

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



ADDENDUM

DATE: August 6, 2007
TO: Commissioners and Interested Parties
FROM: South Central District Staff
SUBJECT: Agenda Item **W 13c**
Local Coastal Program Amendment No. **OXN-MAJ-1-07 (Breakers Way Rezone)**

The purpose of this addendum is to attach the following:

- A. Correspondence to the Commission received from opponents to the proposed LCP amendment (**Exhibit 16**):
 - Letter from [REDACTED] dated August 1, 2007.
 - Letter and photographs from Patricia Einstein, dated August 3, 2007.
- B. Ex Parte Communication received from Commissioner Clark (**Exhibit 17**).
- C. Additional silvery legless lizard and San Diego horned lizard survey results received from the City of Oxnard (**Exhibit 18**):
 - Focused Survey Memo by Impact Sciences, dated March 13, 2007.
 - Focused Survey Memo by Impact Sciences, dated August 3, 2007.

Additional lizard surveys conducted on the Breakers Way site on March 2 and 7, 2007, as well as on July 25 and 27 and August 2 and 3, 2007, indicated an absence of these lizards and lack of desirable habitat conditions to support them.

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AUG 02 2007

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 1, 2007

California Coastal Commission
89 South California Street #200
Ventura, CA 93001

RE: City of Oxnard LCP Amendment No. OXN-MAJ-1-07 (Breakers Way Rezone)
Hearing: August 8, 2007 Item W13c OPPOSED

Dear Commissioners:

WE DO NOT WANT TO SEE THIS SITE REZONED!!!!!!!!!!

The City of Oxnard and California Coastal Commission should be ashamed of themselves. How can you consciously approve the Oxnard Shores property Amendment 1-07 (Breakers Way Rezone)? Don't you realize how much new construction has **already** been approved within one block of this proposed development? The large development at Fifth and Harbor, three new townhouse developments on Driftwood Street, and just blocks away, the gigantic developments at Fifth and Victoria, and Wooley and Victoria. All told, nearly 2500 residential units are already built or under construction in the immediate area and without regard to infrastructure improvements. Furthermore, new and proposed commercial developments have impacted our ability to navigate the small roads inherent in our community. The community was designed in 1960 and many homes only have parking for one car. The residents only have small driveways and there is no curbside parking on the ways. Adding more residences will only add to the growing problems of overcrowding and traffic concerns already facing our residents.

More importantly, The McGrath Family deeded this land to the City of Oxnard trusting that it would retain its resource-protected designation. The land proposed for rezoning for development **did** have "rare or endangered plant...species" before it was cleaned up and used as a parking lot for builders and city vehicles. This is an important fact being overlooked in protecting the land and maintaining its current RP zoning. The greed with which the City has allowed development without concern for the McGraths' request and concern for the infrastructure of our community is disgraceful.

Also, it is alleged that the property "does not maintain viable connections to the beach." But it is, in fact, the only paved sidewalk access to the beach for families living on Reef Way and Breakers Way. Using the allies to access the beach is dangerous as speeding cars, garbage trucks, utility and construction vehicles pose a danger to children. There are no pedestrian sidewalks on these streets but the walkway accessed from the pi safe and free from motor vehicles.

EXHIBIT NO. 16

APPLICATION NO.

Oxnard LCPA 1-07

Correspondence

Finally, the City builds parks everywhere but the beach. Beach children need parks, too. The only park available to our children is over a mile away. The broken glass and driftwood make playing at the beach a danger for the children of our community. In keeping with the request of the McGraths, this area would avail itself perfectly as a naturally vegetated beach park where our children would have the opportunity to play and learn about the plants and vegetation unique to our community. What they need is a park or natural dune habitat, not more housing producing more overcrowding. Please give our children a safe place to play.

We feel strongly that the vegetation be allowed to grow back on this land before you determine it meets the criteria for rezoning. Put up a fence to protect the land and you will see rare plants and ground cover continue to resurface. Just because the City comes in and clears off the plants does not mean they do not exist. This land is an "environmentally sensitive habitat" that has been temporarily destroyed by ruthless developers supported by greedy tax-motivated city officials. And, as a side note, how do you expect families to attend a hearing almost 400 miles away from home? I guess only the wealthy investors and politicians have the resources to testify.

Sincerely,



Cc: John Ainsworth, Deputy Director, South Central Coast District
Barbara Carey, Supervisor, Panning and Regulation
✓ Deanna Christensen, Coastal Program Analyst
Steve Blank, Commissioner
Sara Wan, Commissioner
Dr. William Burke, Commissioner
Steven Kram, Commissioner
Mary Shallenberger, Commissioner
Patrick Kruer, Chair
Khatchik Achadjian, South Central Coast Rep
Dr. Holden, Mayor, City of Oxnard
Dean Maulhardt, Mayor Pro Tem, City of Oxnard
John Zaragoza, Councilmember, City of Oxnard
Andres Herrera, Councilmember, City of Oxnard
Timothy Flynn, Councilmember, City of Oxnard
Curtis Cannon, Community Development Director, City of Oxnard

August 3, 2007

Dear California Coastal Commission,

There are numerous reasons why this lot should not be rezoned from RP to RB-1.
I just want to mention the top 3 reasons as to why this land should not be rezoned.

Reason 1 - This lot was a gift to the city of Oxnard. It was given to the city as Resource Protected land and it should stay Resource Protected. If the city does not want Resource Protected land, they should sell it to someone who does want RP land. Gifted land should not be able to be rezoned. Don't you think the Mc Grath Family would have kept the land for themselves if they thought it could have been rezoned? The land was originally designated for open space in the community. (Exhibit A)

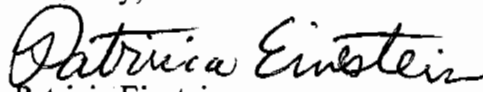
Reason 2 - The Oxnard shores community was designed prior to 1972 when most families only owned 1 car. The neighborhood has very limited parking for beach access and more homes would only increase the parking problem. Unfortunately, numerous people who come to enjoy the beach in this neighborhood use the outer fringe of the Breakers Way Lot for public parking access to the beach. Rezoning the lot will eliminate public parking access to the beach. There should be a formula to designate the number of parking spots and restrooms needed per acre of public beach. What good is it to have a public beach if public parking and restrooms are not accessible? (Exhibit B)

Reason 3 - No mitigation is being given for the loss this Breakers Way Lot. If the lot was in better conditions and there were species of concern on the land then the city would have to mitigate. The city of Oxnard helped to destroy this lot by annually cutting the plants with heavy equipment over the past 25 years. They annually cut the grass with very heavy equipment that could easily murder any Coastal Horned Lizards inhabiting the Breakers Way lot. This removed any ESHA over the past 25 years. If you rezone the land it sends the message that in order to get RP land rezoned, it is a good thing to destroy it first. Included are photos of the Breaker Way lot being mowed in June 2006 without any permit filed. (Exhibit C)

Please do not rezone this land or Oxnard will continue to sell gifted land, neglect parking problems, destroy RP land and sell ESHA land so it can be destroyed rather than protected.

Please consider changing the staff recommendation and do not rezone Resource Protected land or at least mitigate the loss of the public parking and open space in the community.

Sincerely,


Patricia Einstein

2014 Long Cove Dr.
Oxnard, CA. 93036

RECEIVED
AUG 03 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLACE INTERNAL REVENUE STAMPS IN THIS SPACE

Grant Deed

Affix I. R. S. \$.

298 11-55

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH, JR., as Trustees of
Trust "A" and as Trustees of Trust "B", Under the Will of Thomas
Francis McGrath, Deceased,
hereby GRANT(S) to

as Trustee,

The TITLE INSURANCE AND TRUST COMPANY, for the City of Oxnard,
a Municipal Corporation, for public playground and recreational
purposes and all purposes incidental thereto, and public parking purposes
the following described real property in the state of California, county of Ventura, and more
particularly described as follows:

(Herein set forth the legal descriptions of the two
drill sites, Nos. 1 and 2).

SUBJECT TO:

Reservations, easements, rights-of-way and restrictions of
record, and

Also, the grantor hereby reserves in, on, or under said land, as reserved by
John Francis McGrath and Thomas Francis McGrath, Jr., as Trustees of Trust "A" and as Trustees of Trust "B", Under the Will of Thomas
Francis McGrath, Deceased, in deed recorded June 11,
1951, as Document No. 6961 in Book 328 page 321 of said Official Records:

Also, the grantor hereby reserves an undivided 1/8th interest in and to all of the oil,
minerals and petroleum substances in, on, or under said land as granted to
John Francis McGrath, Marion Aileen Leuchs, Marian Elizabeth Graham,
Cornelia Ann McGrath and Thomas Francis McGrath Jr. in equal shares by
deed recorded January 5, 1952, as Document No. 251 in Book 978, page 494
of Official Records:

Also, the grantor hereby reserves the present interest of the grantor herein, in and
to the oil, oil rights, minerals, mineral rights, natural gas, natural
gas rights, and other hydrocarbons by whatever name known that may be
within or under the parcel of land hereinabove described together with the
perpetual right of drilling, mining, exploring and operating therefor and
recovering the same from said land or any other land, including the right
to waste or directionally drill and mine from lands other than those
hereinabove described, oil or gas wells, tunnels and shafts into, through
or across the subsurface of the land hereinabove described, and to bottom
such waste or directionally drilled wells, tunnels and shafts under
and beneath or beyond the exterior limits thereof, and to redrill, re-
tunnel, equip, maintain, repair, deepen and operate any such wells or mines,
without, however, the right to drill, mine, explore and operate upon or
through the surface or the upper 100 feet of the subsurface of the land
hereinabove described when title passes to the City of Oxnard.

PROPERTY COUNTY OF VENTURA COUNTY AND STATE.

WHEN RECORDED MAIL TO

Title Order No.

Escrow or Loan No.

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT D 1045 PARKING MUST BE WITHIN THE WHITE LINE.



Exhibit D 2015 parking on breakers way near the 107.



EXHIBIT D 20+ D people swimming or pouring in Mandalay Beach kept.

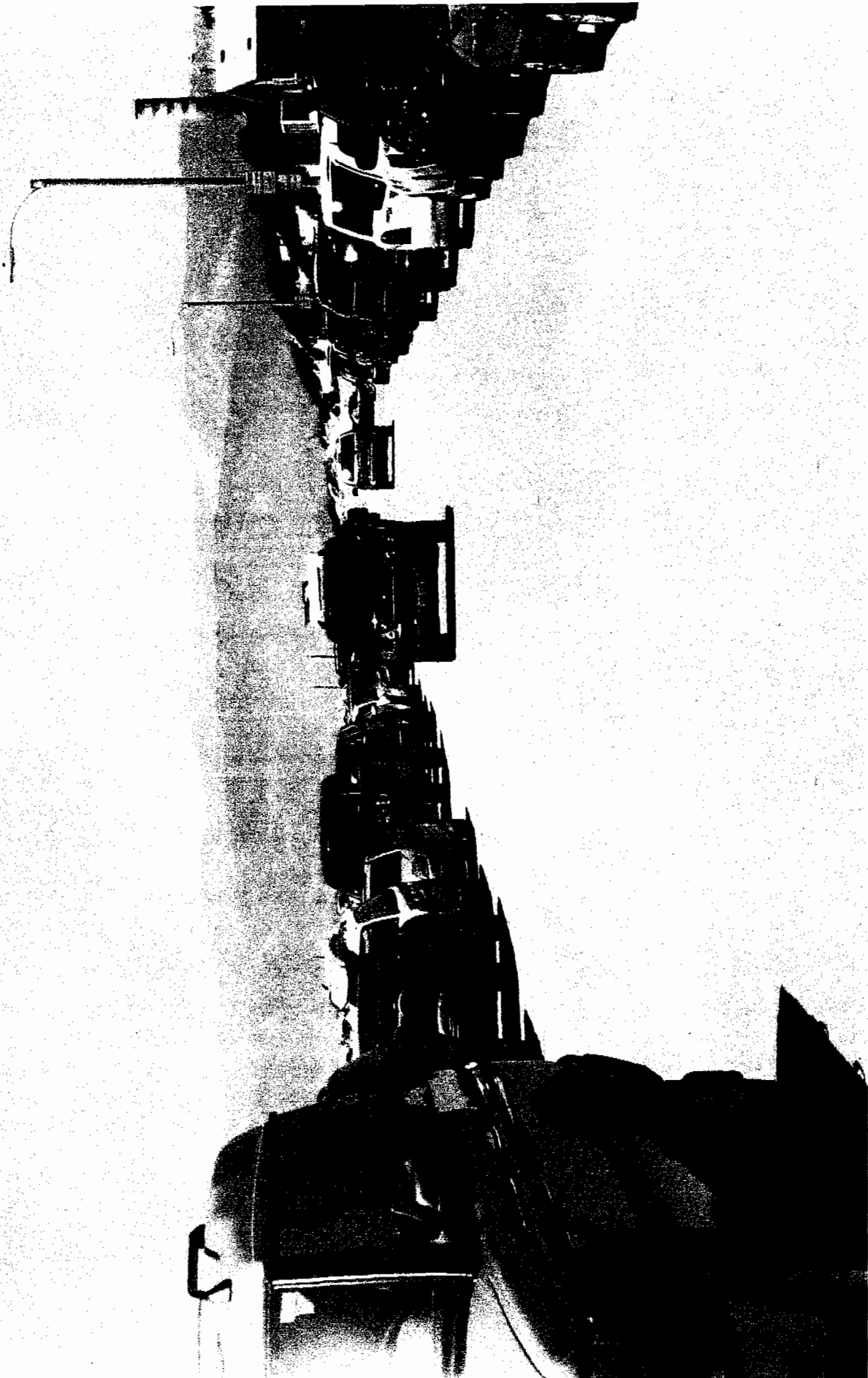


TABLE D OUT 0 PARKING ON THE WAYS ARE LIMITED TO RESIDENTS ONLY.

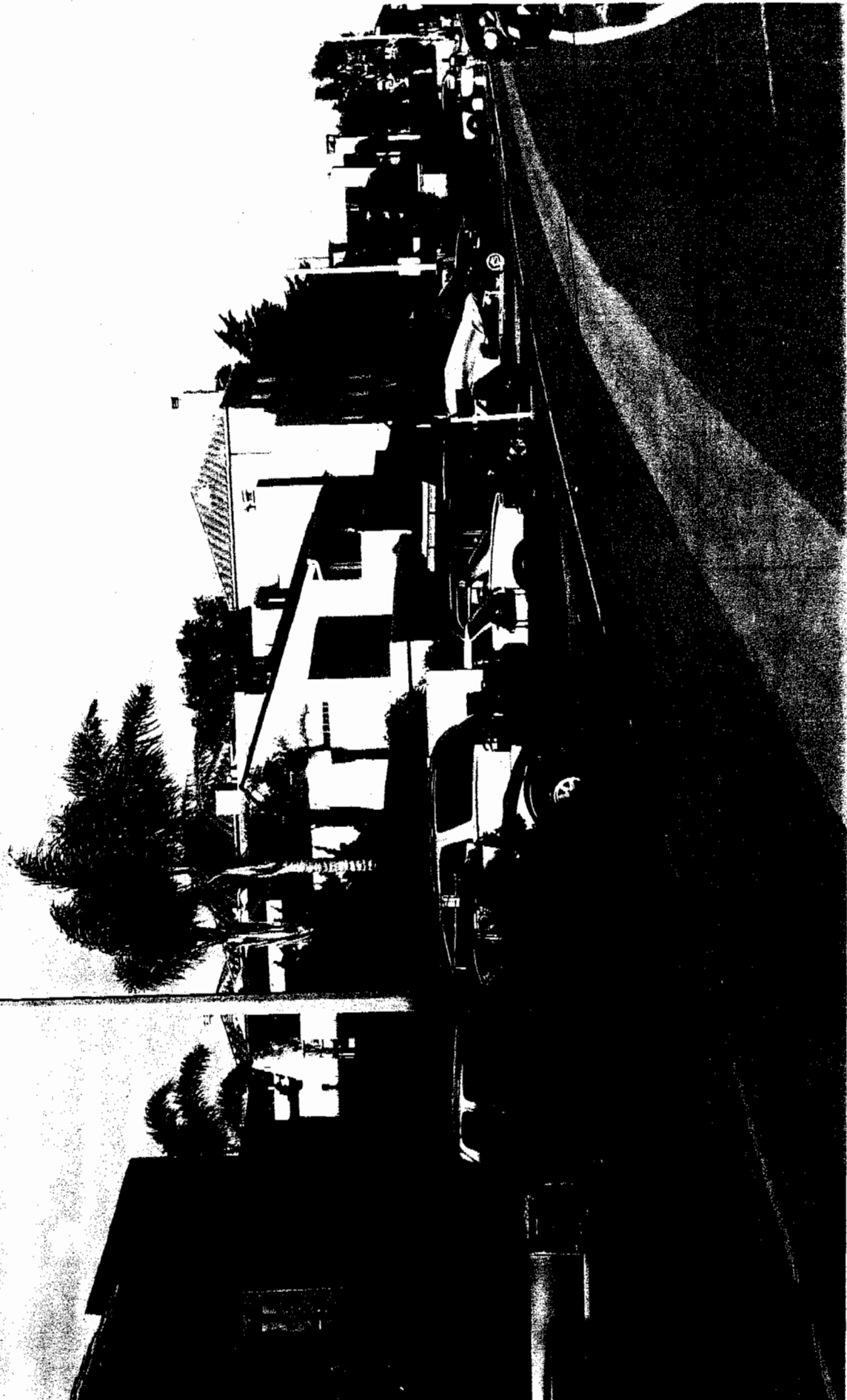


Exhibit B 5 of 5 the public use the Breakers Way lot
for public access parking to the beach.





Exhibit C 1 of 9

EXHIBIT C 2 of 4

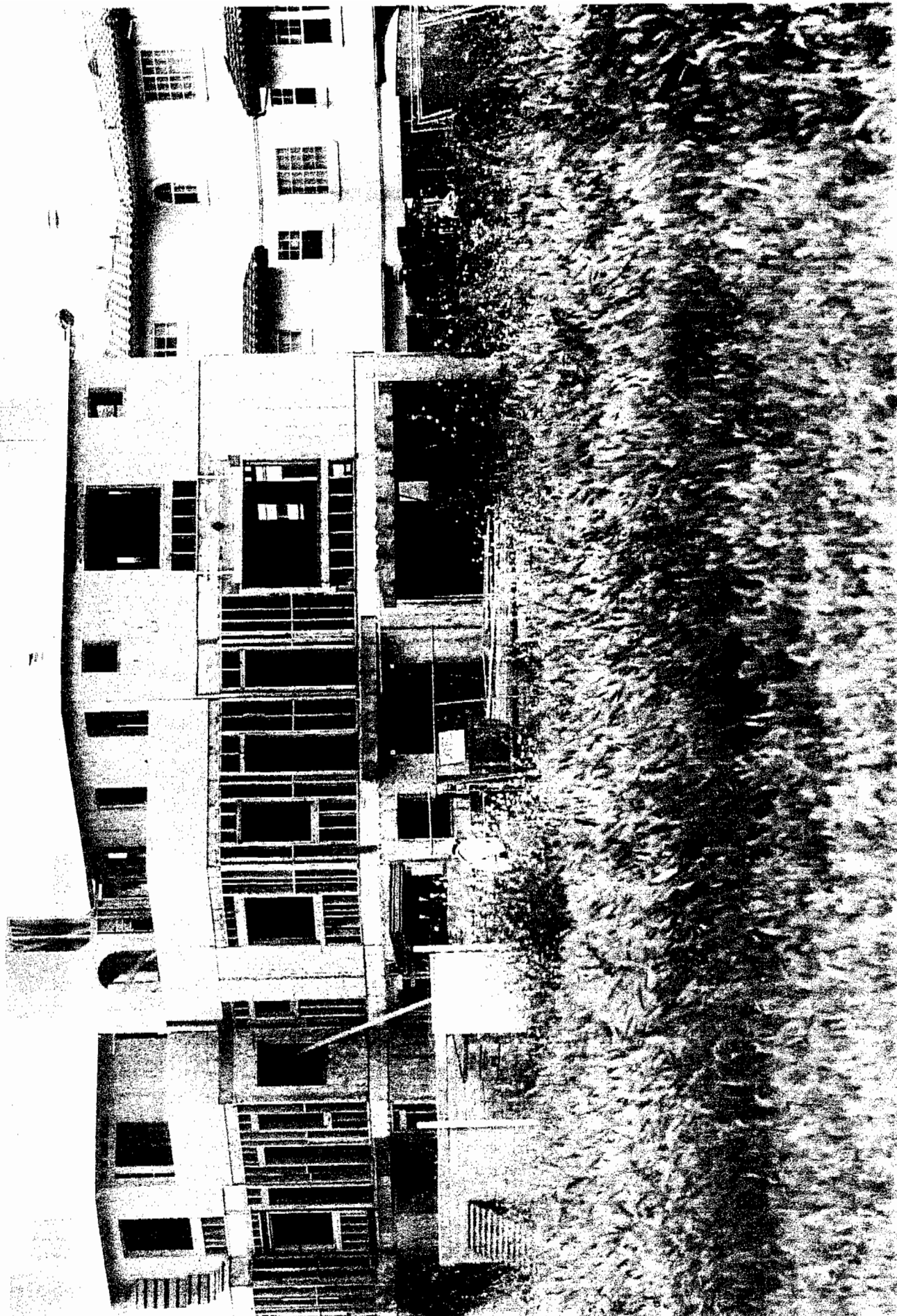


EXHIBIT C 3 of 4



EXHIBIT C 4 04 9



EXHIBIT C 5 of 9



EXHIBIT C
10 07 51



EXHIBIT C 1 of 9

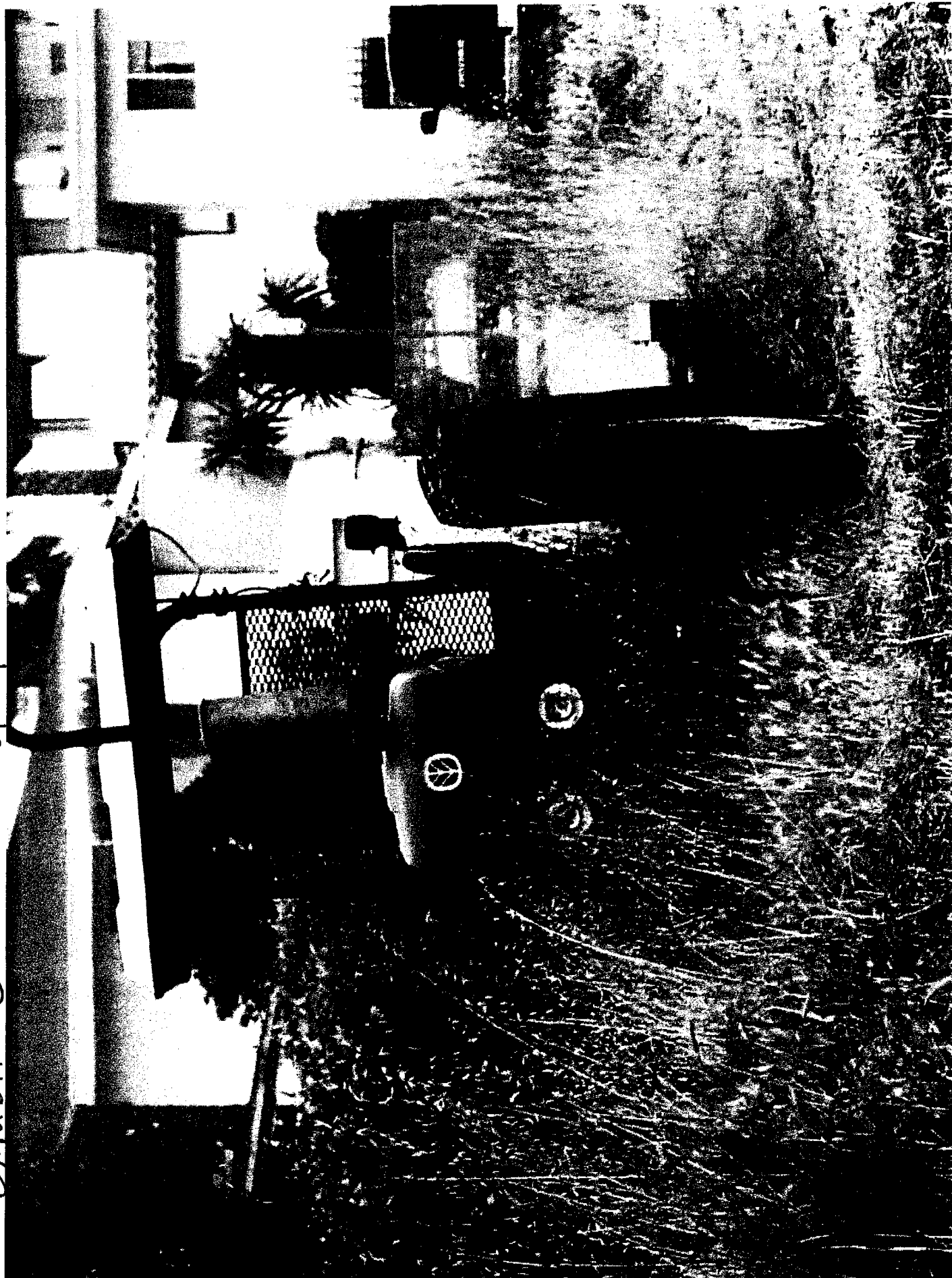


EXHIBIT C 8 of 1



Exhibit C

1. to 1



EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia – Sierra Club
Marcia Hanscom – Sierra Club/CLEAN
Kristen Coppa

Person(s) receiving communication: Commissioner Larry Clark

Location of communication: Bristol Farms
1570 Rosecrans Ave.
Manhattan Beach, CA 90266

Time/Date of communication: August 1, 2007 – 12:30 pm

Type of communication: Meeting

Name or description of the project(s):

Began meeting by explaining the purpose and make-up of ORCA (Organization of Regional Coastal Activists) and the goal of conducting regularly scheduled monthly meetings with all Commissioners. These meetings are held up and down the coast each month with other ORCA representatives, that include, but are not limited to members of Sierra Club, Surfrider, Audubon, CA Native Plant Society, etc. It is ORCA's additional goal to consolidate activists' input on the major agenda items each month and share this consolidated input with each County's/area's respective Commissioner(s). With that in mind, dates for September will be organized the week following the August hearing.

Enforcement

Discussed in general terms the need for added enforcement staff and the appropriate funding for same.

c. City of Oxnard Amendment No. OXN-MAJ-1-07 (Breakers Way Rezone) Public hearing and action on request by City of Oxnard to amend its LCP to change the zoning of the Breakers Way parcel located in the Oxnard Shores neighborhood from Resource Protection (RP) to Single Family Beach (R-B-1). (DC-V)

Discussion on lawsuit and terms of settlement as well as the fact that this item will be heard in closed session. It is important that both of the lots be brought back and heard together as a piecemeal approach will only lead to destruction of ESHA (Sand Dune).

a. City Of Laguna Beach LCP Amendment No. LGB-MAJ-1-07 (Assorted Implementation Plan Revisions). Public hearing on City of Laguna Beach LCP Amendment No. 1-07b which

EXHIBIT NO. 17
APPLICATION NO.
Oxnard LCPA 1-07
Ex Parte Communic.



IMPACT SCIENCES

803 Camarillo Springs Road, Suite A
Camarillo, California 93012
Telephone (805) 437-1900 FAX (805) 437-1901
www.impactsciences.com

MEMORANDUM

TO: Matt Winegar
Through Steve Kaufmann

JOB NAME: Breakers Street Property

FROM: Impact Sciences, Inc.

