contact the Project Manager listed above. This information will be made available in alternate formats upon request.

EXHIBIT NO. 5
APPLICATION NO.
A-6-NOC-06-075
Notice of Future Decision
California Coastal Commission