DATE: March 13, 2007

SUBJECT: Breakers Site-Focused Survey

JOB NO.: 764-02

COMMENTS

Introduction

On March 2 and 7, 2007, four Impact Sciences biologists conducted surveys for silvery legless lizards (*Anniella pulchra*) on the approximate 1.5 acre site bordered by Breakers Way to the north, the frontage road to Harbor Boulevard to the east, Reef Way to the south, and residential homes to the west. During the site visit, the weather had an ambient air temperature of approximately 70 degrees F on both dates, with clear, sunny skies, and winds approximately 5 mph. Both site surveys occurred between 10:00 AM and 1:00 PM.

Methods

Silvery Legless Lizard Survey Methodology for the Breakers Site

Impact Sciences survey methodology for determining the presence/absence of silvery legless lizards on the Breakers site included the protocol established from the findings at a nearby site, the McGrath site as described below, on which a substantial number of legless lizards were previously found by Impact Sciences, and habitat parameters (soil temperature, percent soil moisture, depth, and associated vegetation) were recorded. The methodology included sampling

EXHIBIT NO. 18

APPLICATION NO.

Oxnard LCFA 1-07

2007 Lizard Surveys

a variety of habitats, both in vegetated and unvegetated conditions. The following protocol procedures were implemented during the current Breakers field surveys:

- Surveys will be conducted during the hours between 9AM and 1PM. [Afternoon temperatures and intense sunlight appear to have reduced the lizards in the upper layers of sand in previous surveys]
- Surveys will be conducted when air temperatures range between 65 and 80 degrees Fahrenheit.
- Surveys will occur after rainfall events, when the relative soil moisture content is between 65–80 percent and soil temperatures being 60–70 degrees in the top 5 inches of sand.
- A nearby reference site (west of Harbor Boulevard, between the Reliant Energy Plant and McGrath State Beach) with a known legless lizard population will be surveyed prior to conducting project surveys. If legless lizards are found in similar conditions at the Breakers site, using the methods proposed, the timing of the survey shall be considered suitable for determining presence-absence of this species.
- Teams of two surveyors with experience in sampling legless lizards will sample approximately 5 percent of the total site, using 25 square meter plots representing a variety of on-site habitats; one biologist will be raking while the other is simultaneously scanning for legless lizards in the raked sands.
- The top 10 inches of sand, or until an impervious layer is encountered will be thoroughly raked for legless lizards.
- Plot locations will be determined primarily by the presence of friable (e.g., loose sandy) soils, the presence of native legumes and other flora. Non-suitable habitats (e.g., areas previously or currently covered with iceplant and compacted soils) will also be surveyed to determine with confidence the presence/absence of legless lizards in these conditions.
- Soil moisture and temperature readings will be taken at each plot, and specifically where any legless lizards are found.
- All plots will be mapped to show locations and percentage of the site surveyed, and each sample plot will have the habitat characterized as to the vegetation and soil temperature and moisture content.

- Impact Sciences will photograph any legless lizards found, but not attempt to capture and move any legless lizards to an off site location without receiving prior authorization from the CDFG.

Results

On March 2, 2007, the survey began at the reference site, located north of the Mandalay Reliant Power Plant, west of Harbor Boulevard and south of McGrath State Beach. This is a known site of indigenous and transplanted legless lizards. Conditions were within the parameters listed with 70 degrees Fahrenheit. air temperature, 63 to 79 degree soil temperatures, and 60 to 80 percent soil moisture. After a legless lizard was found beneath a beach aster (*Lessingia filaginifolia*) and dune goldenbush (*Ericamaria ericoides*), the survey moved to the nearby Breakers site because of the capture of this individual indicated that the lizards were near the surface at the time.

On the Breakers site, five – 25 square meter plots (272.25 square-foot plots) were sampled on March 2nd, with another six similar plots sampled on March 7th for approximately 2,995 square feet (4.6 percent of the site) in total being surveyed using the above sampling protocol for legless lizards. Soil temperatures and soil moisture were well within the ranges in which legless lizards have been found in the area. The plots (Figures 1 and 2) ranged from having no vegetation (six sample plots) to being dominated by non-native grasses (two sample plots), or forbs (three sample plots).

No legless lizards were found in any of the 11 sample plots. The sample plots had varied vegetation, and sampling conditions were within ranges under which legless lizards caught at the nearby McGrath site and previously at the intersection of West Fifth Street and Harbor Boulevard.

Discussion

With temperature, relative moisture, and time of day within the specified ranges of conditions in which 58 silvery legless lizards were captured last year at the North Shore site (under California Fish and Game permit number 801257-05), and after discovering a legless lizard without great effort or time spent at the reference location, no legless lizards were uncovered on the Breakers site. Just under 5 percent was sampled using the protocol technique and a variety of habitats on the site were sampled, yet no legless lizard was found on the project site.

Conclusion

The habitats and soils on the Breakers site are more disturbed than on other sites in this general area of Oxnard where legless lizards have been found. It is highly unlikely that any legless lizards are present on this site or could naturally migrate to this site from likely habitats due to these habitat conditions, the size of the site, and the obstacles (residences on three sides and especially Harbor Boulevard and the frontage road west of Harbor Boulevard) between the site and the closest known site inhabited by legless lizards.



FIGURE 1

The Breakers Location



Legend:

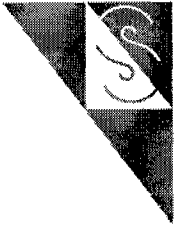
- Survey Plots
- The Breakers Project Site



SOURCE: Aerials USA - 2005, Inland Exploration, Inc. - March 2007

FIGURE 2

Breakers Site with Mapped Survey Plots



IMPACT SCIENCES

803 Camarillo Springs Road, Suite A
Camarillo, California 93012
Telephone (805) 437-1900 FAX (805) 437-1901
www.impactsciences.com

MEMORANDUM

TO: Matt Winegar

JOB NAME: Breakers Street Property

FROM: Impact Sciences, Inc.

DATE: August 3, 2007

SUBJECT: Breakers Site-Focused Survey

JOB NO.: 764-02

COMMENTS

Introduction

As a follow-up to surveys conducted on September 7, 2006 and March 6, 7 2007, three Impact Sciences biologists conducted surveys for silvery legless lizards (*Anniella pulchra pulchra*) and San Diego horned lizards (*Phrynosoma coronatum blainvillii*) on July 25 and 27 and August 2 and 3, 2007. Surveys occurred on the approximately 1.5-acre site bordered by Breakers Way to the north, the frontage road to Harbor Boulevard to the east, Reef Way to the south, and residential homes to the west (see Figure 1, Site Location and Vicinity). Photographs of the site can be seen in Figure 2, Site Photos 1 and 2. During the site visit, the ambient air temperature was approximately 70-80 degrees F on each date, with clear, sunny skies on July 25 and 27 and overcast conditions on August 2 and 3. All site surveys occurred between 9:00 AM and 1:00 PM.

Methods

Silvery Legless Lizard Survey Methodology for the Breakers Site

During each survey day, biologists walked line transects across the entire site, and conducted a preliminary visual survey in search of San Diego horned lizards. Transects were spaced at approximately 10 to 15 feet apart to obtain 100 percent visual coverage of the site. Biologists focused more thoroughly on areas where native plants occurred; however, all habitats, including areas covered with non-native vegetation, were surveyed.

Impact Sciences survey methodology for determining the presence/absence of silvery legless lizards on the Breakers site included protocol established from the findings at a nearby site, the North Shore site, as described below, on which a substantial number of legless lizards were previously found by Impact Sciences, and habitat parameters (soil temperature, percent soil moisture, depth, and associated vegetation) recorded. The methodology included sampling a variety of habitats, both in vegetated and unvegetated conditions. The following protocol procedures were implemented during the current Breakers field surveys:

- Surveys were conducted during the hours between 9AM and 1PM. [Afternoon temperatures and intense sunlight appear to have reduced the lizards in the upper layers of sand in previous surveys]
- Surveys were conducted when air temperatures range between 65 and 80 degrees Fahrenheit.
- Surveys occurred when the relative soil moisture content is between 65 and 80 percent and soil temperatures being 60 to 70 degrees in the top 5 inches of sand.
- A nearby reference site (west of Harbor Boulevard, between the Reliant Energy Plant and McGrath State Beach) with a known legless lizard population was surveyed prior to conducting project surveys.
- Surveyors with experience in sampling legless lizards sampled approximately 5 percent of the total site, using five 25-square-meter plots representing a variety of on-site habitats.
- The top 10 inches of sand, or until an impervious layer is encountered, were thoroughly examined by raking through the sand for legless lizards.
- Plot locations were determined primarily by the presence of friable (e.g., loose sandy) soils, the presence of native legumes and other flora. Non-suitable habitats (e.g., areas previously or currently covered with iceplant and compacted soils) were also surveyed to determine with confidence the presence/absence of legless lizards in these conditions.
- Soil moisture and temperature readings were taken at each plot, and specifically where any legless lizards were found.
- All plots will be mapped to show locations and percentage of the site surveyed, and each sample plot will have the habitat characterized as to the vegetation and soil temperature and moisture content.

- Impact Sciences will photograph any legless lizards found, but not attempt to capture and move any legless lizards to an off-site location without receiving prior authorization from the California Department of Fish and Game.

Results

No San Diego horned lizards were observed during the July and August surveys, nor were any commonly occurring lizards such as California alligator lizards (*Elgaria multicarinata multicarinata*), side-blotched lizards (*Uta stansburiana*), or western fence lizards (*Sceloporus occidentalis*).

On July 25, 27, and August 2 and 3, 2007, the surveys began at the silvery legless lizard reference site, located north of the Mandalay Reliant Power Plant, west of Harbor Boulevard and south of McGrath State Beach. This is a known site of indigenous and transplanted legless lizards. Conditions were within the parameters listed, with an air temperature of 70 degrees Fahrenheit, 63- to 79-degree soil temperatures, and 60 to 80 percent soil moisture. No legless lizards were found in the surveys conducted on July 25 and 27; on August 2, a legless lizard was found below leaf duff underneath an arroyo willow (*Salix lasiolepis*) tree. The survey was then immediately moved to the nearby Breakers site because the capture of this individual indicated that the lizards were near the surface at the time.

On the Breakers site, five 25-square-meter plots (272.25-square-foot plots) were sampled on July 25, 27 and August 2, 3, 2007, for approximately 5,445 square feet (approximately 8.9 percent of the site) in total being surveyed using the above sampling protocol for legless lizards. Soil temperatures and soil moisture were well within the ranges in which legless lizards have been found in the area. The 20 plots surveyed during the four days of sampling ranged from having no vegetation (7 sample plots) to being dominated by non-native grasses (6 sample plots) or forbs (7 sample plots).

No legless lizards were found in any of the sample plots. The sample plots had varied vegetation, and temperature and moisture conditions were within ranges under which legless lizards caught at the nearby McGrath site and previously at the intersection of West Fifth Street and Harbor Boulevard.

Discussion

During the time of the reptile survey, the weather conditions (an approximate air temperature of 70 degrees F and an approximate soil temperature of 80 degrees F) were suitable for observing

San Diego horned lizards, if present. It should be noted that San Diego horned lizards have been observed by Impact Sciences biologists in areas within 0.5 mile of the Breakers site, but the sites where horned lizards occurred were larger, contiguous sites with suitable habitat for various lizard species.

With temperature, relative moisture, and time of day within the specified ranges of conditions in which 58 silvery legless lizards were captured in 2005 at the North Shore site (under California Fish and Game permit number 801257-05), and after discovering a legless lizard at the reference location on August 2, 2007, no legless lizards were uncovered on the Breakers site. Vegetation on site contrasted drastically with that of the reference location, with very little native shrub presence on site. Plants that silvery legless lizards have been known to burrow under, such as arroyo willow, deerweed (*Lotus scoparius*), and bush lupine (*Lupinus arboreus*), do not occur on site. Just under 9 percent of the Breakers site was sampled using the protocol technique and a variety of habitats on the site were sampled, yet no legless lizard was found on the project site.

Conclusion

The habitats and soils/sands on the Breakers site are more disturbed than on other sites in this general area of Oxnard where San Diego horned and silvery legless lizards have been found. It can be concluded from these and from previous surveys that took place on September 7, 2006, and March 6 and 7, 2007, that it is highly unlikely that any San Diego horned or silvery legless lizards are present on this site or could naturally migrate to this site from likely habitats due to these habitat conditions, the size of the site, and the obstacles (residences on three sides and especially Harbor Boulevard and the frontage road west of Harbor Boulevard) between the site and the closest known site inhabited by these species.



Photo 1: View of Site to the Northwest from Southern Boundary

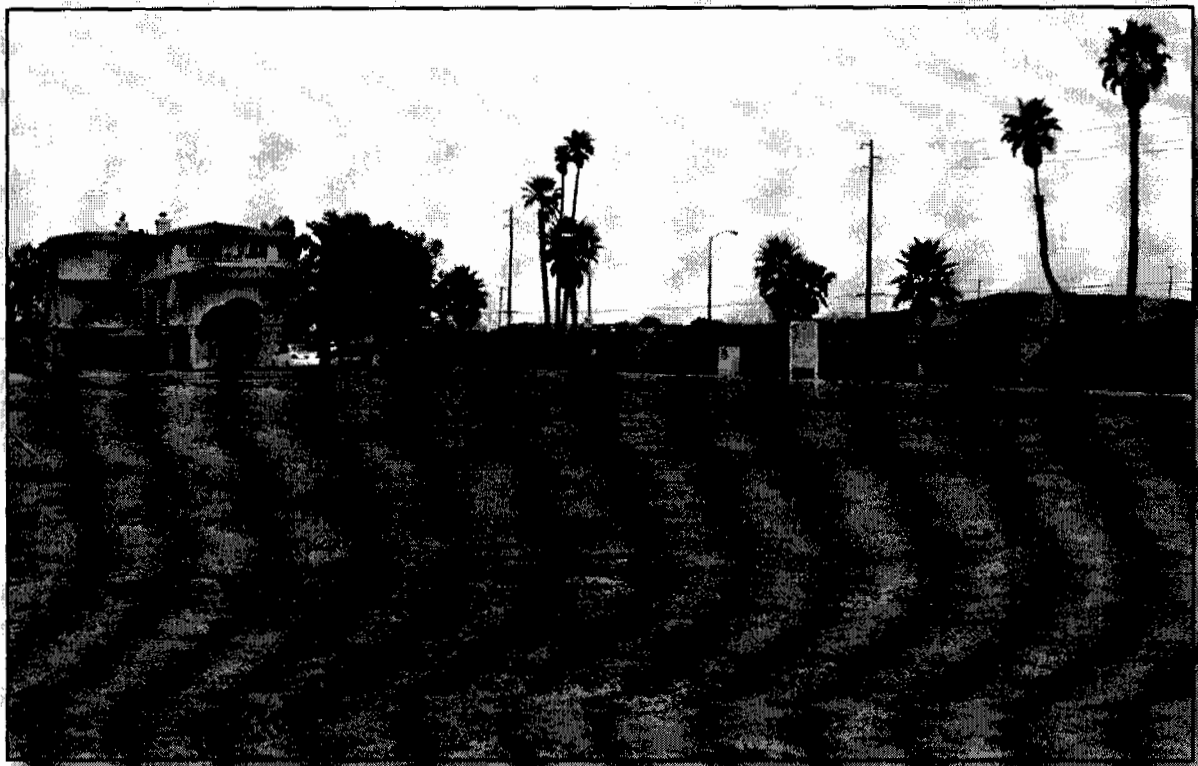


Photo 2: View of Site to the Northeast from Southern Boundary

SOURCE: Impact Sciences, Inc. – August 2007

FIGURE 2



Site Photos 1 & 2

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



W 13c

DATE: July 25, 2007

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director, South Central Coast District
Barbara Carey, Supervisor, Planning and Regulation
Deanna Christensen, Coastal Program Analyst

SUBJECT: City of Oxnard Local Coastal Program Amendment 1-07 (Breakers Way) for Public Hearing and Commission Action at the August 8, 2007 Commission Meeting in San Francisco, Calif.

DESCRIPTION OF THE SUBMITTAL

The City of Oxnard is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to modify the zoning map to rezone a 1.39-acre parcel within the Oxnard Shores neighborhood from the "Resource Protection" (RP) zone to the "Single Family Beach" (R-B-1) zone. The 1.39-acre parcel is located west of Harbor Boulevard, between Reef Way and Breakers Way.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment. The project site is located in the Oxnard Shores area of the City of Oxnard. The parcel is located in an area able to accommodate residential development, utilities are available, and the proposed density is consistent with the character of surrounding development. The site is zoned "Resource Protection" (RP) by the Coastal Zoning Code, a designation that has the purpose of providing for the protection of ESHA. However, the subject site is designated as "Existing Residential Area" under the Land Use Plan, and not as "Resource Protection" or ESHA. As such, there is a conflict between the land use designation and the zoning applied to the subject site. The City asserts that the RP zone was applied to the subject parcel as an interim measure. A provision contained in the RP zone development standards allow for the application of an interim zoning designation.

The Oxnard Shores area was previously sand dunes that were subdivided and graded prior to 1972. The subject parcel is surrounded by existing development, is highly disturbed, does not maintain viable connections to the beach or other dune communities, and is not inhabited by rare or endangered plant or animal species. Thus, the parcel does not meet the LCP definition of Environmentally Sensitive Habitat Area (ESHA). Therefore, the proposed zoning map amendment from "Resource Protection (RP)" to "Single Family Beach (R-B-1)" on this parcel will not result in impacts to ESHA, and is thus consistent with the ESHA policies of the certified Land Use Plan. Furthermore, the proposed amendment will bring the zoning designation of the property into conformity with the land use designation.

Continued on next page

SUMMARY OF STAFF RECOMMENDATION CONTINUED

The rezone proposal for the subject parcel had been a part of a previous LCP amendment request by the City of Oxnard (LCPA 1-05 (Oxnard Shores)). LCPA 1-05 proposed to rezone both the subject parcel and the Whitecap Way parcel in the Oxnard Shores neighborhood from "Resource Protection" (RP) to "Single Family Beach" (R-B-1). The amendment was scheduled for public hearing and Commission action at the August 2006 Commission hearing. In its July 27, 2006 staff report, staff recommended approval of LCP Amendment 1-05 with one suggested modification to delete the proposed zoning change of the Whitecap Way parcel and retain it in the "Resource Protection (RP)" zone district, as the site met the Coastal Act definition of Environmentally Sensitive Habitat Area (ESHA). However, prior to the Commission hearing on LCPA 1-05, the City of Oxnard withdrew the amendment request. The City then proceeded to submit an LCP amendment request (LCPA 1-07) to rezone only the Breakers Way parcel, which is the subject of this LCP amendment staff report.

The subject LCP amendment request was previously heard by the Commission at the April 2007 hearing in Monterey. Staff recommended approval of the proposed amendment. However, the Commission voted to deny the City's LCP amendment request based on concerns regarding the City's pending sale of both the Breakers Way parcel and the Whitecap Way parcel to a private entity. The City subsequently filed a lawsuit challenging the Commission's decision. The City and the Commission engaged in settlement discussions regarding the matter and the City provided evidence that each parcel has been sold separately pursuant to different purchase and sale agreements (Exhibit 13). The purchase and sale agreements make each sale contingent upon the Commission first granting an LCP amendment to rezone each parcel for residential use. The Commission and City have since stipulated to the issuance of a writ of mandate under which the City expressly agreed that the City will sell the Breakers Way parcel and the Whitecap Way parcel, if at all, under separate purchase and sale agreements, and the sale of either parcel to a non-public entity will not close or be consummated unless and until the Commission has approved a rezone as to that parcel (Exhibit 14). The Commission accepted a stipulated writ of mandate remanding the subject LCP amendment back to the Commission for reconsideration (Exhibit 15).

Substantive File Documents

City of Oxnard, City Council Ordinance No. 2733, dated December 19, 2006; City of Oxnard, Planning Commission Resolution No. 2005-10, dated January 20, 2005; Mitigated Negative Declaration No. 98-40; "Horned Lizard Survey at the Breakers Way Site", dated November 13, 2006, prepared by Impact Sciences; "Biological Resources Analysis of Tract Number 5063", dated May 13, 2002, prepared by Dudek & Associates; "Agreement of Purchase and Sale No. A-6830" between City of Oxnard and Elevar Seven LLC for the Breakers Way parcel, dated December 27, 2006; "Agreement of Purchase and Sale No. A-6823" between City of Oxnard and Elevar Seven LLC for the Whitecap Way parcel, dated December 27, 2006; July 18, 2007 *Stipulation to Issuance of Writ of Mandate and Stipulated Writ of Mandate*, County of Ventura Superior Court, Case No. 56-2007-00283553-CU-WM-VTA.

Additional Information: Please contact Deanna Christensen, California Coastal Commission, South Central Coast Area, 89 S. California Street, Suite 200, Ventura, CA (805) 585-1800.

A. PROCEDURAL ISSUES

1. STANDARD OF REVIEW

The Coastal Act provides that:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Public Resources Code Section 30513)

The standard of review for the proposed amendment to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the Commission must approve it unless the proposed amendment is not in conformance with, or is inadequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified City of Oxnard Local Coastal Program.

2. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings (Planning Commission Hearing 1/20/05, City Council Hearings 3/01/05 and 12/19/06) and received verbal and written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public consistent with Sections 13515 of Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

3. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. Oxnard City Council Ordinance No. 2733 approving LCPA 1-07 states that the amendment will take effect automatically upon Commission approval.

B. STAFF RECOMMENDATION, MOTION, AND RESOLUTION ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

Following public hearing, staff recommends the Commission adopt the following resolution and findings.

1. CERTIFY AS SUBMITTED

MOTION: *I move that the Commission reject Implementation Program/Coastal Zoning Ordinance Amendment OXN-MAJ-1-07 for the City of Oxnard as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program/Coastal Zoning Ordinance Amendment for the City of Oxnard as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

C. FINDINGS AND DECLARATIONS FOR APPROVAL OF THE IMPLEMENTATION PROGRAM (IP) AMENDMENT AS SUBMITTED

The following findings support the Commission's approval of the proposed amendment as submitted. The Commission hereby finds and declares as follows:

1. AMENDMENT DESCRIPTION AND BACKGROUND

The City of Oxnard is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to modify the zoning map to rezone a 1.39-acre parcel, known as the Breakers Way parcel, within the Oxnard Shores neighborhood from the "Resource Protection" (RP) zone to the "Single Family Beach" (R-B-1) zone. The 1.39-acre parcel is located west of Harbor Boulevard, between Reef Way and Breakers Way. The subject parcel is designated "Existing Residential Area" on the certified Land Use Plan Map, so no amendment to the LUP is proposed or needed. The City Council Ordinance is included as Exhibit 1. In conjunction with the subject LCP amendment, the City has considered, but not yet granted a coastal development permit for, a subdivision of the subject 1.39-acre parcel into twelve residential lots. Although the proposed subdivision is not part of the subject LCP amendment request, the proposed tentative tract map is included for illustrative purposes as Exhibit 6.

The rezone proposal for the subject parcel had been a part of a previous LCP amendment by the City of Oxnard (LCPA 1-05 (Oxnard Shores)). LCPA 1-05 proposed to rezone both the subject parcel and the Whitecap Way parcel in the Oxnard Shores neighborhood from "Resource Protection" (RP) to "Single Family Beach" (R-B-1). The amendment was scheduled for public hearing and Commission action at the August 2006 Commission hearing. In its July 27, 2006 staff report, staff recommended approval of LCP Amendment 1-05 with one suggested modification to delete the proposed zoning change of the Whitecap Way parcel and retain it in the "Resource Protection (RP)" zone district, as the site met the LCP definition of Environmentally Sensitive Habitat Area (ESHA). However, prior to the Commission hearing on LCP Amendment 1-05, the City of Oxnard withdrew the amendment request. The City now wishes to proceed with an LCP amendment to rezone only the Breakers Way parcel, which is the subject of this amendment staff report. Correspondence from parties opposed to the Breakers Way parcel rezone that have been received to date, either in regard to the previously withdrawn LCPA 1-05 or the subject LCPA 1-07, are attached as Exhibits 9 and 12.

The subject LCP amendment request was previously heard by the Commission at the April 2007 hearing in Monterey. Staff recommended approval of the proposed amendment. However, the Commission voted to deny the City's LCP amendment request based on concerns regarding the City's pending sale of both the Breakers Way parcel and the Whitecap Way parcel to a private entity. The City subsequently filed a lawsuit challenging the Commission's decision. The City and the Commission engaged in settlement discussions regarding the matter and the City provided evidence that each parcel has been sold separately pursuant to different purchase and sale agreements (Exhibit 13). The purchase and sale agreements make each sale contingent upon the Commission first granting an LCP amendment to rezone each parcel for residential use. The Commission and City have since stipulated to the issuance of a writ of mandate under which the City expressly agreed that the City will sell the Breakers Way parcel and the Whitecap Way parcel, if at all, under separate purchase and sale agreements, and the sale of either parcel to a non-public entity will not close or be consummated unless and until the Commission has approved a rezone as to that parcel (Exhibit 14). The Commission accepted a stipulated writ of mandate remanding the subject LCP amendment back to the Commission for reconsideration (Exhibit 15).

2. NEW DEVELOPMENT, COASTAL RESOURCES, AND ESHA

The City of Oxnard Local Coastal Program requires that new development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. Additionally, new development must be located where it will not have significant adverse impacts on coastal resources. Public Resources Code (PRC) Section 30250 (incorporated by reference into the certified LUP) states, in relevant part, that:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The Local Coastal Program also requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development may be permitted within ESHA, except for uses that are dependent on the resource. PRC Section 30240 (incorporated by reference into the certified LUP) of the Coastal Act further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly

degrade ESHA and to be compatible with the continuance of the habitat areas. PRC Section 30240 states that:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

The City of Oxnard LCP defines ESHA as follows:

Environmentally sensitive area means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The proposed LCP amendment would rezone the subject parcel from “Coastal Resource Protection (RP)” to “Single Family Beach (R-B-1)”. This amendment would allow for the future approval of residential development on the parcel, consistent with the density and development standards permitted in the R-B-1 zone. The subject site is located within the Oxnard Shores neighborhood, an area between the beach and Harbor Boulevard that was subdivided prior to 1972 and is developed with single and multi-family residential structures. As such, the site is in close proximity to urban public services such as water, sewer, electrical services, and two major public roadways. Therefore, the site is located contiguous with and in close proximity to existing developed areas. In addition, the conversion of this parcel from vacant to residential use (as was anticipated and planned by the City when it designated the parcel as “existing residential area” in the LUP and “residential low medium” in the General Plan) is not expected to significantly impact traffic or public access in the area. The site is therefore able to accommodate the new residential development. Thus, changing the zoning designation to R-B-1, potentially facilitating future residential development on the site, would not conflict with Section 30250 of the Coastal Act as incorporated into the LUP.

The proposed R-B-1 zoning designation for the subject site will be consistent with the existing land use designation that applies. The LUP Map designates the subject site as “Existing Residential Area”. The LUP describes the Existing Residential Area designation in part as follows: “Applied only to existing, partially developed neighborhoods, this designation will allow the full buildout of these areas at existing densities.” The City proposes to modify the Coastal Zoning Map to zone the site “Single Family Beach” (R-B-1). The R-B-1 zone allows the development of single family residences, with a minimum lot area of 4,000 sq. ft., subject to several development standards. The residential development surrounding the subject site is also zoned R-B-1. The City of Oxnard has considered, although not given approval for, the development of twelve residences on the subject site. That density would be consistent with the density requirements of the R-B-1 zone.

There is a “Resource Protection Area” Land Use Designation under the Oxnard LUP. This land use designation is: “applied only to sensitive habitat areas; this designation will preserve these resources”. The land designated “Resource Protection Area” by the LUP generally corresponds to those habitats designated on the “Sensitive Habitat” (ESHA) Map in the LUP.

The subject site is not designated "Resource Protection Area" under the LUP, but as "Existing Residential Area", as discussed above. Nonetheless, the site is zoned "Resource Protection" (RP) by the Coastal Zoning Code, a designation that has the purpose of providing for the protection of ESHA. As such, there is a conflict between the land use designation and the zoning applied to the subject site. The City found that the RP zone was applied to the subject parcel as an interim measure. The Coastal Act Consistency Analysis submitted by the City on June 8, 2005 states that:

The RP zoning designation of the site is an interim zoning designation. In accordance with Section 37-2.14.3 of the coastal zoning ordinance, "undeveloped parcels of land designated with two or more zone categories shall be totally zoned RP on an interim basis until a specific development plan is approved which is consistent with both the Oxnard Coastal Land Use Plan and all applicable provisions of (the City code)."

In the 1980's the subject properties were zoned A-O for agricultural and oil drilling land uses. Since the properties were used neither for agricultural or oil drilling purposes, the RP designation was placed on the properties in the mid-1980's per the coastal zoning ordinance.

A provision which allows for the application of an interim zoning designation is contained in the "RP" zone development standards. However, there is no discussion of this provision or the specific properties that it had been applied to in the findings for the Commission's certification of the Oxnard Coastal Zoning Ordinance.

The site that is the subject of the proposed amendment is also not identified as ESHA by the LUP. The certified LUP includes the same definition of ESHA as Section 30107.5 of the Coastal Act. The certified LCP also contains policies regarding the protection of ESHA resources, including restriction of uses, the requirement of biologic studies, and development siting and design measures, including buffers. The LUP contains a sensitive habitat map showing the known sensitive habitats (ESHA) within the coastal zone. The ESHAs identified in the LUP include wetlands, dunes, riparian, and marine habitats.

It seems clear that the western area of the City of Oxnard contained extensive dune fields stretching south from the Santa Clara River along the ocean. Most of these dunes have been disturbed, altered, and destroyed for development, as is the case across much of the state. Notwithstanding the destruction of dune habitat within the City, the LUP identifies five dune areas within the coastal zone that meet the definition of ESHA:

1. A 26-acre area at the intersection of Fifth Street and Harbor Boulevard
2. A portion of a 54-acre parcel located between Harbor Boulevard and the Edison Canal, south of Wooley Road.
3. An area at the northerly end of "The Colony" property adjacent to the Oxnard State Beach park site.
4. A chain of dunes paralleling the beach from the Santa Clara River mouth south to Fifth Street.
5. Ormond Beach dunes paralleling the beach.

The subject site is not shown as containing dune ESHA. Staff also reviewed aerial photographs of the project site. A 1972 photo (included in Exhibit 10) shows that the Oxnard Shores area, including the subject site, had been graded, and paved roads and other utilities had been installed prior to the effective date of the California Coastal Zone Conservation Act of 1972 (Proposition 20). The area was sparsely developed with residences at that time. A 1979 photo

(Exhibit 10) shows that many more, but not all of the parcels were developed with residences. The subject site remains vacant, flat, and sparsely vegetated in the 1979 photo.

By comparison, the dunes located east of Harbor Boulevard (south of its intersection with Wooley Road), have clearly maintained their dune geomorphology. Past photos of the area do indicate that these dunes were subject to disturbance, but it does not appear that the site was graded. The 1972 and 1979 photos show that some of the vegetation on this site had been disturbed or removed and tracks or trails made by vehicles are visible. Nonetheless, later photos show that this site maintained its dune landforms and that the site was recolonized with vegetation. In recognition of the dune landforms and habitat present, this site east of Harbor Boulevard was designated as ESHA on the LUP Sensitive Habitats Map and the site was zoned Resource Protection.

Although the subject site is not designated ESHA by the LUP, it is critical to evaluate whether the site should nonetheless be considered to contain habitat that is consistent with the definition of ESHA, in order to ensure that the proposed LCP amendment is consistent with the resource protection policies of the Oxnard LUP.

The subject site is a flat, vacant, approximately 1.39-acre parcel located on the eastern edge of the Oxnard Shores neighborhood, just west of Harbor Boulevard. The City has provided a Biological Resources Analysis, dated May 13, 2002, prepared by Dudek & Associates, Inc. that addresses the biological resources on the subject site (Exhibit 7). The report identifies one soil type on the site (sand), and two vegetation types (annual grassland and disturbed habitat). According to the report, the majority of the site (1.2 acres) contains annual grassland, and the remaining 0.19 acres contain disturbed habitat. The report states:

Annual grassland occupies the majority of the project site. Where native plant communities have been subject to repeated or severe disturbance, the habitat frequently reverts to annual or non-native grassland. These areas usually are dominated by annual grasses, such as bromes (*Bromus* spp.) and wild oats (*Avena* spp.) and other disturbance-tolerant species such as filarees (*Erodium* spp.). Annual grassland onsite is dominated by red-stemmed filaree (*Erodium cicutarium*), pineapple weed (*Camomilla suaveolens*), California burclover (*Medicago polymorpha*), slender oat (*Avena Barbara*), and barley (*Hordeum* sp.).

Disturbed habitat occurs in two areas along the northern and southern project boundaries. These areas are nearly entirely lacking in vegetation, apparently due to vehicle use. At the time of the survey a vehicle was parked in the southern patch of disturbed habitat, and tire tracks were present within both the southern and northern disturbed habitat patches.

The biological report identified no rare, endangered, or special status plant or animal species on the site. In addition, the City has provided Commission staff with a Horned Lizard Survey Report prepared by Impact Sciences, dated November 13, 2006 (Exhibit 8). The report contains the findings of focused surveys for the Coast Horned Lizard (*Phrynosoma coronatum*) on the site that was conducted during the summer and fall of 2006. Coast Horned Lizards are listed as a Species of Special Concern by the California Department of Game, and as a Federal Special Concern species by the United States Department of Fish and Wildlife. No Coast Horned Lizards were identified during the course of the surveys.

Staff has also visited the site in August 2005 and March 2006. The visits confirmed that while the soils are primarily sand, there are no dune landforms present. The level of disturbance on the site was also very clear (Exhibit 11). It was apparent that vehicles, including heavy

equipment, have been driven onto and across the site, and that people and pets have walked across the site. Additionally, construction materials and other debris have been dumped on the site, and a portion of the site has been recently used as a staging area for construction of a residence immediately north of Breakers Way. The eastern and northern portions of the parcel are largely denuded and contain significant amounts of gravel and debris. The western portion of the parcel contains annual grassland. The site abuts existing single family residences on the west, and streets fronted by single family residences to the north and south. To the east, the site abuts a two-lane frontage road. East of the frontage road, there is a block wall and further east there is a four-lane road (Harbor Boulevard). Across Harbor Boulevard to the east, there is a large area of dune habitat.

Given the rarity of dune habitats across the state, the Commission has generally considered dunes, even those that are significantly degraded, to meet the definition of ESHA, if they retain some connection to the beach or other dune areas, or if they are inhabited by plants or animals that are rare, endangered, or have other special status. In this case, based on the available information, the Commission concludes that the subject site does not meet the definition of ESHA. As described above, there has been ongoing disturbance on the subject site since before 1972. The mass grading and development of the suburban-level subdivision that was carried out in the Oxnard Shores area prior to 1972 resulted in the loss of dune topography across this entire area, including the subject site. Most of the parcels created in this area have been developed with residential or commercial structures. The subject site has not been developed. No dune landforms have ever reformed on the site. This is apparently the result of the continuing disturbance of the site, as well as the fact that the site has been physically cut off from the beach and any other source of sand by the surrounding development. The site has been disturbed by vehicles, dumping and storage of construction material and debris, and human intrusion. There is a larger, better developed, dune habitat area to the east, but it is separated from the subject site by two roads and a wall. There is no dune vegetation or dune topography on the site and there are no rare or endangered plants or animals. The Commission's biologist, Dr. John Dixon, has reviewed photos of the site, including aerial photos of the surrounding area, and the biological reports described above. Dr. Dixon also visited the site in August 2005. Based on his review of this information and site visit, Dr. Dixon concluded that the site did not contain habitat that meets the definition of ESHA.

In sum, the site does not contain plant or animal life, or habitat for plant or animal life, that is either rare or especially valuable because of its special nature or role in any ecosystem. Thus, the site does not meet the Coastal Act or LUP definition of Environmentally Sensitive Habitat Area (ESHA), and it does not contain any other coastal resources that the LUP requires be protected, such that the required protection would be incompatible with residential development. Therefore, the proposed zoning map amendment to zone the site from "Resource Protection" to "Single Family Beach" will not result in impacts to ESHA or other protected coastal resources, and the change is consistent with the policies of the certified Land Use Plan.

In summary, the subject parcel located on Breakers Way is surrounded by existing development, is highly disturbed, does not maintain viable connections to the beach or other dune communities, and is not inhabited by rare, endangered, or especially valuable plant or animal species or their habitats. Thus, it does not meet the LUP definition of Environmentally Sensitive Habitat Area (ESHA). Therefore, the Commission finds that the proposed zoning map amendment from "Resource Protection (RP)" to "Single Family Beach (R-B-1)" on this parcel will not result in impacts to ESHA, and it will not result in impacts to any other protected coastal resources. The change is thus consistent with the ESHA policies and other resource protection policies of the certified Land Use Plan. Further, the Commission finds that the proposed LCPA will bring the zoning designation of the property into conformity with the land use designation.

As such, the Commission finds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan.

3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to Section 21080.9 of the California Public Resources Code, within the California Environmental Quality Act ("CEQA"), local governments are exempt from the requirement to prepare an Environmental Impact Report ("EIR") in connection with their activities and approvals necessary for the preparation and adoption of a local coastal program ("LCP"). Instead, the CEQA responsibilities are assigned to the Coastal Commission. The Secretary of Resources, in turn, has determined that the Commission's program of reviewing and certifying LCPs is functionally equivalent to the EIR process. It thus qualifies for certification under Section 21080.5 of CEQA, and it has been so certified, relieving the Commission of the responsibility to prepare an EIR.

However, the Commission does have to satisfy certain CEQA-related requirements in conjunction with its approval of an LCP amendment. Specifically, in addition to making the finding that the LCP amendment is in full compliance with CEQA, the Commission must make a finding that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. See 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). These provisions of the Commission's regulations and Section 21080.5(d)(2)(A) of CEQA require that the Commission not approve or adopt a LCP, "...if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

The proposed amendment is to the City of Oxnard's certified Local Coastal Program Implementation Ordinance (Coastal Zoning Ordinance). The Commission originally certified the City of Oxnard's Local Coastal Program Land Use Plan and Implementation Ordinance in 1982 and 1985, respectively. As discussed above, the proposed LCP amendment is consistent with the policies of the Certified Local Coastal Program. Therefore, the Commission finds that the LCP amendment is consistent with CEQA and the Land Use Plan.

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2733

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
APPROVING A ZONE CHANGE FOR PROPERTY LOCATED ON THE
WEST SIDE OF HARBOR BOULEVARD, BETWEEN BREAKERS WAY
AND REEF WAY.**

WHEREAS, in accordance with the California Environmental Quality Act, the Planning and Environmental Services Manager provided public notice of the intent of the City to adopt a mitigated negative declaration for this project, and the City Council considered the proposed mitigated negative declaration, together with any comments received during the public review process, finds on the basis of the whole record before it (including the initial study and any comments received) that with the imposition of mitigation measures as conditions of approval, there is no substantial evidence that the project will have a significant effect on the environment, further finds that the mitigated negative declaration reflects the independent judgment of the City, and adopts the mitigated negative declaration; and

WHEREAS, the documents and other materials that constitute the record of proceedings upon which the decision to adopt the mitigated negative declaration is based is located in the Planning and Environmental Services Division of the City of Oxnard, and the custodian of the record is the Planning and Environmental Services Manager.

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. The zoning governing vacant property consisting of 1.39 gross acres, located on the west side of Harbor Boulevard, between Breakers Way and Reef Way (APN 191-033-15), is hereby changed from RP (Coastal Resource Protection) to R-B-1 (Single Family Beach), as shown on the map attached hereto as Exhibit A and incorporated herein by reference.

Part 2. The City Council of the City of Oxnard certifies that this ordinance is intended to be carried out in a manner fully in conformity with Division 20 of the Public Resources Code (the Coastal Act).

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No. 2733 was first read on December 12, 2006, and finally adopted on December 19, 2006, to become effective automatically upon approval by the California Coastal Commission.

AYES: Councilmembers Herrera, Holden, Maulhardt, Zaragoza and Flynn.

NOES: None.

ABSENT: None.

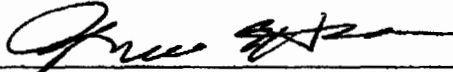

Dr. Thomas E. Holden, Mayor

Exhibit 1
LCPA No. OXN-MAJ-1-07
City Council Ordinance 2733

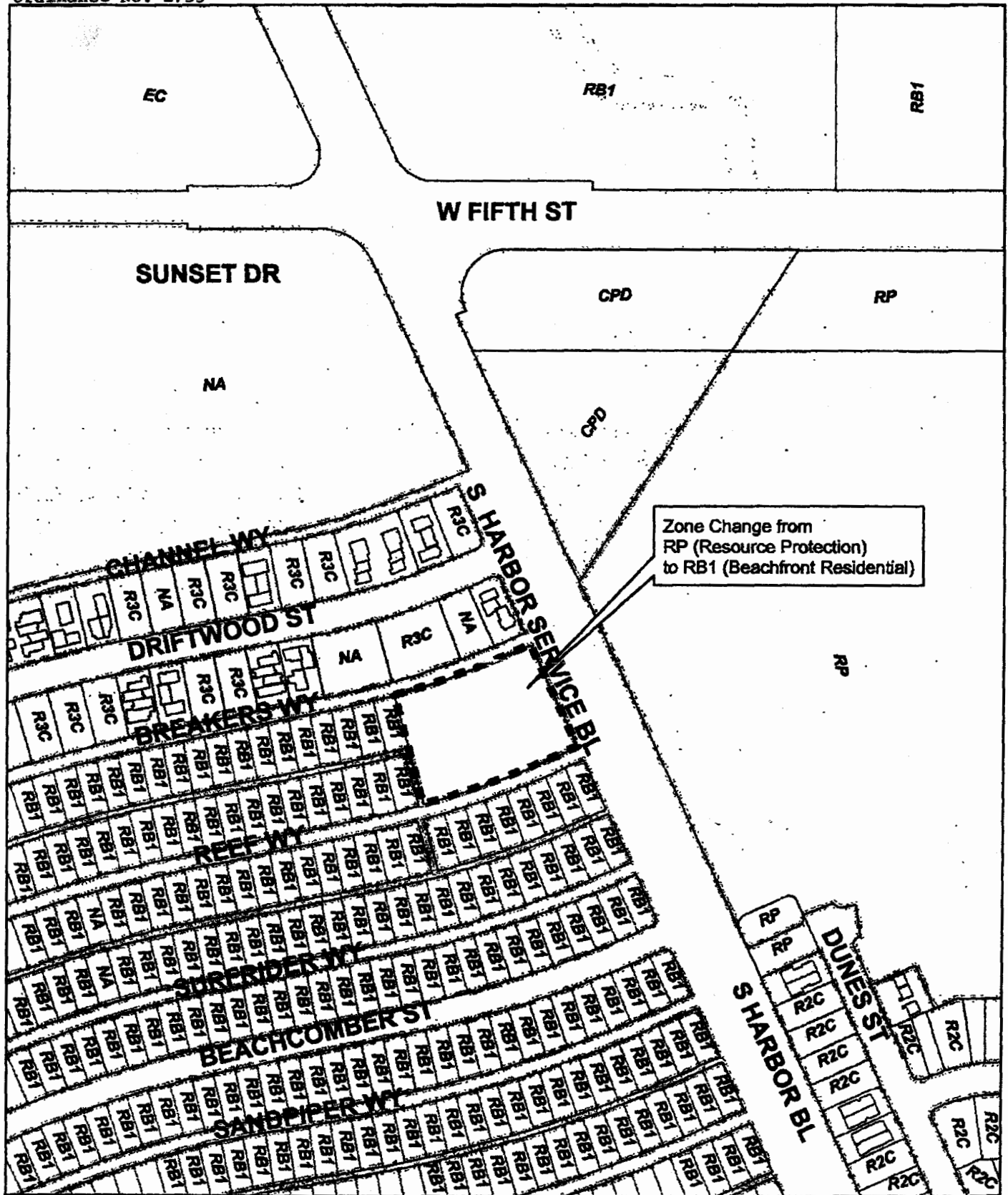
Ordinance No. 2733
Ordinance LCPA 98-1 (PZ 06-410-003)
Page 2

ATTEST:


Daniel Martinez, City Clerk

APPROVED AS TO FORM:


Gary L. Gillig, City Attorney



Oxnard Planning
December 5, 2006

Zone Change

PZ 06-410-03

APN: 191003315

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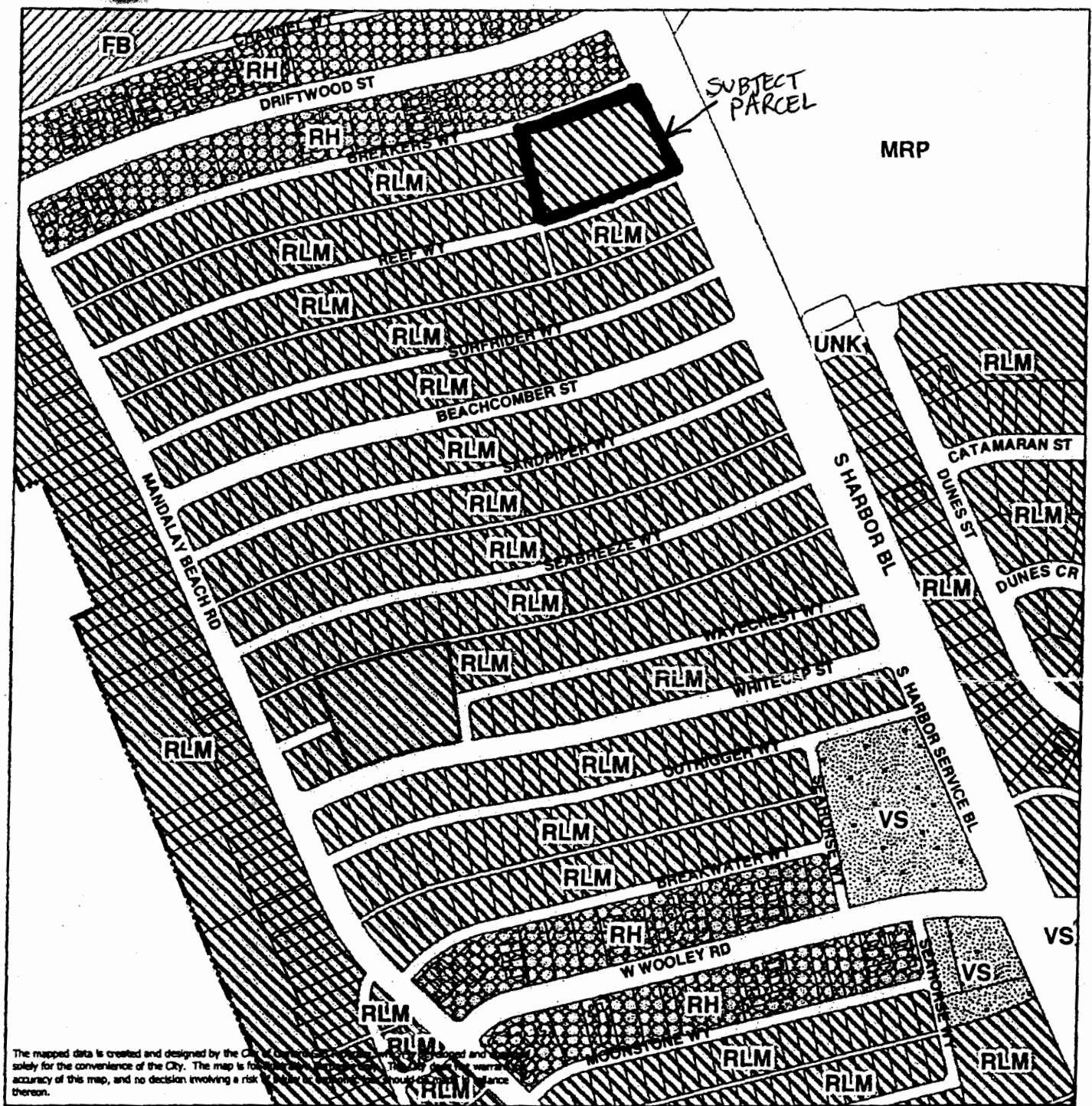
EXHIBIT A



Exhibit 3

LCPA No.
OXN-MAJ-1-07





Zone Change
Map



PZ 98-05-106
PZ 98-05-107

General Plan Map

Legend

-  MISC MR/PLANNING RESERVE
-  RESIDENTIAL HIGH
-  RESIDENTIAL LOW MEDIUM
-  VISITOR SERVING

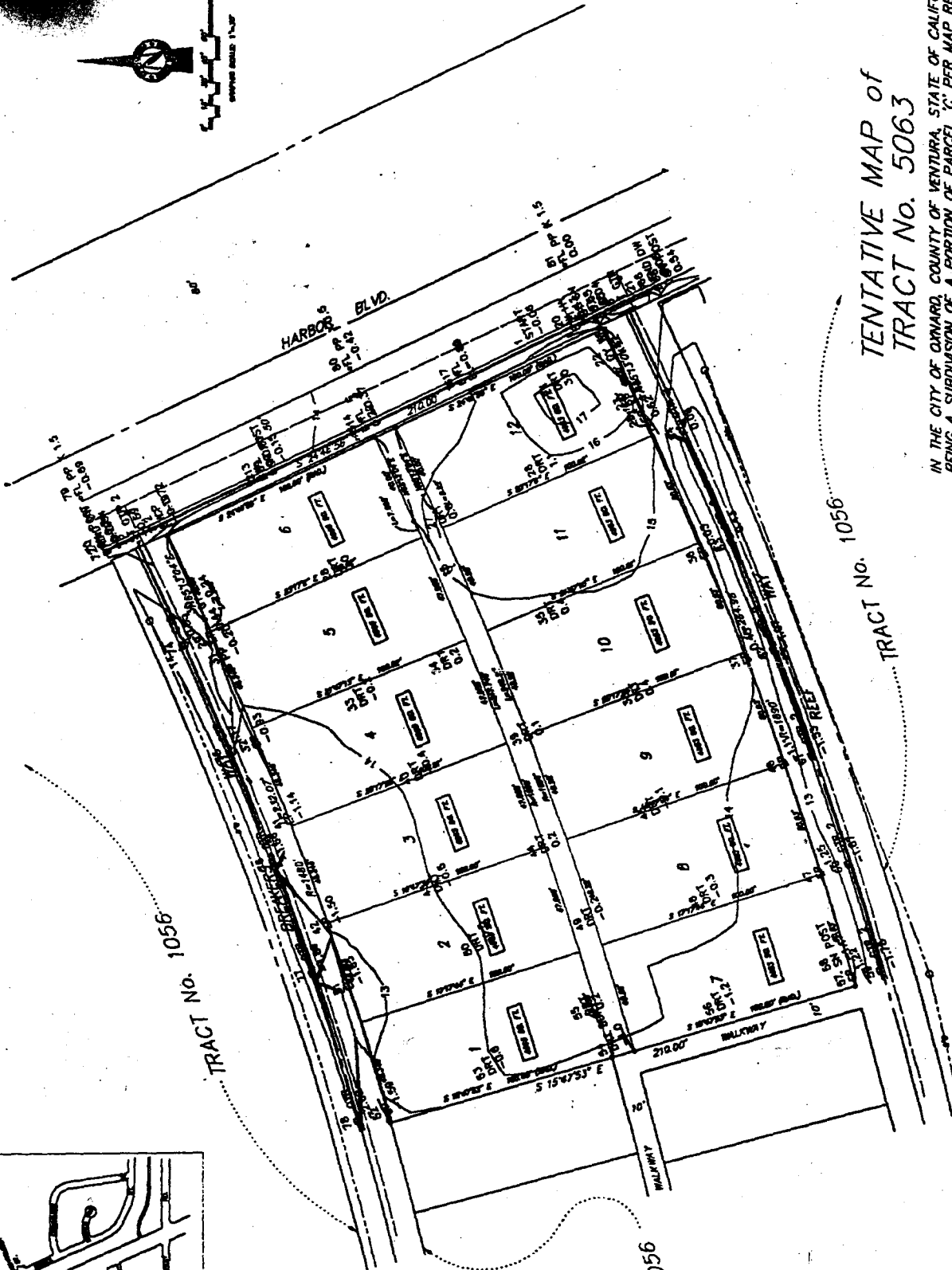
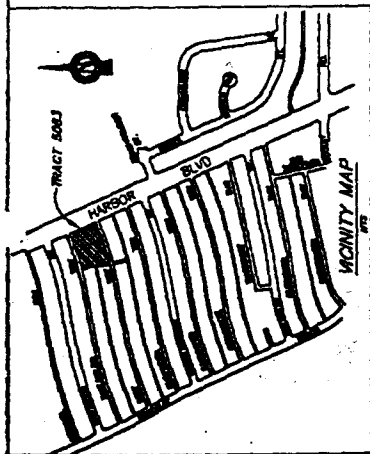
0 100 200 400 600 800 Feet



Planning & Environmental Services

Exhibit 4

LCPA No.
OXN-MAJ-1-07
Land Use Plan
Map



**TENTATIVE MAP of
TRACT No. 5063**

IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA
BEING A SUBDIVISION OF A PORTION OF PARCEL "C" PER MAP RECORDED
IN BOOK 16 OF MISCELLANEOUS RECORDS (MAPS) AT PAGES 46 THROUGH
49, INCLUSIVE.

TRACT No. 1056

PERMANENT EDITION COMPANY
GAS COMPANY

Exhibit 6
LCPA No.
OXN-MAJ-1-07
Tract Map



Engineering, Planning,
Environmental Sciences and
Management Services

Corporate Office:
605 Third Street
Encinitas, California 92024

760.942.5147
Fax 760.632.0164

May 13, 2002

3308-01

Mr. Matthew Winegar, AICP
Development Services Director
City of Oxnard
305 West Third Street
Oxnard, CA 93030

**SUBJECT: BIOLOGICAL RESOURCES ANALYSIS OF TRACT NUMBER 5063
(NORTH SITE), OXNARD, CALIFORNIA**

Dear Mr. Winegar:

On 13 March 2002 Dudek & Associates, Inc. (DUDEK), biologists Brock A. Ortega and Michelle L. Balk conducted a biological resources survey of the 1.39-acre Tract 5063 project site located in the City of Oxnard, California.

1.0 PROJECT LOCATION

The property is located east of Harbor Drive, north of Reef Way, and south of Breakers Way, in the City of Oxnard, California. The property lies within the U.S. Geological Survey 7.5 minute map, Oxnard Quadrangle: Section 1; Township 1 North, Range 23 West (*Figures 1 and 2*). Surrounding land uses include residential to the north, south, and west, undeveloped land (stabilized sand dune) to the immediate east, and agricultural land to the more distant east. The site is located approximately 0.5 mile from the Pacific Ocean.

2.0 METHODS AND SURVEY LIMITATIONS

Data regarding biological resources present on the project site were obtained through a review of pertinent literature and through field reconnaissance; both are described in detail below.

Literature Review

Sensitive biological resources present or potentially present onsite were identified through a literature search using the following sources: U.S. Fish and Wildlife Service

Exhibit 7
LCPA No. OXN-MAJ-1-07
Biological Report

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

1991, 1993), California Department of Fish and Game (1980, 1986, 1987), Impact Sciences Inc. (1998), and California Native Plant Society's Inventory of Rare and Endangered Plants (CNPS 2001). The California Natural Diversity Database (CNDDB) was also reviewed to identify sensitive species possibly occurring within the project limits. General information regarding wildlife species present in the region was obtained from Unitt (1984), Ehrlich (1988), and Garrett and Dunn (1981) for birds, Bond (1977) for mammals, Stebbins (1985) for reptiles and amphibians, and Emmel and Emmel (1973) for butterflies.

A single soil type is present onsite: Coastal Beaches (CnB) (Edwards *et al.* 1970). Areas mapped as Coastal Beaches are usually sandy beaches with adjacent sand dunes but may also be cobbly beaches.

Resource Mapping

A biological survey of the property was conducted by DUDEK biologists Brock Ortega and Michelle Balk on 13 March 2002. The survey was conducted from 1100 to 1200. Survey conditions were generally mild, with approximately 10% cloud cover, winds at 5 to 10 miles per hour, and an air temperature of 60° F. The survey was conducted on foot, and the entire property was walked to complete the resource mapping. All plant species encountered were identified and recorded. Those species that could not be identified immediately were brought into the laboratory for further investigation. Onsite vegetation types, using the Holland (1986) nomenclature system, were mapped directly on a 50-scale topographic/aerial photograph base map. Following completion of field work, all vegetation polygons were transferred to a topographic base and digitized into an AutoCAD drawing and, using ArcCAD, a GIS coverage was created. Once in ArcCAD, acreages of each vegetation type were determined.

Wildlife species detected during field surveys by sight, vocalizations, burrows, tracks, scat, or other sign were recorded. Binoculars (8 X 32 power) were used to aid in the identification of observed wildlife. In addition to species actually observed, expected wildlife use of the site was determined by known habitat preferences of local species and knowledge of their relative distributions in the area. Latin and common names of animals follow Stebbins (1985) for reptiles and amphibians, American Ornithologist's Union (1983, 1989) for birds, Jones *et al.* (1997) for mammals, and Emmel and Emmel (1973) for butterflies.

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A list of plant and wildlife species observed on the property is presented in APPENDIX A.

Survey Limitations

Limitations of the surveys include seasonal constraints, a diurnal bias and the absence of focused trapping for mammals and reptiles. Botanical surveys were conducted when many spring annuals are present, therefore botanical surveys were not compromised. Climatic conditions during the surveys generally were favorable for the identification of wildlife. Surveys were conducted during the daytime to maximize visibility for the detection of plants and most animals. Birds represent the largest component of the vertebrate fauna, and because they are active in the daytime, diurnal surveys maximize the number of observations of this portion of the fauna. In contrast, daytime surveys usually result in few observations of mammals, many of which may only be active at night. In addition, many species of reptiles and amphibians are secretive in their habits and are difficult to observe using standard meandering transects. Pitfall trapping is the most effective technique for detecting many of these species; however, such trapping was beyond the scope of this project.

3.0 RESULTS

The CNDDDB indicated that no sensitive plant or animal species are known to occur onsite; however, several sensitive species may have the potential to occur within the project boundary. These sensitive species, their listing statuses, and their likelihood of occurring onsite are provided in *Tables 1* (plants) and *2* (wildlife).

The survey was conducted at the appropriate time of year for the detection of species listed in *Tables 1* and *2*. No sensitive plant or wildlife species were identified onsite.

Vegetation Types

Based on species composition and general physiognomy, two vegetation types/land covers were identified during the field survey: annual (non-native) grassland and disturbed habitat. These vegetation types or land covers are described below, their acreages are presented in *Table 3*, and their spatial distributions are presented in *Figure 3*. A species list is included as APPENDIX A.

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 1
SENSITIVE PLANT SPECIES POTENTIALLY OCCURRING ON TRACT 5063
PROJECT SITE BASED ON GEOGRAPHY AND GENERAL HABITATS IN
VICINITY - ACTUAL POTENTIAL FOR OCCURRENCE ANALYSIS

Scientific Name	Common Name	Status Federal/State/ Other	Primary Habitat Association/Life Form/Blooming Period	Status/Onsite or Potential to Occur
<i>Arabis hoffmannii</i>	Hoffmann's rock cress	FE/None	Coastal bluff scrub/perennial herb/February-April	Not observed onsite. Extremely low potential to occur; suitable habitat not present. If present onsite, species would have been observed. Species is only known to occur on Santa Cruz Island.
<i>Astragalus brauntonii</i>	Braunton's milk-vetch	FE/None	Closed-cone conifer forest, chaparral, coastal sage scrub, Valley and foothill grassland, recent burns or disturbed areas, limestone soils/perennial herb/March-July	Not observed onsite. Low potential to occur; suitable habitat is not present. If present onsite, species would have been observed.
<i>Astragalus pycnostachyus</i> var. <i>lanosissimus</i>	Ventura marsh milk-vetch	FE/SE	Stabilized dunes, marsh and swamp, salt marsh, wetland/perennial herb/June-October	Not observed onsite. Low potential to occur; suitable habitat is not present. If present onsite, species would have been observed.
<i>Berberis pinnata</i> ssp. <i>insularis</i>	Island barberry	FE/SE	Closed-cone coniferous forest, cismontane woodland, coastal scrub/shrub/March-May	Not observed onsite. Low potential to occur; suitable habitat is not present. If present onsite, species would have been observed.
<i>Chorizanthe parryi</i> var. <i>fernandina</i>	San Fernando Valley spineflower	PFE/SCE	Coastal scrub/perennial herb/February-March	Not observed onsite. Low potential to occur; suitable habitat is not present. If present onsite, species would have been observed.

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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 1 (Continued)

Scientific Name	Common Name	Status Federal/State/ Other	Primary Habitat Associational Life Form/Blooming Period	Status on Site or Potential to Occur
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Saltmarsh bird's-beak	FE/SE	Coastal dunes, coastal saltwater marshes and swamps/annual herb/May-October	Not observed onsite. Moderate potential to occur onsite. If present onsite, species would have been observed.
<i>Dithyrea maritima</i>	Beach spectaclepod	None/ST	Coastal dunes, coastal scrub/perennial herb/March-May	Not observed onsite. Moderate potential to occur onsite. If present onsite, species would have been observed.
<i>Dudleya cymosa</i> ssp. <i>ovatifolia</i>	Santa Monica Mountains dudleya	FT/None	Chaparral, coastal sage scrub, volcanic substrates/perennial herb/March-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya cymosa</i> ssp. <i>mercescens</i>	Marcescent dudleya	FT/None	Chaparral/rocky outcrops, slopes, talus/perennial herb/May-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya abramsii</i> ssp. <i>parva</i>	Conejo dudleya	FT/None	Coastal scrub, Valley and foothill grassland/perennial herb/April-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya verityi</i>	Verity's dudleya	FT/None	Chaparral, coastal scrub, Valley and foothill grassland/north-facing volcanic outcrops/perennial herb/May-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.

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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 1 (Continued)

Scientific Name	Common Name	Status: Federal/State/ Other	Primary Life Associations / Life Form/Blooming Period	Status Onsite or Potential to Occur
<i>Eriogonum grande</i> var. <i>timorum</i>	San Nicolas Island buckwheat	None/SE	Coastal bluff scrub/dry cliffs/perennial herb/March- December	Not observed onsite. Extremely low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed. Species is only known to occur on San Nicholas Island.
<i>Malacothrix squalida</i>	Island malacothrix	FE/None	Chaparral, cismontane woodland, coastal bluff scrub/shallow soils, canyon flats or slopes/annual herb/April-July	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Orcuttia californica</i>	California Orcutt grass	FE/SE	Vernal pools/annual herb/April- June	Not observed onsite. No potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.

Legend

FE: Federally-listed as endangered
 FT: Federally-listed as threatened
 PFE: Proposed for federal listing as endangered
 SCE: State candidate for listing as endangered
 SE: State-listed as endangered

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 2
SENSITIVE WILDLIFE SPECIES POTENTIALLY OCCURRING ON TRACT 5063
PROJECT SITE BASED ON GEOGRAPHY AND GENERAL HABITATS IN
VICINITY - ACTUAL POTENTIAL FOR OCCURRENCE ANALYSIS

Scientific Name	Common Name	Federal/State	Primary Habitat Associations	Potential to Occur
AMPHIBIANS				
<i>Scaphiopus hammondi</i>	Western spadefoot toad	None/CSC, P	Most common in grasslands, coastal sage scrub near rain pools or vernal pools; riparian habitats	Very low potential to occur onsite based on isolation of site and apparent lack of suitable breeding sites
REPTILES				
<i>Anniella pulchra pulchra</i>	Silvery legless lizard	FS, CNF/CSC	Loose soils (sand, loam, humus) in coastal dune, coastal sage scrub, woodlands, and riparian habitats	Moderate potential to occur onsite
<i>Arizona elegans occidentalis</i>	Coastal (California) glossy snake	None/None	Grassland, chaparral, coastal sage scrub, woodlands in sandy and rocky substrates	Low potential to occur due to isolation of site
<i>Cnemidophorus tigris munitatus</i>	Coastal western whiptail	None/None	Coastal sage scrub, chaparral	Low potential to occur due to isolation of site
<i>Cnemidophorus hyperythrus beldingi</i>	Orange-throated whiptail	None/CSC, P	Coastal sage scrub, chaparral, grassland, juniper and oak woodland	Low potential to occur due to isolation of site
<i>Diadophis punctatus similis</i>	San Diego ringneck snake	FS, CNF/None	Moist habitats; woodland, forest, grassland, chaparral; typically found under debris	Low potential to occur due to isolation of site
<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard	FS, CNF/CSC, P	Coastal sage scrub, annual grassland, chaparral, oak and riparian woodland, coniferous forest	Very low potential to occur due to isolation of site
BIRDS				
<i>Ammodramus savannarum</i>	Grasshopper sparrow	PIF, SMC/None	Open grassland and prairie, especially native grassland with a mix of grasses and forbs	Very low potential to occur due to isolation of site

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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 2 (Continued)

Scientific Name	Common Name	State	Primary Habitat/Associations	Status/Use
<i>Ardea herodias</i>	Great blue heron	None/None	Variety of habitats, but primarily wetlands; lakes, rivers, marshes, mudflats, estuaries, saltmarsh, riparian habitats	Likely forages onsite occasionally but does not breed
<i>Asio flammeus</i>	Short-eared owl	PIF, MNBMC/CSC	Grassland, prairies, dunes, meadows, irrigated lands, saline and freshwater emergent wetlands	Very low potential to occur due to isolation of site
<i>Cathartes aura</i>	Turkey vulture	SBNF/None	Rangeland, agriculture, grassland; uses cliffs and large trees for roosting, nesting and resting	Likely forages onsite occasionally but does not breed onsite
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover	FT, MNBMC/CSC (only coastal nesting population is listed)	Nesting habitat along coast includes sandy or gravelly beaches; inland nesting habitat is barren or sparsely vegetated ground at alkaline or saline lakes, reservoirs, ponds, riverine sand bars, and sewage, salt evaporation and agriculture waste-water ponds	No potential to occur onsite due to lack of appropriate habitat
<i>Circus cyaneus</i>	Northern harrier	PIF/CSC	Open wetlands (nesting), pasture, old fields, dry uplands, grasslands, rangelands, coastal sage scrub	Likely forages onsite occasionally but does not breed onsite
<i>Elanus leucurus</i>	White-tailed kite	PIF, MNBMC, SBNF/R, P	Open grasslands, savanna-like habitats, agriculture, wetlands, oak woodlands, riparian	Likely forages onsite occasionally but does not breed onsite
<i>Eremophila alpestris actia</i>	California horned lark	None/CSC	Open habitats, grassland, rangeland, shortgrass prairie, montane meadows, coastal plains, fallow grain fields	Likely forages onsite occasionally but does not breed onsite

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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 2 (Continued)

Scientific Name	Common Name	Status Federal/State	Primary Habitat Associations	Status Onsite or Potential to Occur
<i>Falco columbarius</i>	Merlin	None/CSC	Nests in open country, open coniferous forest, prairie; winters in open woodlands, grasslands, cultivated fields, marshes, estuaries and sea coasts	Likely forages onsite occasionally but does not breed onsite
<i>Falco mexicanus</i>	Prairie falcon	PIF, SBNF/CSC	Grassland, savannas, rangeland, agriculture, desert scrub, alpine meadows; nest on cliffs or bluffs	Likely forages onsite occasionally but does not breed onsite
<i>Lanius ludovicianus</i>	Loggerhead shrike	MNBMC/CSC	Open ground including grassland, coastal sage scrub, broken chaparral, agriculture, riparian, open woodland	Likely forages onsite occasionally but does not breed onsite
<i>Siala mexicana</i>	Western bluebird	None/None	Open forests of deciduous, coniferous or mixed trees, savanna, edges of riparian woodland	Likely forages onsite occasionally but does not breed onsite
<i>Speotyto [Athena] cunicularia</i>	Western burrowing owl	BLM, MNBMC/CSC	Grassland, lowland scrub, agriculture, coastal dunes and other artificial open areas	Not present onsite. Would have observed the species or evidence of occupation if present onsite
MAMMALS				
<i>Lepus californicus bennettii</i>	San Diego black-tailed jackrabbit	None/CSC	Arid habitats with open ground; grasslands, coastal sage scrub, agriculture, disturbed areas, rangelands	Not present onsite. Would have observed the species or evidence of occupation if present onsite
<i>Taxidea taxus</i>	American badger	SBNF/R	Dry, open treeless areas, grasslands, coastal sage scrub	Not present onsite. Would have observed the species or evidence of occupation if present onsite
INVERTEBRATES				
<i>Branchinecta lynchi</i>	Vernal pool fairy shrimp	FT/None	Vernal pools; cool-water pools with low to moderate dissolved solids	Not present onsite due to lack of suitable habitat

The federal and state status of species primarily is based on the Special Animals List (January 2000), California Department of Fish and Game. It has been updated as needed. This version is dated November 17, 2000.

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 2 (Continued)

Federal Designations:

BLM	Bureau of Land Management Sensitive Species
CNF	Cleveland National Forest Sensitive Species
FE	Federally-listed Endangered
FS	Forest Service Region 5 Sensitive Species
FT	Federally-listed as Threatened
MNBMC	Fish and Wildlife Service Migratory Nongame Birds of Management Concern
PFT	Proposed for listing as Federally Threatened
PIF	Partners in Flight Watch List
SBNF	San Bernardino National Forest Sensitive
SMC	Fish and Wildlife Service Region 1 Species of Management Concern

State Designations:

CDF	California Department of Forestry and Fire Protection Sensitive Species
CSC	California Special Concern Species
P	California Department of Fish and Game Protected and Fully Protected Species
R	California Rare Species
SE	State-listed as Endangered
ST	State-listed as Threatened

TABLE 3
ACREAGES BY HABITAT TYPE

Vegetation/Land Cover Type	Acreage
Annual (non-native) grassland	1.20
Disturbed Habitat	0.19
TOTAL	1.39

Annual grassland occupies the majority of the project site. Where native plant communities have been subject to repeated or severe disturbance, the habitat frequently reverts to annual or non-native grassland. These areas usually are dominated by annual

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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

grasses, such as bromes (*Bromus* spp.) and wild oats (*Avena* spp.), and other disturbance-tolerant species such as filarees (*Erodium* spp.). Annual grassland onsite is dominated by red-stemmed filaree (*Erodium cicutarium*), pineapple weed (*Camomilla suaveolens*), California burclover (*Medicago polymorpha*), slender oat (*Avena barbata*), and barley (*Hordeum* sp.).

Disturbed habitat occurs in two areas along the northern and southern project boundaries. These areas are nearly entirely lacking in vegetation, apparently due to vehicle use. At the time of the survey a vehicle was parked in the southern patch of disturbed habitat, and tire tracks were present within both the southern and northern disturbed habitat patches.

4.0 REGIONAL RESOURCE PLANNING CONTEXT

The project site does not lie within an existing or proposed focused planning area. The site does not contribute to regional wildlife movement as it is surrounded on three sides by residential development and on the fourth side by a busy street.

5.0 IMPACTS AND MITIGATION REQUIREMENTS

Proposed Project Impacts

The proposed subdivision project would impact the entire project site: 1.20 acres of annual (non-native) grassland and 0.19 acre of disturbed habitat.

Mitigation Requirements

Impacts to annual (non-native) grassland and disturbed habitat are not considered significant; no mitigation is recommended.

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

If you have any questions or comments, please do not hesitate to contact me at (760) 942-5147.

Very truly yours,

DUDEK & ASSOCIATES, INC.

Michelle Balk
Biologist

MB/ems

cc: *Brock Ortega, DUDEK*

att: *Figures 1 through 3
Appendix A*

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

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Appendix A

List of Species Observed Onsite

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

APPENDIX A

LIST OF SPECIES OBSERVED ONSITE

VASCULAR PLANT SPECIES

ANGIOSPERMAE (DICOTYLEDONES)

AIZOACEAE - CARPET-WEED FAMILY

- *Carpobrotus edulis* - hottentot-fig

ASTERACEAE - SUNFLOWER FAMILY

- *Chamomilla suaveolens* - pineapple weed

BRASSICACEAE - MUSTARD FAMILY

- *Brassica nigra* - black mustard
- *Capsella bursa-pastoris* - shepherd's purse
- Lepidium* sp. - peppergrass

FABACEAE - PEA FAMILY

- *Medicago polymorpha* - California burclover

GERANIACEAE - GERANIUM FAMILY

- *Erodium botrys* - broad-lobed filaree
- *Erodium cicutarium* - red-stemmed filaree

MALVACEAE - MALLOW FAMILY

- *Malva parviflora* - cheeseweed

ANGIOSPERMAE (MONOCOTYLEDONES)

POACEAE - GRASS FAMILY

- *Avena barbata* - slender oat



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Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

APPENDIX A (Continued)

- * *Bromus diandrus* - ripgut grass
- * *Cynodon dactylon* - Bermuda grass
- Hordeum* sp. - barley

WILDLIFE SPECIES - VERTEBRATES

BIRDS

EMBERIZIDAE - WOOD WARBLERS, TANAGERS, BUNTINGS & BLACKBIRDS

Euphagus cyanocephalus - Brewer's blackbird

FRINGILLIDAE - FINCHES

Carpodacus mexicanus - house finch

STURNIDAE - STARLINGS

- * *Sturnus vulgaris* - European starling

MAMMALS

GEOMYIDAE - POCKET GOPHERS

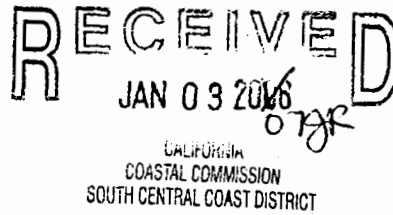
Thomomys bottae - Botta's pocket gopher

- * signifies introduced (non-native) species



IMPACT SCIENCES

803 Camarillo Springs Road, Suite A
Camarillo, California 93012
Telephone (805) 437-1900 FAX (805) 437-1901
www.impactsciences.com



MEMORANDUM

To: Steve Kaufmann
From: Larry Lodwick
Subject: Horned Lizard survey at the Breakers site, Oxnard, CA
Date: 11/13/06

Job No. 764-02

COMMENTS

Introduction

During the summer and fall of 2006, Impact Sciences visited the 1.5 acre Breakers site on four separate occasions to conduct focused surveys for the San Diego horned lizard (*Phrynosoma coronatum*). Surveys were conducted by four qualified biologists on July 11 and September 7, three biologists conducted surveys on September 29, and two biologists performed the surveys on October 12. The environmental conditions (weather, ambient air temperature, cloud cover, soil temperature, etc) were suitable for conducted reptile surveys and observing reptiles (if present) during each site visit. Surveys were conducted under clear to partly cloudy conditions with ambient air temperatures ranging between 65-70 degrees F, and surface soil temperatures ranging between 75 and 80 degrees F. The surveys occurred between 1:00 and 2:00 PM, 5:00 and 5:30 PM, 4:00 and 5:00 PM, and 4:00 and 5:00 PM, respectively on the dates listed above. No San Diego horned lizards were observed during the surveys, nor were any other reptile species.

Note: The conditions for conducting focused surveys for silvery legless lizards (*Anniella pulchra pulchra*) were not suitable during the dates surveyed; therefore, biologists did not focus efforts on this species during the summer and fall 2006 site visits.

Environmental Setting

The 1.5 acre site is located near the intersection of Breakers Way and Harbor Boulevard, less than one mile from the Pacific Ocean. The elevation on the site is between 10-20 feet above mean sea level (msl). The general topography of the site can be characterized as flat. Soils on site are composed of compacted dirt, sand and gravel. The site appears to have been graded in the last few years. The vegetation on site consisted primarily of non-native grasses and herbaceous plants characteristic of disturbed si

species include black mustard (*Brassica nigra*), tocalote (*Centaurea melitensis*), cheeseweed (*Malva parviflora*), salt heliotrope (*Heliotropium curassavicum*), and ice plant (*Carpobrotus edulis*).

Methods

Consistent methods were implemented on each of the four surveys. Surveys began by conducting a preliminary visual survey of San Diego horned lizards throughout the site for about 20 minutes. Following the visual surveys, biologists walked line transects across the entire site spaced at 10-15 feet apart to obtain 100% visual coverage of the site. Biologists focused more thoroughly on areas where native plants occur; however, all habitats were surveyed.

Results

No San Diego horned lizards were observed during the surveys.

Conclusions

Impact Sciences conducted 9 man-hours of surveying the Breakers site and adjacent vacant lands for the presence of coast horned lizards, over various dates and times of day, all under ideal conditions, during the summer and fall of 2006. The entire Breakers site was visually observed by biologists walking transects across the site. During the surveys, no horned lizards were found. Horned lizards are present within 0.25 mile of the site and extremely marginal habitat is present on site (i.e., the sandy conditions). However, there is a lack of native vegetation present. The Breakers site is surrounded by several barriers that inhibit immigration onto the site, such barriers include Harbor Boulevard, several blocks of dense residential development, predators, including dogs, cats, and ravens. Horned lizards have also been collected as pets, and are still picked up by people. In summary, the Breakers site is fragmented from suitable habitat to the east and it would be unlikely to sustain a population of horned lizards over a period of time.

**Dee Vitrano
Aubey Hashman
5012 Nautilus St.
Oxnard, CA 93035
Phone: 805-984-7095**

RECEIVED
JAN 16 2007

LETTER FOR
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

January 9, 2007

California Coastal Commission
89 S. California St., 2nd Floor
Ventura, CA 93001

Dear Coastal Commission,

We are writing regarding LCP Amendment OXN-MAJ-1-05. We don't want to see the two sites rezoned.

This beach community is crowded and parking is already difficult. The community was designed in 1960 and many homes only have parking of one car. The residents who live on the ways only have a small driveway to park on and the neighborhood was designed with very little curbside parking. Public parking at this beach is limited.

The community would like to see the sites protected and restored to natural sand dune areas. The community can restore the two sites. These sites will become outdoor classrooms for people to learn about native sand dune plants.

Please do not rezone Coastal Resource Protected land. The McGrath family gave these sites to City of Oxnard for Open Purposes Only and they should be kept that way.

Sincerely,

Dee Vitrano

Dee Vitrano

Aubey Hashman

Aubey Hashman

Exhibit 9
LCPA No.
OXN-MAJ-1-07
Correspondence

**Marcus A. Horwitz
Helene L. DesRuisseaux
1275 Stradella Road
Los Angeles, CA 90077**

July 29, 2006

California Coastal Commission
89 So. California Street, 2nd Floor
Ventura, CA 93001

Ladies and Gentlemen:

This letter is to express our opposition to the rezoning of the Reef Way and Whitecap parcels for development.

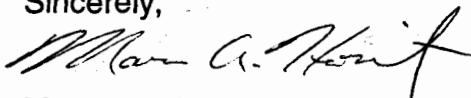
We frequent the Mandalay Shores area almost weekly and enjoy walking in the neighborhood. Over the years, we have seen much of the beauty of the area disappear. Many of the adjacent areas that were farms are now mega-developments. Whereas one use to be able to walk down Harbor Blvd. and see the ocean, now one sees only homes blocking the view. The area at Reef Way and Whitecap is one of the few natural vistas remaining to be seen when walking the neighborhood.

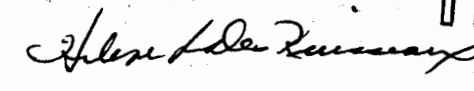
A year or so ago, we voted for a bond fund to increase our taxes so that the state could purchase and thereby preserve natural areas. However, many of these areas are difficult for many of us to reach and enjoy. What we appreciate more is the small natural areas that are in close proximity to where we live or visit. That is why having a small natural area like the one at Reef Way and Whitecap is so important and special.

With the massive development of housing in immediate proximity to Mandalay Shores, do we really need to sacrifice this small oasis on the altar of development? This small area at Reef Way and Whitecap will at most yield a handful of housing units. Given the thousands of housing units being built within a few miles of it, does it make sense to destroy a small area of open space and natural beauty for a few more housing units? To me, this would amount to a net loss for all of us.

Thank you for your consideration.

Sincerely,


Marcus A. Horwitz


Helene L. DesRuisseaux

RECEIVED
JUL 31 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

FELICITY A. HARPER

5225 Wavecrest Way
Oxnard, California 93035-1844
805-985-4335

April 18, 2006

RECEIVED
APR 20 2006
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 S. California Street, 2nd Floor
Ventura, CA 93001

RE: LCP Amendment OXN-MAJ-1-05

Dear Commissioners:

I am writing to protest the development of the parcel of land known as the McGrath site, located between Reef Way and Whitecap Street in the Oxnard Shores area of the City of Oxnard. My home is located on Wavecrest Way approximately 300 feet east from that site.

When I purchased this property in 1976, I was told that the McGrath site had been donated to the city with the caveat that it would not be developed. That was a selling point, since lots on this way are small, and the system of ways and streets in the Oxnard Shores neighborhood greatly reduces the parking available for both residents and guests. Parking is difficult already and will worsen dramatically with the addition of 11 new homes.

This site is the only open area of dunes-type land remaining on the west side of Harbor Boulevard that is suitable for a small park or to leave in its natural state. Our beach-front is gradually filling, and has few coastal access points. This remaining open space is valued for its ability to improve the quality of life in our local area.

Furthermore, the City of Oxnard has not been diligent in keeping the neighborhood informed of the status of this project or the site postings updated. City spokespersons do not have all the facts when they come to open meetings.

Please consider the needs and desires of the current residents when deciding whether to permit development of this site.

Sincerely,



Felicity A. Harper

EXHIBIT NO. 12
APPLICATION NO.
OXN-MAJ-1-05

California Coastal Commission
89 So. California St 2nd floor
Ventura, Ca. 93001
April 17, 2006

RECEIVED

APR 20 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To Whom It May Concern,

I moved to a wonderful house on Whitecap St. last year .
When considering the purchase, I was told by my realtor and
the local association that the vacant lots down the block
were to be turned into a small park. What a wonderful
change from all the building-to enjoy some open space.
With the plans to develop the area east of Harbor, I would
hope some area would be preserved as open space. I am
dreading the traffic and parking problems and pollution
that comes with an over crowded community.
Please listen to the residents of Oxnard Shores and do not
build on Whitecap or Reef Way.

Susan Seaberry
5153 Whitecap St.
Oxnard, Ca. 93035

Robert V. McCabe
5201 Wavecrest Way
Oxnard Shores, CA 93035
(805) 985-1011

April 17, 2006

RECEIVED
APR 20 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

TO : California Coastal Commission
RE: OXN-MAJ-1-05

I am opposed to the development on Whitecap-Wavecrest Way, and also the further development on Reef Way for the same following reasons.

The traffic in the Oxnard Shores area has become horrific. Harbor Blvd, in the morning and evening hours has almost become a parking lot. The majority of the beach lots have been developed to the point of making it difficult to access the beach. The neighborhood is going to be further affected when the several developments on the eastside of Harbor Blvd, are completed.

Several months ago I sent an e-mail to the Oxnard City Council expressing my opposition to developing Wavecrest-Whitecap with an additional twelve or thirteen homes. I have been a resident of Wavecrest Way for over thirty years and had heard many times in the past that the parcel was going to be used as a park for the residents as most homes do not have back yards and very small front yards. I did receive a phone call in reply to my e-mail from a member of the city council, I inquired as to the reasoning of developing this parcel of land to single family dwellings I was told that the money generated by the sale of this property would be sufficient to build new facilities for the Oxnard City Council, plus the added money to the tax base. I can not adequately explain how upset I became when hearing from a council member that the reason he voted for the approval was to solely benefit the city council with new meeting and office facilities, without a thought to the residents or the added congestion this project would cause to the neighborhood.

I pray that the members of the Coastal Commission will see thru the charade that the Oxnard City Council is trying to place upon the residents of Oxnard Shores and vote not to pass on the development of these properties.

Thanking you in advance for your cooperation and understanding.

I remain respectfully,



Robert V. McCabe

Gregory C. Fast
5303 Surfider Way • Oxnard, CA 93035

April 24, 2006

California Coastal Commission
89 So. California Street, 2d Floor
Ventura, CA 93001

RECEIVED
APR 25 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: OXN-MAJ-1-05

Dear Coastal Commission:

I write to voice my opposition the development of the property on Wavecrest Way and Whitecap in Oxnard Shores. I would also like to oppose development on Reef Way.

With regard to both proposals, additional housing will bring more vehicles to surface streets that are already fully utilized. There is a proposed major home development project at the northeast corner of Harbor and West Fifth Street and many condominiums and townhomes are currently under construction around the expanded marina (along Wooley and, then, south along Victoria). The cars of the new residents of these houses, townhomes and condominiums will create gridlock on Harbor, West Fifth, Wooley and Victoria.

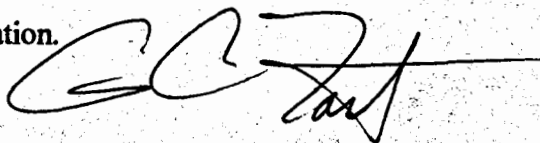
Meanwhile, Oxnard Shores has become virtually fully developed (i.e., there are very few remaining vacant lots) and there are more beachfront homes than were ever contemplated when the subdivision was first created. Thus, the residential surface streets of the Oxnard Shores subdivision are becoming more and more congested. Developing housing on the Wavecrest-Whitecap property and the Reef property will unnecessarily add to this congestion.

More importantly, as a twenty-year resident, I have been told by many people of the several promises that have been made by Oxnard City leaders over the years. Oxnard Shores residents were told specifically that the Wavecrest-Whitecap property would be used for a park. I understand that assurances were made that the Reef Way property would never be developed.

The residents of Oxnard Shores would benefit significantly from two "pocket parks." Our homes are built on small lots and, so, we have small yards. Given the extensive building of three-level mega-homes along beachfront of Mandalay Beach Blvd., few narrow pathways to the beach afforded the "common people" who do not live directly on the beach and the steady erosion of sand, we are increasingly deprived of the beach as a play area.

The current Oxnard City Council appears to not care about promises and representations made by those who came before them. If the Coastal Commission were to disapprove housing development in the two areas mentioned above, the City might become motivated to keep its word and, at the same time, diminish slightly the major street congestion all Oxnard Shores residents will soon have to endure.

Thank you for your consideration.



Net@address[®] by USA[®]NET[®]

Folder: Inbox

Message 3 of 217 (NEW)

< > Delete Reply Reply All Forward as Attachment
Move To: Trash Submit as Spam

Received: from cmsmail14.cms.usa.net [127.0.0.1] by cmsmail14.cms.usa.net via mtad (C8.MAIN.3.27X) with ESMTP id 161keiRGv0203M14; Tue, 09 May 2006 17:32:47 GMT

Return-Path: <annescott_@hotmail.com>

Received: from hotmail.com [65.54.161.26] by cmsmail14.cms.usa.net via smtad (C8.MAIN.3.27X); Tue, 09 May 2006 17:32:47 GMT

X-USANET-Source: 65.54.161.26 IN annescott_@hotmail.com hotmail.com

X-USANET-MsgId: XID713keiRGv3238X14

Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC; Tue, 9 May 2006 10:14:42 -0700

Message-ID: <BAY106-F166F6A0F03273703B22F6CEBA90@phx.gbl>

Received: from 65.54.161.200 by by106fd.bay106.hotmail.msn.com with HTTP; Tue, 09 May 2006 17:14:40 GMT

X-Originating-IP: [70.38.84.197]

X-Originating-Email: [annescott_@hotmail.com]

X-Sender: annescott_@hotmail.com

From: "anne scott" <annescott_@hotmail.com> [Add to Address Book](#) [Block Sender](#) [Allow Sender](#)

To: mehwood@usa.net

Bcc:

Subject: coastal commission [Allow Subject](#)

Date: Tue, 09 May 2006 17:14:40 0000

Mime-Version: 1.0

Content-Type: text/html; format=flowed

X-OriginalArrivalTime: 09 May 2006 17:14:42.0277 (UTC) FILETIME=[0FB4F150:01C6738C]

[Fewer Details](#)

[Print Preview](#)

To the California Coastal Commission,

I am a resident of the Mandalay Shores, I live on Reef Way. It is my understanding the city of Oxnard has 3 options regarding the property at the end of Reef Way.

I do not want more housing, neither do any of my neighbors. Reef Way would not be able to handle the traffic increase.

I would rather you left it as an open space, I do not even agree with a park.

Please don't add any more stress to our easy way of life on Reef Way.

Thank you for your time, Anne Scott

RECEIVED

MAY 05 2006

May 4, 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Coastal Commission,

I am writing in regards to LCP Amendment OXN-MAJ-1-05.

I attended last month's Coastal Commission Meeting in Santa Barbara and thank you for postponing the hearing a month. Postponing the hearing gave me and another resident time to review Oxnard's application located in the Ventura Coastal Commission office on April 14, 2006.

I want to point out six major points to you.

1. The Coastal Commission asked the city of Oxnard for all history related to the sites. Not all the history of the sites was disclosed. There was no mention of Francis McGrath's original deed. It was drafted before he died with the intention that the sites were a gift to the city of Oxnard for open purposes only. McGrath was unable to do anything with the land because it had been rezoned Resource Protected.

Many years ago the real estate agents told perspective buyers that these lots would always remain open so many residents purchased homes and lots near the two sites because it was always mentioned that the lots were Resource Protected with the intent for open purposes. After McGrath's death, the deed was drafted differently. It stated the sites only as a gift to the City of Oxnard. McGrath would have kept them for his own family if he thought he could get them rezoned!!!!

Anyways, the residents had no idea that the city of Oxnard had other plans for the sites. Everyone just kept hope that one day the lots would be turned into parks.

About 12 years ago the city placed the Public Notice in Oxnard's Spanish Newspaper "La Vita" that the sites were now city surplus. It was the city's way of pulling the wool over the residents by placing the Public Notice in a Spanish Newspaper. I myself speak Spanish but have never read the city's Spanish newspaper. So no one knew that the sites were surplus.

A few years ago the residents noticed surveyors on the lots and began to ask what they were doing. That's when we all found out the city was trying to figure out how many lots it could get out of the sites. Again the local real estate agents were the ones who were telling us that now the lots were going to be subdivided and sold for more homes in the area. The city was communicating to the real estate agents for their support. For these agents it only meant more revenue and possible selling commission for them. These real estate agents continue to tell everyone that there is no hope and the lots are already sold to Tri-mark a developer.

In January 2004 the residents did motion to support helping pay the fees to sue the City of Oxnard in a law suite over the sites. The residents voted for the board members to allocate money to support the case that the resident near the sites wanted to pursue. The residents lost the law suit against the city mainly on the basis that we filed the suit after the allowed statute of limitations had exceeded. Was that mentioned in the history of the site disclosed by the city of Oxnard? The City of Oxnard is very sneaky and needs to be monitored.

2. I noticed in the city's application they claimed to be putting money into the area for the residents by purchasing playground equipment in 2004 at the Nautilus Square location. Did the city mention that the community wanted the city to pay for new playground equipment and they said no. We the residents had to pay for the equipment and the city only paid for the labor for putting it in. The residents had to pay for swings and slides that the entire city uses on weekends and summer days. We also purchase needed benches so that any residents of Oxnard and the vacationers from out of the area can sit and enjoy the beach. The City of Oxnard does not have a dog park so we even pay for all the doggie poop bags so that when the residents of Oxnard

who come out to the beach with their dogs are encourage to pick up after their dog. This Oxnard Shores community cares more about the beach than the city. If proposed sites are rezoned and sold all the revenues from the sale should be used to keep the California Coast in Oxnard maintained for public use.

3. Did the city's application mention all the development that has been approved in the area and how it will effect the beach? We should not be rezoning for more homes in the area until we see how the future population effects the beach. Many people use the dunes and nearby ESHA protected land as recreational areas because there isn't enough open space.. With the population increasing this land would be better for playgrounds, walk dogs off their leash, public parking or just left as is. This area needs open space. The community originally had four Resource Protected areas. Half of these lots have all ready been rezoned. Did the community see any of that money?

4. In 1995 the city had biologist study the sites and the report grouped them together in the study. In the 2004 study, the sites are now discussed separately. The city destroyed the Breakers Way/ Reef Way site when the city repaved the streets. The lot was flatten, dirt was poured on to it and all the heavy equipment needed to pave the streets used the site for a parking lot. If the site is rezoned, that too should be used to mitigated for the value before the city ruined it. Is Oxnard's plan to destroy all Resource Protected land so that it can be rezoned?

5. The home owners in the area are not being properly informed. The city is misleading the public by telling the real estate agents and not the residents. The public notice signs on the sites were only changed a week ago. Most residents are only part time residents and are not in town until they have a long weekend or summer vacation. The home owners only get together once a year at the annual meeting. The topic is mentioned under "Drill Sites" in our annual minutes. The residents do support keeping the sites open space of some kind.

6. The land is still of value to the coastal habitat. Many birds including the Long-billed Curlew come to the sites. They must be after the red ants you find there. How nice to see birds foraging on the natural habitat. During the summer residents spot Horny Toad Lizards. The natural coast isn't what it was 50 years ago but nature's creatures still need open space as well.

In a dream world I would like to see one site put to public use for dogs and children. The other site would be left alone and protected by the community so that the natural habitat of the coast would have the needed open save it needs as well.

Please do not rezone Resource Protected land. It was originally zoned this way for a reason and Francis McGrath felt it was never going to be rezoned and that is why he gifted it away.

Sincerely,

Patricia Hernandez - Einstein

Patricia Hernandez- Einstein
part time resident at
5439 Reef Way
Oxnard, CA. 93035

Written April 12, 2006

Hello my name is Patricia Einstein and 5439 Reef Way is my address. These are my Top 5 Reasons why the Coastal Commission should keep both sites Resource Protected.

1. The Public Notice on the two sites display in big print "POSTONED". Most people in Oxnard don't know this meeting is taking place. I only found out only a few days ago and was concerned because the city is misleading the public by displaying that the original meeting date of November 2005 is still postponed. The residents do care about the sites. A petition to put a park there is evidence that we do care. Many people just don't know this meeting is taking place. (It is difficult to connect with neighbors without a centralized community school or park and the recent cold and wet weather just makes things more difficult to spread the word that this meeting was taking place today.)

2. The Oxnard Coast is undergoing a major increase in it's development and population. We don't have a long term study of what that will do to the natural habitat along the California Coast here in Oxnard when all the development is completed.

*****Oxnard has approved developments such as Northshore, Westport, Seabridge, and the 200 plus homes planned at Beachcomber and Harbor.

*****The shores area itself is increasing in population with more and more homes being built on empty lots but it is not yet at 100 percent of the lots built upon. The houses being built on Mandalay Beach Road create a huge 3 story wall that stands 35 feet tall and the homes inland can only be 2 stories and 27 feet tall. These huge homes are now beginning to put up gates between the houses so the only way to get to the beach is through a few public accesses.

What kind of effect will all this development have on the coastal habitation when it is all completed?

3. Oxnard officials don't play fair when it comes to the Oxnard shores residents. All the other neighborhoods in Oxnard have a neighborhood school and park with play equipment for their children. The shores children are victims of reverse discrimination. Our elementary school is miles away and our children are bussed. Our local park is over a mile away from my home. I need to drive my 3 year old with her bike (she is learning to ride and we don't have sidewalks to practice on) so she rides around the park. But anyway, when I get to my local park, I then have to pay for parking. Most people think our children play on the beach but it is far too dangerous to let kids go to beach on their own. Besides, the beach is usually dirty with tar, twigs and sand fleas.

*****These sites are natural playgrounds for children and they say they have seen some really strange and unique creatures on them.

*****The recommendations of 1:1 mitigation only means that Oxnard will put the money into another area of the city and our children will continue to be neglected.

4. A major reason to keep these sites protected was noted in the summary report, Two Long-billed Curlews (*Numenius americanus*) were observed foraging on one of the sites during the March 2006 visit.

The city of Oxnard had the sites cleared before the Coastal Commission did their study so how do we know for sure that there weren't endangered species or species of concern on them before and if there were they can come back to the open space habitat.

*****The Reef/Breakers Way site habitat consisted of coastal grass and it was destroyed 2 years ago when the streets and ways were repaved. Tons of dirt was placed on the site and all the city vehicles parked there during the six months of road work.

*****The Whitecap lot was cleared about 2 years ago. I walked by the all the time and admired the trees and coastal grass. It was home to many species. For all we know, the Long-billed Curlews (*Numenius americanus*) could have been flourishing on these sites.

I remembered taking a picture of the trees in May of 2001 and although it is from a different angle, you can tell that the site was a thick grouping of trees. I was shocked when the site was all cut back in about spring of 2003. The photos taken a few days ago are evidence that the trees were cut back immensely. Unfortunately, I don't have a picture of the beautiful coastal grass that use to exist on the site.

Give the trees, plants and grass time to grow back naturally, with time more Long-billed Curlews will be found on possibly on both sites.

5. Open space along the coast will be the endangered species in the years to come. There is no urgency to rezone the sites today or in the next 10 years for that matter.

Please keep these lots Resource Protected. Wait for the trees, plants, and grass on the sites to grow back and let the Long-billed Curlews have a chance to breed on these sites.

RECEIVED

APR 26 2006

California Coastal Commission

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Please help save our open space. Our normal way of life is being crushed by the City officials of Oxnard. Cronyism with big developers has eaten up our open space and traffic congestion is getting close to big city LA.

We need public beach access, Parks and less development. Please leave us some open space in the Mandalay Beach area.

Thanks for helping,


Tim Brown

3020 Windward Way
Oxnard, CA. 93035

April 27, 2006

Randy Scuria
5365 Reef Way
Oxnard

RECEIVED
MAY 02 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Calif. Coastal Commission
89 So. Calif. St.
Ventura, Ca

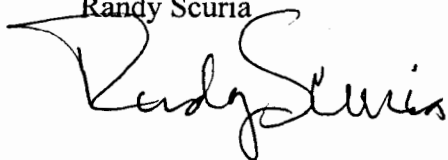
Re. LCP Amendment OXN-MAJ-1-05

I have lived at this address in the "shores" for 18 years and seen its development eat up almost every lot. The 2 empty lots on Reef Way and Wavecrest were supposedly designated as oil drilling easements and if not used for that purpose, were rumored to be left as a park for the community.

The residents of Oxnard shores have no front nor back yards for their kids to occupy their time so having these two unused lots in the neighborhood would offer a perfect site for them to play on.

We are not asking that a park be made here using city or county funding, we would be completely happy with just leaving it as it is now...open.

Thank you for your consideration
Randy Scuria



Re: LCP Amendment OXN - MAY - 1 - 05

May 8, 2006

California Coastal Commission
89 S. California Street, 2nd Floor
Ventura, CA 93001

RECEIVED
MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Commissioners:

We have been an Oxnard Shores homeowners since 1981, living first on Seabreeze Way and now on Reef Way across from the Reef Way lot. We have seen tremendous changes in the neighborhood during these 25 years.

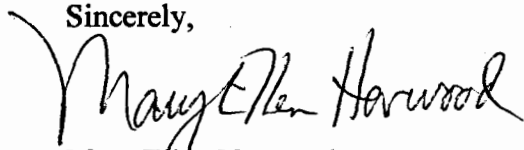
During this time the open spaces and beach accesses have been rapidly disappearing in favor of new construction of high end residential residences. Beachfront now has approximately 5 homes in construction and at least another 2 or 3 in permit stage. The lots which are not beachfront also have seen a huge increase in building not only single family, but also condos and multiple unit housing. This results in more people, more cars, more children, and more pets, all using the same facilities. In the near future we can expect that all currently vacant lots will be built with high end residences.

We believe the best use of the Reef Way lot is to maintain its character as Resource Protection. The lot is a viable location for a small neighborhood park which would be available for children to play, seniors and adults to walk or sit, and for pets to run. It is located at the Harbor Blvd. end of the development, opposite where the beach is located. It is also located at the far end of Oxnard Shores, at the opposite end of where the existing Oxnard State Beach Park is located. This makes an ideal location for a small neighborhood park.

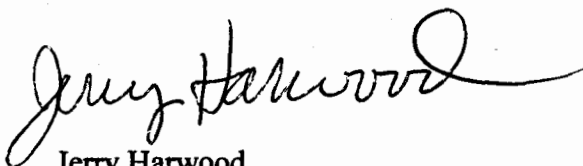
If the zoning is maintained as Resource Protection as its donors intended, the community of Oxnard Shores residents can determine its plan for the future.

Oxnard Shores has been a lovely place to live in a beach community for many many years. We, the residents, would like to keep it accessible with space available for living in harmony with the outdoors which is so beautiful in this Oxnard beach area.

Sincerely,



Mary Ellen Harwood
805-985-9542



Jerry Harwood
805-320-4167

Ric & Mary Hurley

RECEIVED
MAY 08 2006

APRIL 16, 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

CALIFORNIA COASTAL COMMISSION
89 SO. CALIFORNIA ST.
VENTURA, CA 93001

SUBJ: LCP AMENDMENT OXN-MAT-1-05

I LIVE HERE ON REEF WAY FOR
FIFTEEN (15) YEARS. I LIKE THE
OPEN SPACE.

PLEASE LEAVE THE OPEN SPACE
FOR A PLAY GROUND.

THANK YOU,

R. W. Hurley

5427 Reef Way, Oxnard, Calif. 93035

Phone: (805) 985-6729

April 22, 2006

**Dennis Doherty
5249 Reef Way
Oxnard, Ca 93035**

RECEIVED
MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**California Coastal Commission
89 So. California Street 2nd floor
Ventura, CA. 93001**

Regarding LCP Amendment OXN-MAJ-1-05

As a homeowner that lives next to this site, I see everything that goes on here. Children playing ball, residents walking their Pets.

There are a lot of apartment and condo's on the next street over and children should have a place to go and play after school. It would be nice to have a place for the children to play and a sitting park for older residents. Parents would feel a lot safer If their children were playing in a park then down at the beach where there are no life guards.

Oxnard Shores has grown so much in the past five years and every street lot is almost filled with a new homes, and where is The extra parking "there is no parking" when guest come to visit where should they park?

We are in need of "PARKING"

I deeply feel that we should keep some of the land open for our future.

Thank you,

Dennis Doherty



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MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 7, 2006

To: California Coastal Commission
89 So. California St. 2nd Floor
Ventura, CA 93001

Re: LCP Amendment OXN-MAJ-1-05

Dear Sirs:

I am deeply disappointed about the slow disappearance of most of the open land left here at Oxnard Shores. I know for a fact that when it comes to big money and development the residents do not have any say at all.

Why are there plans for the remaining open lots to be rezoned and resold? Can we being longtime residents in the Shores have some vote to this issue?

The reason I moved to this area was because I enjoyed the openness of the neighborhood. Now the area is getting crowded due to monstrous homes being built along Mandalay Road (mind you a large percentage of these are vacant second or third homes).

I think it is about time the Commission does its real job of working for the public and not just for the mighty dollar.

Yours truly,



Mr. & Mrs. Jose David
5151 Wavecrest Way
Oxnard, Ca 93035



- Moisture Meters
- Thermo-Hygrometers
- Infrared Thermometers
- Gas Detection
- Electrical Analyzers
- Borescopes
- Inspection Cameras
- Particle Counters
- Thermal Imaging
- Training & Education

May 4, 2006

RE: Rezoning of Whitecap property in Oxnard Shores

To Whom It May Concern:

We wanted to express our disappointment in hearing of your continued persistence in attempting to rezone the land next to our home.

When we purchased our home five years ago, our real estate agent told us the history of the property north of Whitecap and why it would always be left in its natural, unspoiled state. He assured us, and our neighbors later confirmed, that the land was to remain vacant. Since then both our children and neighbors have enjoyed the safety and unspoiled nature of the property. Considering how tight the homes are in the Shores, the Whitecap property has become a sort of community backyard for many of us.

Since we've lived on Seabreeze, we have also been burdened with the constant drone of new home construction. From trash and debris left behind, to the ever growing HIGH speed traffic that travels on Mandalay Beach Road, the Shores is starting to feel more like a fast growing urban development than the small beach community where we planned to raise our family. It's become very discouraging.

I'm not clear as to exactly what the studies and reports provided, but as a full time resident, I can assure you the constant building year after year is ruining the Shores. It needs to stop. The increased traffic creates unhealthy air, parking problems, increased crime and quite frankly, dangerous conditions for our children.

Please reconsider the motive of the proposed zoning change and its long-term impact on the Shores community and residents. Your decisions in the coming weeks will affect not just our family, but also the families of each generation to follow.

Sincerely,

David and Angela Brown Family
5344 Seabreeze Way
Oxnard CA 93003

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MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

4848 Colt St. #11
Ventura, CA 93003
(800) 895-4916

www.InspectorTools.com

Oxnard Shores PETITION

I am in favor of Open Space. I am opposed
to building on Reef Way and Whitecap Pt 3.
Please maintain R.P. zoning for Resource Protection.

Name

Address

Phone

Email

Barbara Hoyt 5340 Reef Way
PATRICIA Hoad 5360 Reef
Joe Brocato 5354 Reef Way

805 382 1184 bhoxt-ca@yahoo.com
805 901 1234
805 985-2220 Joe Brocato
Netzeru.net

Sandra Velasquez 5306 Reef Way

(805) 512-0863

Joe Reed 5300 Reef Way

805-985-9844

MaryEllen Hamwood 5242 Reef

805-985-8542 melhamwood@usa.net

Joe Hamwood 5242 Reef Way, X

RECEIVED
MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Coastal Law Enforcement Action Network

(CLEAN) enforcing laws protecting the California coast

Marcia Hanscom

Managing Director

a bioregional project of IH-Center

322 Culver Blvd., Suite 317

Playa del Rey, CA 90293

telephone: (310) 821-9045

facsimile: (310) 448-1219

coastallawenforcement@earthlink.net

May 11, 2006

Th 16b

The Honorable Meg Caldwell,
Coastal Commission Chair &
Honorable Coastal Commissioners
California Coastal Commission

hand delivered to CCC hearing/May 11, 2006 – Costa Mesa

re: City of Oxnard Local Coastal Program Amendment 1-05 (Oxnard Shores)
to rezone two parcels from "Resource Protection" to "Single Family Beach"

Dear Commission Chair Caldwell & Commissioners:

We write in strong opposition to the changing of this zoning. If the 1972 citizen ballot initiative that created the California Coastal Act and the California Coastal Commission did nothing more than to continue to protect those resources designated for protection, it would be the minimal that voters who enacted this law expected.

It is beyond understanding how staff can recommend approval of the change of these two parcels from "resource protection" to "single family beach." Only money can be at the heart of this effort, and the money the city expects to make from the sale of these properties to more speculative developers is not sufficient reason to change this zoning.

We have reviewed a document that is a copy of a city council resolution which at one time would have allowed for oil drilling on these sites. In the resolution, it is clearly stated that "subdivision plans designed for the ultimate use of such sites as parks, playgrounds or parking lots on cessation of drilling activity."

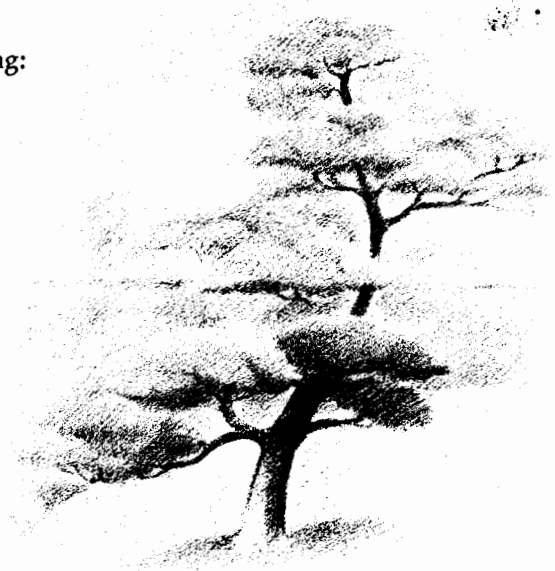
In addition to the clarity of the intention of this document, we understand that the McGrath family donated this land to the City of Oxnard with the intention that these two parcels remain as open space.

We have visited the sites and from that visit have learned the following:

WHITECAP STREET SITE:

The Whitecap Street site is clearly a functioning southern foredune habitat. The characterization that Dudek & Associates offers that "Disturbed southern foredune occupies the majority of the site" is not an accurate characterization.

While iceplant and some other invasive non-native plants exist



California Coastal Commission

Re: Oxnard LCP amendment--zone change request/"resource protection" to "single family beach"

May 11, 2006

Page 2

on the site, the site is filled with much more luxuriant and healthy native sand dune flora and fauna than the staff report suggests.

Native red ant hills exist, which is probably why neighborhood children report that the rare California Horned Lizard exists on the site. A good portion of the site is currently filled with beautiful yellow Beach Primrose and many other dune plants, including numerous plant species that are not mentioned in the staff report.

Just a few of the plant species not mentioned include Dune Goldenbush, Coyote Bush, Pearly Everlasting, a rare Lotus and Popcorn Flower.

The staff report also quotes Impact Sciences as having said that 15% of the site is unvegetated. There is nothing wrong with bare sand in a sand dune habitat. In fact, a natural sand dune habitat is supposed to include unvegetated, bare sand areas. This denotes a healthy ecosystem, not a site overgrown with invasives, like iceplant, which, while on the site, is not as pervasive as the staff report leads one to believe.

Given the state of the site as we observed it earlier this week, this Whitecap Street site has all of the markings of an ESHA. We would ask that an expert in dune ecology be allowed the opportunity to visit the site to assist in identification of the plants missing from the staff report and from reports prepared by consultants from the city. Also a protocol survey needs to be conducted to verify the presence of the rare California Horned Lizard, reported by residents in the area. And if this species is found to exist, ESHA designation must be forthcoming, as well as protective fencing to keep neighborhood cats from decimating the population.

This sand dune site is not as isolated as the staff report purports, in part because of public beach access paths, small as they might be. Even though the City of Oxnard has done its best to wall off the beach from the public with million dollar houses and little space in between, the streets near this site are covered with sand (even though street sweeping signs exist, suggesting street sweeping does occur.) So sand is still blowing through the few spaces to the beach, and this site, being so very close to the beach really does deserve to remain as a natural sand dune, if for no other reason than to demonstrate to the public and to the community the historical natural character of this area.

The Coastal Act does not allow for alteration of natural coastal forms, so the mitigation suggested by staff is not allowed. Additionally, the mitigation site is not coastal foredune, as the Whitecap Street site is. It is an entirely different dune community, as evidenced by a different plant community. So the mitigation suggested would not replace the values lost from the destruction of the Whitecap Street site.

The proposed mitigation site is valuable for the reasons stated in the staff report, and we would ask the Commission that the City of Oxnard be directed to fence off the site for the sake of the

California Coastal Commission

Re: Oxnard LCP amendment--zone change request/"resource protection" to "single family beach"

May 11, 2006

Page 3

rare Silvery Legless Lizards without regard to any proposed mitigation scheme. It is their responsibility to protect these rare animals without destruction of additional sand dune areas.

BREAKERS WAY SITE:

The Breakers Way site may be in need of enforcement action from staff or from a citizen public interest group. This site, according to reports from numerous neighbors in the area, looked much like the Whitecap Street site, until two years ago when the City removed all of the major vegetation and altered the sand dune topography with bulldozers. It would seem that this action ought not to have been completed without the LCP amendment before the Commission today being approved and a coastal development permit being issued to alter the natural landforms and to remove major vegetation.

Our preference would be for enforcement action to be taken and for the site to be restored to its natural sand dune character, much like the Newport Beach residents who destroyed coastal dunes without a permit were required to do recently by this Commission.

The neighborhood would like at the very least for this site to remain as open space and to have some local park space for residents to use, as seemingly contemplated by the original McGrath donation of the property.

Clearly, this site currently is not functioning in an ecological manner, however, it seems that this is by design by the City of Oxnard. If no CDP exists for this habitat destruction and land form alteration, then enforcement action must take precedence of the proposed change in zoning requested today.

The beautiful coastal dunes of Oxnard are slowly being eroded away by actions of the City and the Coastal Commission. The line in the sand must be drawn here if the remnant dune populations of this lovely stretch of coastline are to remain. Please draw the line today and deny this request for zoning change.

With best regards,



Marcia Hanscom

Managing Director

CLEAN ~

Coastal Law Enforcement Action Network

enforcing laws protecting the California coast

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JUN 22 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

3830 San Simeon Ave.
Oxnard, CA 93033
June 12, 2006

California Coastal Commission
89 S. California St., 2nd Floor
Ventura, CA 93001

Members of the Commission:

RE: LCP Amendment OXN-MAJ-1-05

I am writing to ask that you continue to support preserving the Resource Protected lots on Reef Way and Whitecap at Oxnard Shores in Oxnard. These lots are in the Coastal Zone. The City of Oxnard wants to rezone these lots for residential development and sell the property to a developer to build housing.

It would be a mistake to loose these lots which could provide much needed open space/ parkland in this densely developed area. Part of one of the lots could also provide badly needed public parking. Public access to the beach at Oxnard Shores is greatly limited by the lack of public parking for those who want to visit the beach.

I am an Oxnard neighborhood council chairperson, and I also chair a local community group that is working to improve Oxnard. As such, I watch all the Oxnard City Council meetings. I have seen several staff reports presented to the Council regarding the sale of these two lots. The City is not selling the lots because of planning or land use issues. The sole reason for the sale is that the City needs the money from the sale to finance other projects in the City that are not in the coastal zone.

Sincerely,



Shirley Godwin

California Coastal Commission
89 So. California St. 2nd Floor
Ventura, California 93001

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APR 26 2006

April 19, 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: LCP AMENDMENT OXN-MAJ-1-05

Sirs:

I believe that turning land that had, to my knowledge, been deemed a 99 year oil lease over to developers to build houses and take away precious open land is absolutely abominable.

There are already several developments on the east side of the Harbor that are in the works and there is no way of knowing how that will impact the Oxnard Shores Area. The Shores area is already crowded and parking difficult. I understand that there is consideration for condos to be built on the north side of Fifth Street, east of Harbor Blvd. This was my reference in the first line of this paragraph. Those sand dunes were used by people to hike, walk dogs, and enjoy. What a terrible shame to have that go. Is this whole area to be turned into a STRIP MALL???? There is a bird sanctuary just across from this area. Will that be up for grabs as well ??? The city of Oxnard is not notifying the neighborhood to what is going on. This is a SHAME.

I am seriously considering moving to Ventura, I built my home here, in the Shores in the late 70's. I never thought I would move away. Before building my home I lived on both Silver Strand and Hollywood Beach and have been a part business owner of an eating establishment. I have always loved this area and it is heart breaking to me to consider this move, but living here is no longer tenable.

Over sprawl - no room to BREATHE. And forget about parking. At least the people of the city of Ventura have the good sense to stop urban sprawl and save their hillsides. The beach area, the shores, the natural beauty of this area has, for years, slowly been taken away. NOW we have one small piece of land that is sorely needed as an open space, left as is, OR if that isn't possible, at least make it into a park area to be enjoyed by many people.

I can remember when there were young families here who used it for Easter egg hunts, teens putting up backdrops for skateboarding, sandlot baseball games dogs, chasing frisbees owners would throw for them.

This area has relatively little crime. In the thirty years I have lived in my home and have left my home unlocked at night, only locking up totally when I have gone away for more than a day. nothing has ever been stolen, What will happen when the area is over developed?

This community NEEDS an open space be it natural or if MANKIND MUST turn it

into something else, the green area would be beautiful and a place to give some semblance of respite and joy from the work a day world. There is NO view of the ocean save oceanfront. Houses are being built so close together you can reach out and shake hands with your neighbors leaning out from your respective windows. I personally look out one window of my home and see wood, the other window and see stucco. I can't see my neighbors down the street from my driveway, I can't see the sky even from those two windows sitting at my dining room table, No sunsets, NOTHING . EXCEPT that lovely open space behind me and now greedy developers (perhaps politicians, too???) want to destroy that as well for the almighty dollar.

Most residents at the shores and on the beach have NO FRONT OR BACK YARDS. Houses too close together totally destroy "good neighbor feelings".

There are too few public accesses to the beach. Why should it be so hard to enjoy what people came here for - clean air, the wonderful smell of the ocean, the breezes The feeling of well being. Years ago when the teens surfed (and still do) there were signs saying Southies GO HOME I thought that was a rather harsh, rude thing to do and say. Maybe they weren't wrong.

Again, to recap:

PLEASE don't build anything on the land that had been designated as a 99 year oil lease. Residents need a park area and open space. There will soon be NO OPEN SPACE FOR ANYONE to enjoy, visitors will be turned away because of lack of space to enjoy. There is little or no parking, The city decides to let building go on and after THEIR decisions are made and its a "done deal" so to speak, or so it seems, THEN maybe the people who are affected by these decisions MAY or may not be notified in a timely fashion if at all.

PLEASE LEAVE THIS LAND BE. There IS building going on on the other side of the harbor. Let us have this relatively small piece of land to enjoy. Please leave the dunes for people to enjoy as well.

A resident of 30 some years at the Shores, possibly soon to be resident of the City of Ventura.



Alene LaDelle Brown
5254 Sea Breeze Way
Oxnard, Calif. 93035

RECEIVED
JUN 15 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 South California Street 2nd Floor
Ventura, CA 93001

In re: LCP Amendment OXN-MAJ-1-05

Dear Commissioners:

I am writing about the proposal to develop 2 lots near the beach in Oxnard. One lot, the Reef Way site, has been severely degraded by gravel dumped by the City of Oxnard when they resurfaced the nearby streets. Heavy equipment was parked on what is zoned a Resource Protected site. We are not aware that any necessary permits were obtained by the City of Oxnard when this degradation and destruction occurred.

Oxnard is severely under parked. We have far too many people and far too little parkland. This is evident every weekend when parks are over crowded. There is an obvious need for more parkland. These two lots will provide not just open space, but they are also areas that can be restored to their natural state and used as educational outdoor classrooms. Before development, this area had natural dunes and provided habitat for many birds, lizards and plants. Most of the beach areas in California have been developed and cannot be restored. These two areas provide a wonderful opportunity to preserve, restore and use a rare resource.

I would like to add my voice to the many asking that these areas be saved from development and used as open space and outdoor classrooms.

Sincerely,



Nancy Pedersen
514 East Kamala Street
Oxnard, CA 93033

805-486-9146

June 2, 2006

Dear Sirs:

Regarding the property located between Reef Way and White Canyon Oxnard. This land was left to the City of Oxnard in Mr McGrath's Will after the death of his grandson. He stipulated it was to be "FOR PUBLIC USE" only. When did the City break the law ignoring or deleting that "Clause" of his WILL "FOR PUBLIC USE ONLY" ??

Our little city is so badly developed we are so crowded in with such small size lots. We need some buffer zones (LIKE APTOS) ^{BECAUSE OF} ~~between~~ our increasing over developing. Why not keep it the land for "public use"? That small area for a little space for a park for Children and people?

In my own "COLEMAN FAMILY" my great grandfather in his "WILL OF 1890" left his

estate to "PROSPECT HILL SCHOOL" now "STONELEIGH
BURNHAM" GREENFIELD MA. and a fund invested
for perpetual care of a cemetery of family
and friends. No one ever dared to not
carry out that or those stipulations of
his will. That would be breaking the
law!!

So no one should be changing
"McGrath's Will" and sub-dividing
for more developing. Money Money
is constantly being taken for Taxes
and more Taxes!

Respectfully,
Adele G. Lee

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JUN 05 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 So. California St. 2nd Floor
Ventura, Ca 93001

RECEIVED
JUN 05 2006

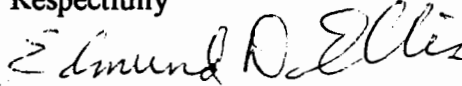
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Regarding LCP Amendment OXN-MAJ-1-05. I am an Oxnard Calif. Citizen and a Member of the Oxnard Saviers Road Design Team and would like to add my voice in Protest to the rezoning and sale of Reef Way and Whitecap.

I recommend a traffic study of the area before proceeding any further with this project. The community would like to see sites protected and restored to natural sand dunes areas.

At present existing housing is already blocking view of the beach and if more housing Are built, it will only add to the over crowding in this area.

Respectfully



Edmund D. Ellis
515 De Anza Way
Oxnard, CA 93033

RECEIVED

JUN 16 2006

Dear Coastal Commission,

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

June 10, 2006

My name is Connor and I live on Reef Way. I am 9 years old. A couple of years ago, the lot at the end of Reef Way was full of tall grass and animals. One day I came home from school and it was bull-dozed down. I was really sad and angry. Please put it back the way it was and don't build anything there. I want to play there and look for all of the animals again like I used to.

From,

Connor Carinio

Connor Carinio

5418 Reef Way

Oxnard, Ca 93035

RECEIVED
JUN 16 2006

California Coastal Commission, CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT June 4, 2006

I am writing this letter to you as a concerned citizen of Oxnard and The Shores community regarding the rezoning and selling of the lots located on both Reef Way and Whitecap. I have been a resident on Reef Way a mere 14 years and love it tremendously. I have also seen many changes. I came home one day and was horrified and shocked to see the Reef Way lot bull-dozed, grated, graveled and full of machinery and equipment in a fenced area. I was stunned to find out the city had done this. Even more so when I found out they had done it illegally.

Living at the beach has it's many benefits, fresh air and walks on the beach. However, there is less and less access to the beach and places to walk. I would like to see the sites mentioned, to be restored to their natural sand dune and wildlife habitat.

Let's save the lots. Let's restore them to their natural state and leave something for us to enjoy here in Oxnard. This site is a Resource Protected area.

Thank you for your attention to this matter.

Kelly Carinio
5418 Reef Way
Oxnard, CA 93035

S.O.S.-Save Open Space!

June 4, 2006

Hello, my name is Sarah Carinio. I am 11 years old and I live on Reef Way. I know, you guys are trying to build more and more houses on the lots, which are supposedly not used. I understand money, money, money. Isn't it crowded enough? But, if you guys look back you bulldozed the land off about 1 or 2 years ago leaving us with an empty lot. Now we need to make use of that lot...not building houses though. There used to be dunes so we could take walks in it and hide behind the sand. It was really fun. We still have other things to do since you took that away. Now people play with their dogs there and have a really fun time. But, it's not the only thing we do there. A lot of the times there are kids playing there with baseballs, Frisbees and many other things. That lot is really important to me. There used to be wild life there! But not after you killed everything off. It isn't fair that we don't have say in this. How about we make it a park or a little corner store. It can be very useful. How many houses do we have on our street? Many of them. Not everything has to be a home for people...why can't there be a home for the animals? If you put more homes there not many people will be very happy. A. It's very crowded. B. You won't get much privacy. And C. It isn't worth living at the beach (in which you can't really see). The lot can be used for a better reason. Why waste so much money on building homes if you can use less money for something as great as restoring it back to its natural habitat.. So I hope you really read this letter and found out what this lot could really be. Thank you. Make a good decision for the environment and the people around and in it.

Sincerely,

Sarah Carinio
Concerned resident

RECEIVED
JUN 16 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: LCP Amendment OXN-MAJ-1-05

PETITION TO SAVE OPEN SPACE IN THE OXNARD SHORES AND

MANDALAY SHORES COMMUNITY

June 10, 2006

RECEIVED
JUN 29 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

I am in favor of Open Space in Oxnard Shores. I am opposed to building on the Whitecap and the Breakers Way/Reef Way lots. Please maintain RP zoning for Resource Protection as was intended by the donors of the land.

Name	Address	Phone	Email
------	---------	-------	-------

MaryEllen Howard	5242 Reef Way	985-9542	mehoward@vsa.net
Sylvia Aguil	4000 Pearson Rd	805 5028	
Miguel Lopez	715 Pearson Rd	890 4214	
Janice Sirote	3020 Amalfi	(805) 984 3043	
David Luna	845 Dunes	805 215-0000	
Arthur Heller	107 Fern	654 1245	
WV SPEAR	777 E CI	805-247-0809	
Norma Hernandez	5230 Driftwood	805 815 8771	
Dekker Goodchild	5160 West Woodway Rd	805 815-3254	
Chelene Middleton	3600 N. Harbor Blvd #144	805-340-6889	
Heidi Zark	3600 S. Harbor Blvd	805 758 1731	
Levi Beesbill	5220 BEACHCOMBER ST		
Kevin & Cecilia Murphy	5006 Marlinway	985-9584	

JAY AND CAROL VAUGHN
5344 DRIFTWOOD STREET
OXNARD, CA 93035
805-985-1406

RECEIVED
JUL 11 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 7, 2006

California Coastal Commission
89 S. California St 2nd Floor
Ventura, CA 93001

RE: LCP Amendment OXN-MAJ-1-05

WE DO NOT WANT TO SEE THE TWO SITES REZONED!!!!!!!!!!!!!!!!!!!!!!

Dear Commissioners:

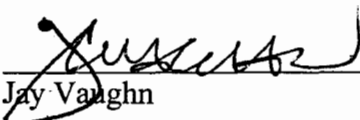
Oxnard Shores is a beach community that has grown and is already scheduled to grow BEYOND ITS CAPACITY in recent years. Here at the north end, there are no parks available to the growing families with young children. The neighborhood is extremely dense and the beach is not visible and is becoming harder to access. The broken glass and driftwood make playing on the beach a danger for the children of our community. What they need is a park or natural dune habitat in these two sites, not more houses.

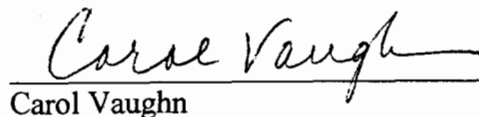
The McGrath Family gave these sites to the City of Oxnard for Open Purposes only and their request should be honored, not disregarded for purposes of financial gain and greed. Our community would like to see the sites protected and restored to their natural sand dune state, or turned into small green parks.

There are more than 2500 residences under construction in our area and traffic is already an issue which continues to go unaddressed. This beach community is already extremely crowded and parking is difficult. The community was designed in 1960 and many homes only have parking for one car. The residents who live on the ways only have a small driveway and there is almost no curbside parking. Adding more residences will only add to the growing problems of overcrowding facing our residents.

Please do NOT allow these sites to be developed into residences. Please protect our environment and give back to the current homeowners the gift long proposed by the original owners of this land. Give our children a safe place to play.

Sincerely,


Jay Vaughn


Carol Vaughn

California Coastal Commission
89 So. California St., 2nd Floor
Ventura, CA 93001

RECEIVED
JUL 11 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Coastal Commission,

I am writing in Regarding LCP Amendment OXN-MAJ-1-05.

I do not want to see the two sites rezoned.

This beach community is crowded and parking is already difficult. The community was designed in 1960 and many homes only have parking of one car. The residents who live on the ways only have a small drive way to park on and the neighborhood was designed with very little curbside parking. The public who come to this beach have extremely limited parking.

The neighborhood is extremely dense and we no longer can see the beach and there are only a few small public accesses.

The community would like to see the sites protected and restored to natural sand dune areas. The community can restore the two sites. These sites will become outdoor classrooms for people to learn about native sand-dune plants.

Please do not rezone Coastal Resource Protected land. The McGrath family gave these sites to City of Oxnard for Open Purposes Only and they should be kept that way.

Thank you,

John & Patricia Ochoa
5209 Surfrider Way
Oxn. Ca. 93035

The following letter was submitted along
with identical letters from 172 other parties.

California Coastal Commission
89 So. California St., 2nd Floor
Ventura, CA 93001

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JUL 24 2008

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Coastal Commission,

I am writing in Regarding LCP Amendment OXN-MAJ-1-05.

I am opposed to seeing the two sites rezoned.

This beach community is crowded and parking is already difficult. The community was designed in 1960 and many homes only have parking of one car. The residents who live on the ways only have a small drive way to park on and the neighborhood was designed with very little curbside parking. The public who come to this beach have extremely limited parking.

The neighborhood is extremely dense and we no longer can see the beach and there are only a few small public accesses.

The community would like to see the sites protected and restored to natural sand dune areas. The community can restore the two sites. These sites will become outdoor classrooms for people to learn about native sand dune plants. We want to protect species of concern.

Please do not rezone Coastal Resource Protected land. The McGrath family gave these sites to City of Oxnard for Open Purposes Only and they should be kept that way.

Thank you,

Diane Wherland
4501 W. Channel Is. Blvd
Oxnard Ca, 93035

Law Offices of
DEIRDRE FRANK
A Professional Corporation

1280 South Victoria Avenue, Suite 200
Ventura, California 93003
(805) 650-1200 (805) 988-8833

Deirdre Barkley Frank
Jill A. Singer

Sandra C. Vigil, Paralegal

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 5, 2006

California Coastal Commission
89. S. California Street 2nd Floor
Ventura, CA 93001

Re: Oxnard Amendment to LCP Thursday Item 16B OXN-MAJ-1-05

Dear Commissioners:

We are not a "handful" of opponents to these amendments. We have been debating and fighting with the city for years over these parcels. A group of us sued the city, spending thousands of dollars and expending a lot of time. We lost the court case but continue to believe that these parcels were intended to remain open, to relieve the congestion that was anticipated when the original annexation was done in 1958-1959.

Enclosed are the historical documents not provided to you by the city.

Were we, the residents who moved, built and live in Oxnard Shores misled? Were we entitled to rely on maps when we purchased our land? Did we detrimentally rely on representations made concerning the past and future use of these drill sites? Yes.

On February 11, 1958 the City of Oxnard passed Resolution 1939 permitting the City to accept and consent to deeds or grants conveying to the City of Oxnard any interest in or easements upon real estate for public purposes.

In July, 1958, in preparation for the Petition for Annexation, Resolution 2162 was passed by the Oxnard City Council. (Exhibit 1) It states "...and the size and shape of said drill sites #1 and 2 have BEEN SELECTED AND SUBDIVISION PLANS DESIGNED FOR THE ULTIMATE USE OF SUCH SITES AS PARKS, PLAYGROUNDS OR PARKING LOTS on cessation of drilling activity. . ."

The original December 9, 1958 contract (EXHIBIT 2) which discussed these lots says the City would get title after certain things were done. Attached to the contract was an exemplar deed, Exhibit B to the contract. That exemplar states that title was to be held by Title Insurance and Trust Company, as Trustee for the City of Oxnard, a Municipal Corporation, FOR PUBLIC PLAYGROUND AND RECREATIONAL PURPOSES AND ALL PURPOSES INCIDENTAL THERETO AND PUBLIC PARKING PURPOSES. (EXHIBIT 3).

On February 27, 1959, a Trust Agreement was entered into between the City of Oxnard and the Trustors McGrath. (EXHIBIT 4) That agreement references the December 9, 1958 contract and then states, "...the Trustors desire to execute a Grant Deed in favor of the Trustee herein, in and to certain real properties described in said deed, a copy of which is attached hereto and marked Exhibit "B", and by reference thereto made a part hereof as if fully set forth herein". This is the deed to the Title Insurance and Trust Company to hold as trustee for the City. This deed attached to this trust agreement did not follow the exemplar deed attached to the December 9, 1958 contract BUT it DID incorporate the contract itself by indicating drilling rights will cease "at such time as title to the property passes to the City of Oxnard pursuant to contract between the City, the Grantors hereof, and the Oxnard Shores Development Co. with respect to the aforesaid described real property, WHICH CONTRACT IS ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF OXNARD".

The Trustee transferred title to the City in 1995.

In 1996, the City declared the property surplus. NOTE that there was NO NOTICE of this to anyone in the Shores. The notice was published in LA VIDA, a Spanish newspaper.

In 1998, the City attempted to rezone and approve tentative tract maps in order to sell the sites as a complete package to developers. The residents outcry filled the city council chambers. None of those minutes or written communications have been provided to you by the City so I enclose the January 26, 1999 minutes of the City Council meeting as EXHIBIT 5. Note the reference to Dorothy Maron who was a former member of the City Council and stated that she recalled the Council indicating these sites would be parks during her tenure. Her exact comments were omitted from the minutes.

The matter was tabled.

In February, 2003, a representative group of residents sued the City to reform the deeds and to finally get to the bottom of the legalities involving these sites. The ruling was against us and to be complete, I enclose a copy of the Decision by Judge Hutchings for your review. (Exhibit 6).

This rezoning is not similar to the rezoning of the Seahorse property as City represents. That site was never considered one of the "drill sites" thought to be reserved for park space. Drill sites 1 and 2 were the only sites referenced in any documents referring to park land.

Thank you very much for your consideration of these important issues.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Deirdre Frank". The signature is written in dark ink and is positioned above the printed name.

DEIRDRE FRANK

1

RESOLUTION NO. 442

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD GRANTING A VARIANCE AND A DRILLING PERMIT TO THE STANDARD OIL COMPANY OF CALIFORNIA FOR THE EXPLORATION, DRILLING AND PRODUCTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES ON SITES WEST OF McGRATH ROAD AND SOUTH OF WEST FIFTH STREET, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Standard Oil Company of California has requested a Variance and a Drilling Permit for use of drilling sites, located south of West Fifth Street and west of McGrath Road within the City limits of Oxnard, to explore, drill into and produce oil, gas and other hydrocarbon substances from Drilling Districts # 7 and # 8, as established by Ordinance 445 of the City of Oxnard, and from unincorporated areas adjacent thereto; and

WHEREAS, the lands embraced in the above request, being a part of lands recently annexed to the City of Oxnard, are located westerly of the City of Oxnard as its boundary existed prior to such annexation and are far removed from the area of the City described in Section 8191 of the Oxnard Ordinance Code; and

WHEREAS, the ownership of the mineral estate of all of the lands (except scattered parcels aggregating approximately 1 acre, more or less) included within the said request and all of the lands adjacent thereto (excluding tidelands) and within an excess of 1,000 feet of the exterior boundaries of the subject Districts are the same; and

WHEREAS, the conditions incorporated in the County of Ventura land use permits #472 and #602 for drilling on such adjacent lands are comparable to those hereinafter provided for the subject district, and the shape of the area as annexed is an exceptionally unusual circumstance; and

WHEREAS, no residence exists at present within 2,000 feet of the proposed district (or districts) and the size and shape of said drill sites #1 and 2 have been selected and subdivision plans designed for the ultimate use of such sites as parks, playgrounds or parking lots on cessation of drilling activity; and

WHEREAS, the drill sites which are the subject of said request are necessary to the recovery of oil, gas and other hydrocarbons from beneath the land included within the aforesaid drilling districts and contrary to the situation with other land similarly situated, it appears that oil, gas and other

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SOUTH CENTRAL COAST DISTRICT

EX1

hydrocarbons beneath said drilling districts could not be recovered by slant drilling from the eastern or southern areas of the City and that to withhold permission to use said drill sites would result in unnecessarily severe hardship to the owners of minerals within said drilling districts and would be inconsistent with the general purpose of the zoning laws of the City, and it is necessary in order to insure the spirit and purpose of the zoning law will be observed, the public safety and welfare secured and substantial justice done, that the variance and permit requested be granted; and

WHEREAS, it appears possible that portions of the oil, gas and other hydrocarbons underlying said drilling districts might be recovered from wells drilled into said districts from sites outside the City, and that in the event such recovery proved practical, possible future residential use of the land within said districts could best be protected by permitting drilling from outside the City into said districts, and that the location of said districts close to the shoreline of the Pacific Ocean and almost entirely bounded by territory outside the limits of the City of Oxnard are exceptionally unusual circumstances, and it is determined that the public health, comfort, safety, welfare and property values within the City will best be protected by also granting said petition in respect to the subsurface drilling from surface sites outside the City for which permission is requested; and

WHEREAS, the City Council has determined that the granting of this permit and variance will not result in material damage or prejudice to other property in the same zone and vicinity and will not adversely affect the Master Plan of the City; and

WHEREAS, the City Council has carefully studied said application and finds the granting of said Variance and Drilling Permit to be in accordance with the best interests of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES HEREBY RESOLVE that said Variance and Drilling Permit be granted, subject to the following conditions:

1. All standard conditions for establishment of a drilling district, as set forth under Section 8191.32 of the Oxnard Ordinance Code except as modified by this permit and variance. The controlled drilling sites established hereunder shall be of the size and location designated on the attached map, marked Exhibit "1" and by this reference made a part hereof.

2. Surface drilling and production operations of the wells hereby permitted, including all equipment and other appurtenances accessory thereto, shall be limited to three drilling sites located as described herein:

Drilling Site Number 1: (Herein insert description of site shown on Exhibit C)

See description of site incorporated in Ordinance 615.

Drilling Site Number 2: (Herein insert description of site shown on Exhibit C)

See description of site incorporated in Ordinance 615.

Drilling Site Number 3: (Herein insert description of site shown on Exhibit C)

See description of site incorporated in Ordinance 615.

No surface drilling or production equipment or appurtenances accessory thereto shall be outside of said drilling sites. Upon a particular well being placed on production, the permittee shall file with the City Clerk a town lot map verified by the permittee or a responsible official thereof, showing location of the production interval and route of the well between said interval and the particular controlled drilling site. All wells passing through or bottomed under residential or commercial zones shall be below a depth of 500 feet.

3. All operations within the City shall be conducted in accordance with good and safe town lot oil drilling and production practices and in accordance with applicable governmental regulations.

4. A City building permit shall be secured for any permanent or temporary structure to be used in connection with the production of oil and constructed on the controlled drilling site, which structure shall conform to the City Building Code. A drilling permit shall not be construed to authorize any use requiring a special use permit under the Oxnard Ordinance Code, other than drilling for and production only of oil, gas and other hydrocarbon substances. Refineries, dehydration plants, absorption plants, tank farms and other uses not necessary to the production, cleaning and shipping of oil at the well head shall not be considered authorized by the drilling permit.

5. The entire controlled drilling site shall be adequately landscaped except for those portions occupied by any required structure, appurtenance or driveway, and all such landscaping shall be maintained in good condition at

all times. Plans showing the type and extent of such landscaping shall be first submitted to and approved by the City Council. Except for the derrick and temporary tanks above eight feet all machinery, tools, pipe and other equipment used in connection with any drilling operations shall be screened from view, and all drilling operations shall be conducted or carried on behind an eight foot solid fence, which shall be painted or stained so as to render such fence as unobtrusive as practicable and shall be maintained in good condition at all times. The requirements of conditions five shall not become effective until such time as required by the City Council.

6. No oil, gas or other hydrocarbon substances may be produced from any well hereby permitted unless all equipment necessarily incident to such production is either screened from view or countersunk. A plot plan showing the type and extent of such screening shall be subject to the approval of the City Council. Electrical power only shall be utilized in all pumping and production operations, which power shall not be generated on the controlled drilling site. Production shall be by the gas lift or hydraulic method or other approved methods when the hydraulic method is not practicable, such other methods to be to the reasonable satisfaction of the Director of Public Works.

7. Unless authorized by a special use permit as set forth above, there shall be no tanks or other facilities for the storage of oil erected or maintained on the premises, except closed gauging and shipping tanks. All oil produced shall be transported from the well by means of an underground pipe line without venting products to the atmospheric pressure at the production site, except when venting is necessary in the interest of safety.

8. Sumps for cuttings and drilling mud from wells on the particular drilling site shall be permitted on the drill site provided that (a) such sumps are enclosed within the eight foot fence referred to in paragraph 5 above, (b) no obnoxious odors result therefrom, and (c) such sumps are removed and the soil restored to natural condition and level within sixty days from placing said well on production or abandonment thereof. No other earthen sump shall be used within the District, and all waste water, oil or any other waste products from the drilling operations shall be accumulated in steel tanks. Such steel tanks or sumps shall not be permitted to overflow at any time. Such tanks or the waste material therein shall be hauled away from the drilling site for the disposal at any

approved waste disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.

9. This permit shall automatically terminate when drilling and production operations have ceased for a consecutive period of six months and the City of Oxnard has acquired title to said Drilling Sites Nos. 1 and 2 pursuant to contract between the City and the Thomas Francis McGrath Trusts A and B, et al., dated December 7, 1955. Upon expiration of the drilling permit or the abandonment of any well or other facility, the premises shall be restored by the applicant to the conditions existing prior to the issuance of said permit, as nearly as practicable so to do.

10. All operations under the permit shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4, the State of California, and the Federal Government. The water supply of the City of Oxnard shall not be wasted, polluted or contaminated by any operations of the permittee or his successors in interest. During drilling and production and upon abandonment of each well, effective means shall be used to prevent vertical movement of ground water.

11. All installations of whatever kind or nature and the maintenance thereof shall meet all reasonable requirements of the Chief of the Oxnard Fire Department not inconsistent herewith. Permittee shall at all times use extreme caution to prevent the occurrence of fire, explosion and blow-out of wells. Permittee, shall install and maintain in good condition the most modern and effective equipment in general use in the oil industry for the prevention, control, and extinction of fire, explosion and blow-out of wells.

12. All drilling and production equipment used shall be so constructed and operated that no noise, vibration, dust, odor or other harmful or annoying substances or effect which can be eliminated or diminished by the use of reasonable care shall be permitted to result from drilling or production operations carried on at any drilling site or from anything incident thereto to the injury or annoyance of persons in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in methods of drilling and production shall be adopted as they, from time to time become available if capable of reducing factors of nuisance or annoyance.

13. If at the time of commencement of drilling operations, any occupied residential or commercial structure is at any time located within 500 feet of any well, any derrick used in connection with the drilling of said well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and soundproofing material to the extent that the same may be accomplished without unduly interfering with the functioning thereof. Once commenced, drilling operations shall be prosecuted with reasonable diligence to completion or abandonment of the well.

14. Within sixty (60) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the City Council for the drilling of another well on the premises.

15. At all reasonable times, City officials shall be permitted to review and inspect the controlled drilling site and the methods used in the drilling and production operations and disposal of waste. Records of the permittee relating to operations conducted under this permit shall be open to inspection by the City Assessor.

16. All vehicles of the permittee in excess of three tons shall be restricted to the use of the following public roads, now or hereafter located in the City of Oxnard, in connection with this permit: Highway 101 north of Gonzales Road or south of Pleasant Valley Road, Gonzales Road, Beach Road, Ventura Road, Fifth Street west of Ventura Road, Pleasant Valley Road, Hueneme Road, McGrath Road, and roads abutting the controlled drilling sites. The permittee shall repair all damage to City roads caused by his operations. This permit shall not be construed to restrict applicant in the use of County Roads.

17. Upon issuance of a drilling permit and prior to drilling operations thereunder, the permittee shall provide and file with the City Council a bond issued by a company authorized to do business in the State of California, conditioned upon the faithful performance of each and every condition set forth in the permit. Said bond shall be maintained constantly until released by the City Council or this permit expires. The amount of the bond shall be \$50,000.00 for each controlled drilling site. The surface of the roads to be used are to be examined prior to use in connection with the permit and an additional bond in

the amount of \$25,000 for each controlled drilling site, made payable to the governmental agency having jurisdiction, shall be posted guaranteeing the repair of all damage caused by oil and gas operations. No extension of time that may be granted or any change of specifications or requirements that may be approved or required by any officer or department of this City or any other alterations, modification or waiver affecting any of the obligations of the permittee made by any City authority or by any other power or authority whatsoever shall be deemed to exonerate either the permittee or the surety on any bond posted pursuant to this requirement. The provisions of this paragraph shall not apply to wells existing at time of issuance of this permit, but shall be effective at such time as additional wells are drilled on the particular controlled drill site.

18. Written notice to the City Manager of transfer of interest of the permittee is required within thirty days of such transfer. Prior to commencement of operations by a transferee, the transferee shall post the required bonds and agree in writing to comply with all provisions of this ordinance and the drilling permit issued thereunder. If said notice, agreement and bonds are not filed, the drilling permit shall be automatically suspended until such time as said documents are filed.

19. By signature herebelow, permittee agrees on behalf of himself and his successors and assigns, to comply with all applicable terms and conditions of the Oxnard Ordinance Code as of the date hereof, as modified by this variance and permit, and all conditions prescribed in this drilling permit.

20. The permittee shall hold the City of Oxnard and all officers and employees thereof harmless against any claims of third parties for bodily injury or death and claims for property damage resulting from permittee's operations within the City under this permit.

Any permittee must at all times be insured to the extent of One Hundred Thousand Dollars (\$100,000) against liability in tort arising from drilling or production, or activities or operations incident thereto, conducted or carried on under or by virtue of the conditions prescribed in the drilling permit. The policy of insurance issued pursuant hereto shall be subject to the approval of the City Attorney, and duplicates shall be furnished to him. Each such policy shall be conditioned or endorsed to cover such agents, lessees or representatives of the permittee as may actually conduct drilling, production or incidental

operations permitted by such drilling permit. The provisions of this paragraph of condition 20 shall not apply to wells existing at the time of issuance of this permit, but shall be effective at such time as additional wells are drilled on the particular drill site.

21. This permit is subject to cancellation or suspension as set forth in Section 8191.6 of the Oxnard Ordinance Code.

22. If any occupied residential structure is at any time located within 500 feet of the drilling site, no materials, equipment, tools or pipe used for either drilling or production operations shall be delivered to or removed from the controlled drilling site except between the hours of 6:00 A.M. and 8:00 P.M. on any one day, except in case of emergency incidental to unforeseen drilling or production operations.

23. An internal combustion engine or electrical equipment may be used in the drilling operation of the wells, and if an internal combustion engine is used, mufflers shall be installed on the mud pumps and engine so as to reduce noise to a minimum, all of said installations to be done in a manner satisfactory to the Fire Chief. The requirements of condition 23 shall not become effective until such time as required by the City Council.

24. While this permit is issued to Standard Oil Company of California, in event that Standard surrenders its lease to the mineral owners, said owners or the Lessees of said owners shall be deemed the successor-transferee for the purposes of this permit, providing that said owners or said Lessees of owners comply with the terms of condition 18 above.

AND IT IS FURTHER RESOLVED that a variance to Oxnard Ordinance Code Section 8191.23 is hereby granted to permit drilling into or through and production from Drilling District #7 from drill sites located outside the City, provided operations of permittee in connection with such drill sites comply with all the conditions of this Resolution, except Condition 4 and the first two sentences of Condition 2.

Passed and adopted this 21st day of July, 1958, *in and to the effect that the City Council of Oxnard, California, do hereby resolve and Standard Oil Company of California, its successors and assigns, be and lawfully be authorized to*

CARL E. WARD, Mayor

ATTEST: ETHEL DALE, City Clerk

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THIS AGREEMENT, made and entered into as of this 9TH day of DECEMBER, 1958, by and between CITY OF OXNARD, a municipal corporation, hereinafter sometimes referred to as "City" and John Francis McGrath and Thomas Francis McGrath, Jr., as Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath deceased, and Oxnard Shores Development Co., a partnership, hereinafter sometimes referred to as "Owners,"

W I T N E S S E T H:

1. That said Owners desire to petition for annexation to the City of Oxnard of the property shown on the attached map, (designated Exhibit "A"), in order that the Subdivision (shown in red on said map) can receive municipal services, providing, however, the Owners can be assured of certain matters pertaining to the use of said property after annexation.

2. That in order to assure themselves that the City will take necessary steps to enable the owners to use the property in the manner desired, as set forth herein, the Owners concurrently deliver herewith to the Title Insurance and Trust Company as Trustee a Grant Deed in the form of Exhibit "B" attached hereto, of the property described in the attached permit as drilling sites Nos. 1 and 2. A trust indenture shall be entered into by and between the Owners herein, as Trustors, and the Title Insurance and Trust Company, as Trustee, authorizing said Trustee to convey to the City of Oxnard the same interest acquired in the aforementioned deed, five (5) years after the happening of all of the following events:

- a. Within the Subdivision, and for a period of not less than five (5) years from the date hereof, the City has permitted the use of septic tanks which are constructed in such a manner as to meet the present requirements of the County of Ventura for septic tanks located in unincorporated subdivisions, providing that in each subdivided lot the septic tank and leach lines are located in that portion of the particular lot which is adjacent to a dedicated public street or alley. For said period of not less than five (5) years, the City has not required the use of sewers within the Subdivision.
- b. In the final subdivision map of the said Subdivision, the City did not require that any R-1 or R-1-B lot within the Subdivision be larger than 4,000 sq. ft.

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EX 2

EXHIBIT A Page 1 of 20

- c. In the ordinance of annexation, interim zoning within the Subdivision was established as indicated on the attached map, marked Exhibit "C" and by reference made a part hereof. It is understood that Owners or their successors intend to incur expenses and to otherwise rely upon said zoning. The City Council and Planning Commission knew of no reason why said zoning should be changed, except that special beach zones may be established to permit the same types of uses as indicated on the attached map and also providing that within said beach zones no sewers will be required and single family residential lots shall be of a minimum of 4,900 sq. ft. in size.
- d. Standard Oil Company of California has surrendered its lease as now or hereafter amended or extended covering all the land within said Subdivision.
- e. Drilling and/or producing operations upon Drilling Sites Nos. 1 and 2 have ceased for a period of ten (10) consecutive years.
- f. An oil drilling district has been established for property within said Subdivision, within six months from the date of annexation of said Subdivision, in accordance with existing Sections 8190 through 8191.32 (h) of the Oxnard Ordinance Code as follows:

Sec. 8190 - Purpose of Article. The purpose of this Article is to regulate and restrict the location of certain types of uses, the requirements of which cannot be adequately provided for in Article 2 above. These uses, the boundaries of the districts wherein they are permitted, the limitations governing their operations and the procedure for the establishment of new districts, are provided for in this Article. Except for the supplemental uses, exclusively permitted by this Article, all property within the districts hereby established is subject to the provisions of Article 2 above.

Sec. 8191 - "O" Oil Drilling Districts. It is hereby declared to be the object and purpose of this Section to establish reasonable and uniform limitations, safeguards and controls for the future drilling for and production of oil, gas and other hydrocarbon substances within the City. Limitations, safeguards and controls are deemed necessary in the public interest in order to effect practices which will provide a community plan for the orderly development and conservation of such mineral resources so important to the economy, and which will also protect the surface uses of the land, as such uses are indicated by the Master Plan of the City, City zoning regulations, the value and character of improvements in or near districts where oil drilling or production is hereinafter permitted, and the desirability of certain areas for residential, commercial or other uses. It is recognized that many citizens with substantial property investments do not own mineral rights and would not profit directly from oil or gas development. The Council finds that uncontrolled

drilling and production would be detrimental to the general welfare of the residents of the City and to the public health, safety, comfort, convenience and prosperity. It is contemplated that areas within the City may be explored for oil by directional drilling methods, with surface drilling and production operations limited to a minimum of controlled drilling sites in M-2 Zones which now exist or may hereafter be created in the eastern and extreme southerly portions of the City, so located, spaced and regulated that the prevailing westerly winds will not carry oil odors into the residential and commercial areas of the City. In this manner, necessary oil development operations will cause the least possible detriment to the community and to the general welfare.

(It is agreed that the sentence above underlined is not to be interpreted as mandatory, and that it is impractical to drill the area west of Patterson Road from the eastern and extreme southerly portions of the City.)

Sec. 8191.1 - Definitions.

"Applicant" or "Permitter" shall mean said person or persons, his or their successors in interest, and any parent company or subsidiary thereof.

"Controlled Drilling Site" shall mean the location upon which surface operations incident to oil well drilling or deepening and the production of oil or gas or other hydrocarbon substances may be permitted under the terms of Section 8191 et seq. subject to conditions prescribed by the Council.

"Directional Drilling" shall mean whipstocking, or slant drilling from a controlled drilling site.

"Oil" shall be construed to include oil, gas or other hydrocarbon substances.

"Oil Well" shall mean any well or hole already drilled, being drilled or to be drilled into the surface of the earth which is used or intended to be used in connection with coring, or the drilling for, prospecting for, or producing petroleum, natural gas, or other hydrocarbon substances; or is used or intended to be used for the subsurface injection into the earth of oil field waste, gases, water or liquid substances; including any such existing hole, well or casing which has not been abandoned in accordance with the requirements of this Code.

Sec. 8191.2 - Prohibitions. Future drilling for oil, gas or other hydrocarbon substances within the City of Oxnard shall be conducted only in accordance with the provisions of Section 8191 of this Code, and the subsections thereunder, and any future drilling operations not in conformity therewith are determined public nuisances and shall be prohibited.

Sec. 8191.21 - Existing Wells. For wells located in territory annexed to the City after the effective date of this ordinance, the City shall have authority to enforce all of the conditions of any permit granted by the County. Certain provisions of Sec. 8191.4, hereunder, are designed to protect the public safety and to prevent public nuisances, and shall be construed as regulations upon such existing wells and the owners and operators thereof. Failure to comply with said regulations shall be considered a violation of this Code. Said regulatory sections are as follows: Section 8191.4 (c) through (i); (j) -- restoration of premises upon abandonment only; (k) through (p); (q) -- roads to be specified by the City Council; (r) -- if a bond has been posted for the protection of the County, the City shall be substituted for the County under

the same conditions; (t) and (v). Regardless of any County permit, new wells shall not be drilled except in a City Drilling District under a City drilling permit as hereinafter set forth. Prior to granting of a permit for such new well, the applicant shall agree to substitute his permit for any existing wells for a drilling permit as set forth hereunder.

Sec. 8191.22 -- Location of Controlled Drill Sites. It is determined that the location of drill sites on property within the City zoned as residential (R-1, R-2, R-3), commercial (C-1, C-2), light manufacturing (M-1), or agricultural (A-1) would be contrary to the purposes for which said zones were established and would be contrary to the interests of the community and to the public health, safety, comfort and general welfare. On the basis of information received from major oil companies, it is determined that modern drilling techniques make it practicable for oil or gas deposits under such zones to be developed by directional drilling from sites in the M-2 Zones of the City. Drill sites in the residential, commercial, light manufacturing or agricultural zones of the City are therefore prohibited.

Sec. 8191.23 -- Drilling from Outside City Limits. Because oil operations in County areas are not ordinarily as carefully supervised or controlled as is necessary in City areas and as is contemplated by this Code, and because oil operations in such adjacent areas may adversely affect areas of the City, it is determined that the public health, comfort, safety, welfare, and property values within the City of Oxnard can best be protected by this comprehensive plan for orderly drilling operations within the City. Drilling into the City limits from a drill site located outside the City limits is prohibited, except in exceptionally unusual circumstances under which the Council and Planning Commission establish a City Drilling District and grant a subsurface City drilling permit as set forth hereunder, after first determining that residential uses in the City can best be protected by permitting drilling from outside the City. The decision of the Council as to whether such circumstances exist shall be final. In no event will such drilling be permitted where the drilling site outside the City is within 1,000 feet of a residential zone in the City. An applicant for such a permit shall apply for formation of a Drilling District and drilling permit in the manner set forth hereunder, and shall specify in his application the unusual circumstances which require granting of the permit. Increased cost of drilling by whipstocking from a controlled drilling site in the M-2 Zone in the eastern or extreme southerly sections of the City shall not be deemed an unusual circumstance. The application shall be granted or denied in accordance with the procedure and conditions set forth hereunder for drilling within the City Limits, except that City property owners within 2,000 feet of the proposed drilling site shall be notified of the Planning Commission public hearing in the manner hereinafter provided. The applicant shall agree to comply with every condition of the drilling permit, in the same manner as if the surface drilling site of the well were located within the City limits.

(It is agreed that the shape of the area to be annexed pursuant to this agreement is an exceptionally unusual circumstance and that the residential uses in the City can be protected by permitting the drilling into said area from drill sites located outside the City limits.)

Sec. 8191.24 -- Drainage of Oil from Properties Within City. In order to prevent drainage of oil from property within the City, if the producing interval of a well producing oil or gas in paying quantities should be in unincorporated territory within 660 feet of the City limits, and if any holder of a City drilling permit should own an interest in such a well and should also then own an interest in property, as to which such permittee has or shall obtain the right to drill, within the City and within 660 feet of such well, said permittee shall, within one year from the time the well in unincorporated area is placed on production, offset each such well with a well located on said property within the City limits, to at least the same depth as the well to be offset, or to such lesser depth at which oil is obtained in paying quantities. Said offset well shall be located within 330 feet of a projection of a line from the well to be offset through the City limits at the nearest point and located at least as close to the City boundary as the producing interval of the well to be offset, providing permittee has the right to drill in this area. Otherwise the offset well shall be drilled within 660 feet of the well to be offset. The fact that the producing interval of any such well outside the City is within 660 feet of property within the City shall be prima facie evidence that said property within the City is being drained of oil. All wells in the City shall be drilled from an approved controlled drilling site into an approved drilling district. Permittee shall make application therefor in accordance with the procedure set forth in this Article 9 of the Ordinance Code, and Permittee shall not be required to drill said offset well unless a District is established and the permit to drill said offset well is issued by the Council. If an existing well or wells within the City already fulfill this offset requirement, or if the City permittee has already drilled the maximum number of wells required under the lease or leases in connection with which the offset is required, or if another permittee who owns an interest in the well to be offset drills a well to fulfill this offset requirement, then an additional well shall not be required by this section. Permittee shall not be required to drill such offset well if all the property within the City limits and within 660 feet of the producing interval of the well to be offset is included in the same single ownership oil and gas lease, as that under which the well to be offset was drilled. Upon request of said permittee or of owners of mineral rights within said area within the City, the provisions of this subsection may be waived by the City Council, if the Council finds that no drainage of oil from City Districts will result from the well to be offset, or if the Council finds that drilling of the offset well is impracticable or undesirable. The permittee may submit evidence regarding such matters to the Council. The decision of the Council thereon shall be final.

(It is agreed that pursuant to Section 8191.24, Permittee shall not be required to drill such offset well if all the property within the City limits and within 660 feet of the producing interval of the well to be offset is included in the same single ownership oil and gas lease, as that under which the well to be offset was drilled, and that in said circumstance the provisions of Section 8191.24 are waived.)

Sec. 8191.3 -- Establishment of Drilling Districts. Whenever the public necessity, convenience or general welfare justify

such as on, the Council may establish by ordinance an Oil Drilling District.

Sec. 8191.31 — Procedure.

Sec. 8191.311 — Initiation. The proceedings for the establishment of an Oil Drilling District may be initiated by a verified application of one or more of the owners or lessees of property within the boundaries of the proposed district, or by resolution of the Planning Commission or Council. An application for the establishment of a district shall be filed with the Planning Commission upon a form prescribed for that purpose by the Planning Commission and shall be accompanied by a filing fee of \$100 which shall not be refundable. In said application, the applicant shall agree that he shall be bound by the provisions of Section 8191 et seq. of this Code, and all provisions of any Drilling District Ordinance and drilling permit adopted or granted as a result of said application. Each application shall contain a statement that the applicant has the proprietary or contractual authority to drill for and produce oil, gas or other hydrocarbon substances under the surface of at least 51% of the property to be included in said district. Except in the M-2 Zone of the City, the district described in said application shall be more than 70 acres but not more than 100 acres in area, including all streets and alleys within the boundaries thereof. Districts in the M-2 Zone shall be not less than 35 acres or more than 100 acres in area. Districts shall include all property within their boundaries and shall be compact in area. The boundaries thereof shall so far as practicable follow property lines, public streets or alleys and the boundaries of previously created districts, thereby avoiding leaving areas between districts which cannot be later formed into districts of the minimum size. Land under such authority of the applicant and located outside the boundaries of the City and contiguous with the proposed district may be included for the purpose of calculating said minimum areas. Smaller districts may be created in situations where there is not contiguous property within the City which could be included to create a district of minimum size. Each application shall contain a description of the controlled drilling site, located in the M-2 Zone of the City, from which the applicant has or can secure access to the proposed district and which he proposes to use to develop the proposed district. A map and legal description of each proposed district or districts and the controlled drilling site proposed to be used in developing said district or districts shall accompany the application, such map to be in sufficient copies to be mailed to each property owner within the proposed district and within 300 feet of the exterior boundaries thereof, with six additional copies for City files.

Sec. 8191.312 — Public Hearing. A proposal to establish a district shall be set for public hearing before the Planning Commission or its Hearing Officer. Notice of the time, place and purpose of such hearing shall be given by the following methods:

- (a) By at least one publication in a newspaper of general circulation in the City not less

than two days prior to the date of the hearing; and

(b) By mailing a postal card or letter notice not less than five days prior to the date of such hearing, to the owners of all property within the proposed district and within 300 feet of the area proposed to be included within the district, using for this purpose the last known name and address of such owners as shown upon the records of the City Assessor as of the first of the month previous to the month in which the public hearing is held.

The affidavit of the Secretary of the Planning Commission affirming that such notice was mailed as prescribed above shall be prima facie evidence of the mailing of the notice. Proof of failure to mail notice to a particular owner shall not invalidate, as to other property owners, any district created hereunder. After the termination of any hearing or continuation thereof conducted by said Hearing Officer, he shall submit his report thereon to the Commission within such period of time as may be fixed by the Commission.

Sec. 8191.111 -- Decision of Planning Commission and Council. The Planning Director shall investigate all proposals to establish districts and shall make a report thereon to the Commission. Upon receipt of the reports of the Planning Director and Hearing Officer, the Planning Commission shall consider the proposal to establish the district, and may approve, conditionally approve or disapprove the same, either in whole or in part. If approved, either in whole or in part, an ordinance to establish the district and controlled drilling site, as approved by the Planning Commission, shall be presented to the Council and on the basis of the general welfare may be adopted or disapproved by a majority vote of the Council. The Planning Commission or the Council may enlarge the proposed boundaries of a District, providing that notice is given to owners within the enlarged areas and a public hearing is held thereon, as set forth in Section 8191.112 above. The Planning Commission shall act on any application for the establishment of a district within 40 days from the date the public hearing is terminated. This time limit may be extended, by mutual consent of the applicant and the Planning Commission, for an additional period. In the event the Planning Commission shall fail to act within the specified time limit, the Planning Commission shall be deemed to have approved the establishment of the district as requested in the application, and the Secretary of the Commission shall advise the Council accordingly. Maps showing boundaries of approved districts shall be on file in the office of the City Clerk. Said maps and the notations, references and other information shown thereon which pertain to the boundaries of these districts are made as much a part of this Code as if fully described herein. Reference is hereby made to such maps, notations, references and other information for full particulars.

Sec. 8191.114 -- Disapproval and Appeal to Council. If a proposed district is disapproved by the Planning Commission, its action thereon shall be final,

except that any applicant, owner or lessee of mineral rights included in such a disapproved proposed district may appeal to the Council. Such appeal shall be filed in duplicate with the City Clerk within 20 days from the date of mailing the notification of disapproval to the applicant, or within 20 days from the action of the Planning Commission disapproving a proposal initiated by the Planning Commission or Council. An appeal shall set forth specifically wherein it is alleged that the Planning Commission's findings and decision were in error. The City Clerk shall transmit one copy of the appeal to the Planning Commission and thereupon the Planning Commission shall transmit the file with a report to the Council disclosing why the proposal to establish the district was disapproved. The Council shall then review the action of the Planning Commission and in its discretion may enact an ordinance establishing the district and designating the controlled drilling site from which the district is to be developed.

Sec. 8191.42 ... Standard Conditions for Establishment of an Oil Drilling District. Establishment of each oil drilling district shall be in accordance with the requirements and procedure set forth above and shall be subject to the following conditions. Reference to "Applicant" in said conditions shall be construed as meaning "Grantee" in these districts which may be established after initiation by the Planning Commission or Council.

(a) Controlled Drilling Site. Not more than one controlled drilling site shall be permitted for each district and such site shall not be larger than two acres when used to develop a district approximately the minimum size; provided, however, that where such site is to be used for the development of larger oil drilling districts or where the Planning Commission and City Council require that more than one oil drilling district be developed from one controlled drilling site, such site may be enlarged, at the discretion of the Council. Said site shall be located only in the M-2 Zone of the City and shall be subject to the approval or reasonable disapproval of the City Council. The site shall be situated not less than 200 feet from any state highway and not less than 200 feet from any residence or commercial establishment located in a residential or commercial zone.

(It is agreed that the controlled drilling sites to be established hereunder shall be of the size and location designated on the attached map, marked Exhibit B and by this reference made a part hereof.)

(b) Number of Wells. Except for wells above required to be drilled to offset wells drilled outside the City limits, the number of oil wells which may be drilled and operated from any controlled drilling site may not exceed one well to each five acres in the district or districts to be explored from said site.

(c) Authority of Applicant. Each applicant, requesting a drilling permit as provided in Section 8191.4 hereunder, must have the proprietary or contractual

authority to drill for oil under the surface of at least 51% of the property in the district to be explored.

(d) Offer to Lease. Each applicant or his successor in interest shall, within ninety days from the date the ordinance establishing the particular district becomes effective, (1) file a declaration of pooling, pooling all property within the district which is then under lease to the applicant and which may be pooled under the terms of the particular lease, said pooling to be in accordance with the terms of the particular lease, and (2) execute an offer in writing giving to each record owner and lessee of mineral rights located in said oil drilling district who has not joined in the lease, or other authorization to drill, the right to join in the lease or authorization and thereafter to share in rental payments, bonus payments and the proceeds of production from wells boreholes in said district. Said share shall be computed upon the same basis, as that of the average of property owners (by surface area) who have by lease or other legal consent, agreed to the drilling for and production of oil, gas or other hydrocarbon substances by the applicant from the subsurface of said district at the time the district was created. The offer shall provide that the lessee shall have no right in the surface of the land, nor in the subsurface thereof except below a depth of 500 feet. The applicant shall file said offer with the City Clerk and cause it to be recorded in the office of the Ventura County Recorder. The offer hereby required must remain open for acceptance for a period of five years after the date the drilling permit is issued. During the period said offer is in effect, said applicant, or his successors in interest, shall impound all proceeds of production to which said owners or any of them may become entitled, in a bank or trust company in the State of California, with proper provisions for payment to the said record owners and lessees of mineral rights in the district who had not signed the lease or other authorization at the time such drilling district was created, but who accept such offer in writing or who are deemed included pursuant to Public Resources Code Section 3608 within the said five-year period. Any such payments remaining in any bank or trust company at the time said offer expires, which are not due or payable as hereinabove provided, and future payments as they would otherwise become due to said owners who have not joined in the lease or other drilling authorization, shall be paid to the City of Oxnard Fund for Acquisition and Operation of Parks and Recreational Facilities in order that those otherwise entitled shall receive through municipal improvements some benefit from the proceeds of such production.

(e) Access to Oil Drilling Districts. In order that wherever possible owners or lessees of oil deposits located in property zoned other than M-2 shall have the opportunity to develop said deposits and reach said deposits from controlled drilling sites located in the M-2 Zone, each applicant shall agree that he and his successors in interest, so far as he or they have any right and may legally do so, and as a condition to the granting of said applicant's request for formation of any drilling district

or issuance of any drilling permit hereunder, shall assign to any other successful applicant for establishment of an oil drilling district hereunder co-equal rights in and to subsurface rights of way or subsurface easements through premises in which said applicant-assignor then has an interest. The assignee shall agree to hold the assignor harmless from any and all liability which may be incurred as a result of the assignee's use of said rights of way or easements.

(f) Operations in Unincorporated Areas. Each applicant shall agree to comply with the provisions of Sec. 819L.23 and Sec. 819L.24 above with respect to drilling into or draining oil from under property within the City limits from drilling operations in unincorporated areas.

(This requirement shall be construed in accordance with the agreements set forth in parenthesis after Sections 819L.23 and 819L.24 above.)

(g) Quitclaim of a Portion of a District. If the Grantor should quitclaim or otherwise release any portion of a District, said quitclaimed or released lands shall continue to share pro-rata in the proceeds of production from any wells bottomed in the District, provided however that this provision shall not be deemed to abrogate or supersede any contractual relationship entered into by the particular owner. A Grantee shall not quitclaim or release lands in any District, except in a compact parcel or parcels of not less than five acres each so shaped that the quitclaimed or released lands could be formed into a separate District or Districts.

(h) Termination of Drilling Districts. At any time after one year from formation of a district, upon request of any owner or lessee of mineral rights within the district, or at any time upon initiation of reviewing action by the Council or Planning Commission, any district may be reviewed and the Council may by ordinance dissolve, reduce the size or partition the district as follows. Prior to the production of oil within a district, the district may be dissolved if it does not appear that drilling operations are being diligently prosecuted or if any person does not hold proprietary or contractual authority to drill for and produce oil under the surface of at least 51% of the property within the district, providing said action is reasonable under the particular circumstances. After the production of oil within a district and subsequent to quitclaiming of portions of a district, the district may be reduced in size by elimination of quitclaimed and non-leased or non-controlled acreage.

All matters hereinbefore set forth in parenthesis shall be construed as a part of this agreement, and matters set forth in this agreement shall be construed as Findings of Fact.

Neither the City Council nor Planning Commission know of any reason why drilling districts and drilling sites should not be established as indicated on the attached map, and oil

production within the subdivision unitized in Drilling

Districts established pursuant to the Oxnard Ordinance Code.

- g. A variance and drilling permit, in the form attached hereto as Exhibit "D", has been issued by the City of Oxnard, within two weeks from the effective date of the ordinance establishing the said Drilling District.

When the events described in paragraphs 2a, 2b, 2c, 2f, and 2g, hereof have occurred and even though the balance of the conditions of paragraph 2 hereof have not at such time occurred, the Trustee shall nevertheless deliver said deed to the City twenty (20) years after the death of all of the now living lawful issue of William H. McGrath; Thomas Francis McGrath, Jr.; George D. McGrath and Charles J. Cooway.

If the events described in paragraphs 2a, 2b, 2c, 2f, and 2g above have not occurred within five (5) years from the date hereof, or if the drilling district or permit or variance should be rescinded or amended by the City, without agreement of the parties hereto, the Trustee shall recover drilling sites Nos. 1 and 2 to the owners.

3. That as a further consideration of annexation by the City of Oxnard and performance of the conditions as set forth above, Owners do agree as follows:

- a. Owners will petition for annexation to the City of Oxnard of the territory included within Annexation 58-1, as said annexation was approved by the Ventura County Boundary Commission, and will sign the annexation petition attached hereto marked Exhibit "E". Owners agree not to protest said annexation.
- b. The City is causing a water line to be constructed to the corner of McGrath Road and Fifth Street, of sufficient capacity to deliver sufficient quantities of domestic water to the Subdivision. Prior to water being furnished to the Subdivision, Owners will pay to the City the sum of 10% of the cost of a 16" reinforced concrete steel cylinder pipeline being constructed on West Fifth Street between Ventura Road and McGrath Road, to defray in part the expenses of the said water line. It is understood that said payment

shall not relieve owners or their successors of the obligation to pay to the City the fees as required by the Oxnard Ordinance Code, and future amendments thereto to defray the cost to the City of construction of the distribution system within or immediately adjacent to the Subdivision.

4. This agreement may be executed in any number of counterparts with the same force and effect as if all parties hereto signed the same document.

5. Wherever the word "District" is used in this agreement said word shall be construed to mean "Districts" if more than one oil drilling district is established for property within the said Subdivision.

6. Any notice or other document or writing to be delivered from the City of Oxnard to the other parties to this agreement may be given by sending the same by registered mail, one copy addressed to each of the following persons, at the following addresses, unless the Oxnard City Attorney is otherwise notified in writing.

- a. Oxnard Shores Development Co., a partnership
8600 La Tijera Boulevard
Los Angeles, California
- b. John Francis McGrath and Thomas Francis McGrath, Jr.,
as Trustees of Trusts "A" and "B", respectively, created
under and by virtue of the Last Will of Thomas Francis
McGrath Dec'd
1732 East Gonzales Road
Oxnard, California

Any notice to be given from any of the other parties to said agreement to the City of Oxnard shall be signed by:

Fred W. Marlow, as partner of Oxnard Shores Development Co.

John Francis McGrath and Thomas Francis McGrath, Jr. as Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath, Dec'd

7. This agreement and permit, a copy of which is attached hereto, shall be irrevocable excepting upon the terms provided therein and shall be binding upon the City and the owners, and their heirs, executors, administrators, successors and assigns.

WITNESS our hands as of the day and year first above written.

CITY OF OXNARD

By Carl E. Ward, Mayor

ATTEST:
Ethel Dale
ETHEL DALE, City Clerk

OWNERS:

Trustees of Trusts "A" and "B",
respectively, created under and by
virtue of the Last Will of Thomas
Francis McGrath, Dec'd.

John Francis McGrath
John Francis McGrath, Trustee

3

PLACE INTERNAL REVENUE STAMPS IN THIS SPACE

Grant Deed

Ally I. R. S. \$

208 11-33

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH, Jr., as Trustees of
 Trust "A" and as Trustees of Trust "B", Under the Will of Thomas
 Francis McGrath, Deceased,
 hereby GRANT(S) to
 as Trustee,
 The **TITLE INSURANCE AND TRUST COMPANY**, for the City of Oxnard,
 a Municipal Corporation, for public playground and recreational
 purposes and all purposes incidental thereto, and public parking purposes,
 the following described real property in the state of California, county of Ventura, and more
 particularly described as follows:

(Herein set forth the legal descriptions of the two
 drill sites, Nos. 1 and 2).

SUBJECT TO:-

Reservations, easements, rights-of-way and restrictions of
 record, and

the following substances in, on, or under said land, as reserved by
 Deed of McGrath, Trust Company, a corporation, in deed recorded June 11,
 1950, as Document No. 2661 in Book 822, page 351 of said Official Records;

Also EXCEPTING an undivided 1/8th interest in and to all of the oil,
 minerals and petroleum substances in, on, or under said land as granted to
 John Francis McGrath, Helen Aileen Leuchs, Marian Elizabeth Graham,
 Geraldine Ann McGrath and Thomas Francis McGrath Jr. in equal shares by
 deed recorded January 5, 1951, as Document No. 251 in Book 972, page 484
 of Official Records.

Also EXCEPTING the present interest of the grantor herein, in and
 to the oil, oil rights, minerals, mineral rights, natural gas, natural
 gas rights, and other hydrocarbons by whatsoever name known that may be
 within or under the parcel of land hereinabove described together with the
 perpetual right of drilling, mining, exploring and operating therefor and
 removing the same from said land or any other land, including the right
 to whipstock or directionally drill and mine from lands other than those
 hereinabove described, oil or gas wells, tunnels and shafts into, through
 or across the subsurface of the land hereinabove described, and to bottom
 such whipstocked or directionally drilled wells, tunnels and shafts under
 and beneath or beyond the exterior limits thereof, and to redrill, re-
 tunnel, equip, maintain, repair, deepen and operate any such wells or mines,
 without, however, the right to drill, mine, explore and operate upon or
 through the surface or the upper 100 feet of the subsurface of the land
 hereinabove described when title passes to the City of Oxnard.

PROPERTY (WHICH IS NOT FOR SALE LOANED AND JUNE)

WHEN RECORDED MAIL TO

Title Order No.

Escrow or Loan No.

RECEIVED
 MAY 08 2006

CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

EX 3

EXHIBIT B

4

TRUST AGREEMENT

TRUST NO. PR-13637

THIS TRUST INDENTURE entered into this 27th day of February 1959, by and between the Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath, Deceased, herein called Trustors; the Title Insurance and Trust Company, a California corporation with its principal place of business at Los Angeles, California, herein called the Trustee, and the City of Oxnard, a municipal corporation, herein called Beneficiary,

W I T N E S S E T H:

That WHEREAS the Trustors have heretofore, to-wit on the 9th day of December 1958, entered into a contract with the City of Oxnard, a municipal corporation, a copy of which is attached hereto, marked Exhibit "A", and by reference thereto made a part hereof as if fully set forth herein, and

WHEREAS in order to execute the terms of said agreement referred to herein as Exhibit "A", the Trustors desire to execute a Grant Deed in favor of the Trustee herein, in and to certain real properties described in said deed, a copy of which is attached hereto marked Exhibit "B", and by reference thereto made a part hereof as if fully set forth herein, and

WHEREAS said Trustee shall hold said deed for the primary benefit of the City of Oxnard, a municipal corporation, the Beneficiary herein, and the Trustors upon the happening of the conditions herein-after set forth.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED as follows:

1. That said Trustors have concurrently with the execution of this Trust Indenture delivered to said Trustee a deed purporting to

RECEIVED
MAY 08 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

1.

Original in Vault

EX4

1 convey to it certain real property described in that certain deed
2 hereinbefore referred to as Exhibit "B".

3 2. The beneficial interest above as aforesaid under this
4 trust hereby is vested in the City of Oxnard, a municipal corporation,
5 organized and existing under and by virtue of the laws of the State
6 of California herein sometimes referred to as the "Beneficiary".

7 3. That the Trustee holds such title as was thus received by
8 it in and to the said real property referred to as Exhibit "B" in
9 trust under the conditions set forth in this instrument and for the
10 following purposes:

11 SECTION I

12 To convey said real property hereinabove described in Exhibit
13 "B" to the City of Oxnard, a municipal corporation, when said City of
14 Oxnard shall have complied with all of the terms, provisions and
15 conditions to be performed by it of that certain agreement dated
16 December 9, 1958, and hereinbefore referred to as Exhibit "A".

17 SECTION II

18 That in the event the City of Oxnard, a municipal corporation,
19 shall fail to perform any and/or all of the provisions of said con-
20 tract dated December 9, 1958, and hereinabove referred to as
21 Exhibit "A", said Trustee shall re-convey said real property described
22 in Exhibit "B" to the Trustors or their successors or the owners of
23 said real property as of the date of said reconveyance in the event
24 of the prior termination of that certain trust created under and by
25 virtue of the Last Will of Thomas Francis McGrath, Deceased.

26 SECTION III

27 That in order to execute the provisions of Section I. and II,
28 ROBERT BLINN MAXWELL, Lawyer, whose address is 326 South A Street,
29 Oxnard, California, is hereby appointed as the person who shall de-
30 termine whether the said real property described in Exhibit "B" shall
31 be conveyed to the City of Oxnard, a municipal corporation, in accord-
32

1 ance with the provisions of Section I, or reconveyed in accordance
2 with the provisions of Section II. Before arriving at such deter-
3 mination the said ROBERT BLINN MAXWELL shall consult with the Trus-
4 tee and thereafter his decision shall be final and binding upon the
5 Trustors and Beneficiary.

6 In the event that the said ROBERT BLINN MAXWELL shall here-
7 after for any reason whatsoever become incompetent or die prior to
8 the termination of this Trust Indenture, then the Trustee herein is
9 appointed as the person to determine whether or not said real property
10 shall be conveyed in accordance with the terms and provisions of
11 Section I, or in accordance with the terms and provisions of Section
12 II of this Trust Indenture, and the decision of said Trustee shall be
13 final and binding upon the Trustors and Beneficiary.

14 SECTION IV

15 The Trustee shall neither be required to pay or to attend to
16 the payment of any taxes or assessments levied or assessed against
17 said real property hereinbefore described in Exhibit "B"; PROVIDED,
18 HOWEVER, that upon the receipt of the funds the Trustee shall pay all
19 taxes and assessments levied or assessed against the said real
20 property.

21 The Trustee shall not be required to commence or defend any
22 suit or suits with respect to the real property now held in this
23 trust unless requested so to do in writing by the said Trustors and/or
24 the Beneficiary, accompanied by money and indemnity sufficient, in
25 the Trustee's opinion to cover all costs, damages and liabilities in
26 connection therewith.

27 SECTION V

28 a) To abandon, compromise, contest and arbitrate claims and
29 demands, to institute, compromise and defend actions at law (but
30 without obligation so to do as recited in the foregoing section); to
31 require of the Trustors and/or Beneficiary money and indemnity suf-
32

1 ficient in the Trustee's opinion to cover all costs, charges and
2 liabilities in connection therewith; and to employ such counsel as
3 the Trustee shall deem advisable; all at the risk of the trust es-
4 tate.

5 b) To disclose the trust when the Trustors' fiduciary
6 capacity requires.

7 SECTION VI

8 This trust shall cease and terminate upon the non-compliance
9 by the City of Oxnard, a municipal corporation, with any and/or all
10 of the terms of that certain agreement dated December 9, 1958, and
11 hereinabove referred to as Exhibit "A", and upon said Trustee being
12 so advised of said non-compliance by ROBERT BLINN MAXWELL or upon
13 determination of said non-compliance by said Trustee in a manner
14 provided in Section III hereof.

15 SECTION VII

16 Unless otherwise sooner terminated, this trust shall cease
17 and terminate upon the full compliance by the City of Oxnard, a
18 municipal corporation, with that certain agreement dated December 9,
19 1958 and hereinbefore referred to as Exhibit "A". Thereupon the
20 property described in Exhibit "B" shall be conveyed, transferred and
21 delivered (without collection of consideration therefor and subject to
22 all matters then against the same) to the City of Oxnard, a muni-
23 cipal corporation.

24 SECTION VIII

25 The fees of the Trustee shall be such as shall be agreed upon
26 between the Trustors and the Trustee from time to time. All fees,
27 expenses and advancements with seven percent (7%) interest of the
28 Trustee are a first lien upon the trust estate.

29 The provisions hereof shall bind the Trustors, Trustee and
30
31
32

the Beneficiary, their successors and assigns.

Dated: February 27 1959.

John Francis McGrath
John Francis McGrath

Thomas Francis McGrath, Jr.
Thomas Francis McGrath, Jr.
as Trustees of Trusts "A" and "B", res-
pectively, created under and by virtue of
the last Will of Thomas Francis McGrath,
Deceased.

TRUSTORS

TITLE INSURANCE AND TRUST COMPANY,

By Alvin C. Munn
Vice President

By Harold P. Beach
Assistant Secretary

TRUSTEE

CITY OF OXNARD, a Municipal Corporation

By Carl E. Ward
Carl E. Ward, Mayor

ATTEST:

By Ethel Dale
Ethel Dale, City Clerk

BENEFICIARY

Declaration of
Trust No. PR-13637

1 AMENDMENT TO TRUST INDENTURE (PR-13637)

2
3 THIS AGREEMENT made and entered into this 2d day of March,
4 1959, by and between JOHN FRANCIS McGRATH and THOMAS FRANCIS
5 McGRATH, Jr., as Trustees of Trusts "A" and "B", respectively, cre-
6 ated under and by virtue of the Last Will of Thomas Francis McGrath,
7 Deceased, herein called Trustors; the Title Insurance and Trust
8 Company, a California corporation, with its principal place of busi-
9 ness at Los Angeles, California, herein called the Trustee and the
10 City of Oxnard, a municipal corporation, herein called Beneficiary,

11 W I T N E S S E T H:

12 THAT WHEREAS the parties hereto have heretofore entered into
13 a Trust Indenture in writing dated February 27, 1959; and

14 WHEREAS it is the desire of all the parties hereto that the
15 name of EDWIN L. CARTY shall be substituted in place of ROBERT BLINN
16 MAXWELL in all portions of said Trust Indenture wherein the latter's
17 name appears; and

18 WHEREAS there was not set forth in said Trust Indenture the
19 person or person obligated to pay the taxes and any other assessments
20 levied upon the real property to be held by said Trustee, under and
21 by virtue of the said Trust Indenture; nor was there any provision in
22 said Trust Indenture as to who would be liable for payment of said
23 Trustee's fees; and

24 WHEREAS it is the desire of the parties hereto that said
25 Trust Indenture be amended to provide that the Trustors shall pay all
26 taxes and assessments levied against real property involved in this
27 trust and Trustee's fees in connection with the performance of said
28 Trust Indenture for the entire duration of said trust.

29 NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED as follows:

30 1. That said Trust Indenture dated February 27, 1959, betwee
31 the aforesaid parties shall be amended as follows:

32 2. That wherever the name ROBERT BLINN MAXWELL shall appear

1 in said Trust Indenture, the name of EDWIN L. CARTY shall be substi-
2 tuted in place thereof.

3 3. That said Trustors shall pay all taxes and any other
4 assessments levied upon said real property held by said Trustee
5 under and by virtue of said Trust Indenture for the duration of said
6 trust.

7 4. Said Trustors shall pay all Trustee's fees and costs
8 in connection with the administration of said trust estate for the
9 duration of said trust.

10 The provisions hereof shall bind the Trustors, Trustee
11 the Beneficiary, their successors and assigns.

12 Dated: March 3, 1959.

13
14 *John Francis McGrath*
15 John Francis McGrath
16 *Thomas Francis McGrath Jr.*
17 Thomas Francis McGrath Jr.
18 as Trustees of Trusts "A" and "B",
19 respectively, created under and by
20 virtue of the Last Will of Thomas
21 Francis McGrath, Deceased.

22 TRUSTORS

23 TITLE INSURANCE AND TRUST COMPANY

24 By *Chas. Bennett*
25 Vice President
26 By *Harold A. Tracy*
27 Assistant Secretary

28 TRUSTEE

29 CITY OF OXNARD, a Municipal
30 Corporation
31 By *Carl E. Ward*
32 Carl E. Ward, Mayor

33 ATTST:

34 By *Ethel Dale*
35 Ethel Dale, City Clerk

36 BENEFICIARY

37 (CORP. SEAL)
38 JUN 9 - 1959

39 Amendment to
40 Trust No. PR-13637

No. 75-109

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JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH Jr., as
Trustees of Trusts "A" and "B", respectively, under the Last Will
and Testament of Thomas Francis McGrath, Deceased, do hereby grant
to THE TITLE INSURANCE AND TRUST COMPANY, a California corporation,
the following described real property in the state of California,
county of Ventura, and more particularly described as follows:

Part of Mandalay Unit No. 1, in the county of Ventura, state
of California, as per map thereof recorded in Book 13, Page 58 of
Maps, in the office of the County Recorder of said county, described
as follows:

PARCEL I: (Drill Site No. 1)

Commencing at the most Northerly corner of Lot 15, Block 149
of said Mandalay Unit No. 1; thence South 24° 46' 56" East along the
Northeasterly line of said lot, 10 feet; thence South 65° 13' 04"
West and parallel with the Northwesterly line of said lot, 40 feet
to the true point of beginning; thence continuing South 65° 13' 04"
West, 40 feet; thence Southwesterly along a tangent curve, concave
Northwesterly and having a radius of 1690 feet, an arc distance of
265 feet; thence North 15° 47' 53" West and radial to said curve,
210 feet; thence Northeasterly along a curve having a radius of
1480 feet and being concentric with and distant 210 feet measured
radially from the hereinbefore mentioned curve having a radius of
1690 feet, an arc distance of 232.07 feet; thence North 65° 13' 04"
East and tangent to said curve, 40 feet; thence South 24° 46' 56"
East, 210 feet to the true point of beginning.

PARCEL II: (Drill Site No. 2)

Commencing at the most easterly corner of Lot 53, Block 143,
of said Mandalay Unit No. 1; thence North 65° 13' 04" East along the
northeasterly prolongation of the Southeasterly line of said Lot 53,
100 feet; thence North 24° 46' 56" West and parallel with the North-
easterly line of said Lot 53, 216 feet; thence Northeasterly along a
curve, tangent at its point of beginning to a line bearing North
65° 13' 04" East, concave southerly, and having a radius of 1252 feet
an arc distance of 80 feet to the true point of beginning; thence
continuing Northeasterly along said curve, an arc distance of 257
feet; thence North 9° 21' 36" West and radial to said curve, 226
feet; thence Southwesterly along a curve having a radius of 1478
feet and being concentric with and distant 226 feet measured radially
from the hereinbefore mentioned curve having a radius of 1252 feet,
an arc distance of 303.39 feet; thence South 21° 07' 16" East and
radial to said curve, 226 feet to the true point of beginning.

1 EXCEPTING from the aforesaid described real property all
2 oil, gas, hydrocarbon substances and other minerals and fissien-
3 able substances lying below a depth of 500 feet from the surface of
4 said land, and reserving unto Grantors, their successors and
5 assigns, the right to produce and take substances from the aforesaid
6 described real property and other property, by means of wells lo-
7 cated on the aforesaid described real property and drilled into the
8 aforesaid described real property and/or other property. Said
9 right of Grantors, their successors and assigns, to use the afore-
10 said described real property above a depth of 500 feet below the
11 surface thereof, shall terminate at such time as title to the
12 property passes to the City of Oxnard, pursuant to contract between
13 the City, the Grantors hereof, and the Oxnard Shores Development Co.
14 with respect to the aforesaid described real property, which con-
15 tract is on file in the office of the City Clerk of the City of
16 Oxnard.

17 IN WITNESS WHEREOF this instrument has been executed this
18 24th day of February 1959.

19 *John Francis McGrath*
20 John Francis McGrath
21 *Thomas Francis McGrath Jr.*
22 Thomas Francis McGrath Jr.
23 as Trustees of Trusts "A" and "B",
24 respectively, under the Last Will
25 and Testament of Thomas Francis
26 McGrath, Deceased.

27 STATE OF CALIFORNIA }
28 County of Ventura } ss:

29 On February 24, 1959, before me, the undersigned, a Notary
30 Public in and for said County and State, personally appeared
31 JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH Jr., known to me to
32 be the persons whose names are subscribed to the within instrument
and acknowledged that they executed the same.

WITNESS my hand and official seal.

22659

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 8:01 A. M.
OFFICIAL RECORDS VENTURA COUNTY
JUN 11 1959
BOOK 1744 PAGE 493

Robert H. Thomas 125

33 *Edward C. Maffei*
34 Notary Public in and for said county
35 and state.

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ACTION: Mayor Pro Tem Zaragoza moved to adopt **Resolution No. 11,497**. Councilmember Maulhardt seconded; and the motion was adopted by the following vote: Ayes: Councilmembers Holden, Lopez, Maulhardt, Pinkard and Zaragoza.

2. **SUBJECT:** Presentation of the Tezcatlipoca Awards.
DISCUSSION: The Resident Services Coordinator described the program, which works with at risk youth and stated that the awards recognize individuals and community-based organizations for their participation and support of the program.

P. APPOINTMENT ITEMS

1. **SUBJECT:** Presentation of The Greater Oxnard Economic Development Corporation Five-Year Plan by Steven L. Kinney.
RECOMMENDATION: Continue to February 2, 1999.
ACTION: Mayor Pro Tem Zaragoza moved approval as recommended. Councilman Pinkard seconded; and the motion was unanimously adopted.

R. STUDY SESSION

Public Safety

2. (071) **SUBJECT:** Ordinance Authorizing Imposition of an Administrative Fine for Violations of the Oxnard City Code ("OCC").
RECOMMENDATION: Continue to February 2, 1999.
ACTION: Mayor Pro Tem Zaragoza moved approval as recommended. Councilman Pinkard seconded; and the motion was unanimously adopted.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Mr. Bernard Dunhom spoke about Oxnard's veterans preference in hiring policies and flying of POW/MIA flags.

Speaking against Cornell Corrections being located at 425 "D" Street and the City's issuance of a certificate of occupancy were Mr. Steve Buratti, Alan Wingo, Louise Ann Noeth, Marsha Maulhardt, Barbara Higgins, Tina Hurley, Rebecca Barkley, Peter Erdos, Al Barkley (petition submitted).

K. PUBLIC HEARINGS

Community Development and Conditions

1. (039) **SUBJECT:** Vacation of a portion of Wavecrest Way, Zone Change, Tentative Subdivision Maps, and Coastal Development Permits for two lots in the Coastal Zone, Filed by the City of Oxnard.
RECOMMENDATION: (1) Adopt a resolution approving an amendment to the certified Local Coastal Program and direct staff to forward the amendment to the California Coastal Commission for consideration of an amendment to the Coastal Zoning Ordinance by reclassifying specified property on the zone map from R-P (Coastal Resource Protection) to R-B-1 (Single-Family Beach) for two parcels, approximately 1.39 and 1.42 acres each, located on the west side of Harbor Boulevard between

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SOUTH CENTRAL COAST DISTRICT

CX00376

EX 9

Breakers and Reef Ways and on the north side of Whitecap Street east of Mandalay Beach Road, respectively; (2) Adopt a resolution approving Tentative Subdivision Map No. 5063, subject to certain findings and conditions; (3) Adopt a resolution approving vacation of a portion of Wavecrest Way and approving Tentative Subdivision Map No. 5064, subject to certain findings and conditions; and (4) Adopt a resolution upholding the Planning Commission's approval of PZ Nos. 98-5-106 and 107, subject to certain findings and conditions.

ACTION: Mayor Lopez declared the public hearing open.

DISCUSSION: The Assistant City Clerk stated the affidavits of publication are on file and one written communication was received in opposition to the recommendation.

The Public Services Director ("Director") described the proposal and discussed how the properties were received by the City, adding that there is nothing which restricts the property to park purposes, and the properties have never been designated as park properties. He stated 1) the properties have been designated for residential development since 1982 when the City Council adopted the Local Coastal Program and Land Use Plan; 2) the density of the subdivisions is consistent with the balance of the Oxnard Shores neighborhood; 3) tests have confirmed there is no contamination on these lots; 4) all the streets and ways will receive a new slurry coat to restore and upgrade the streets upon completion of the current underground utility project, scheduled in early June. The Director then discussed the storm drain system and proposed improvements to the Harbor Boulevard landscape medians, parkway and wall and stated that improvements would be funded from the potential sales of the lots.

Speaking against City Council's approval of the recommendation were: Ms. Dierdre Frank, Robert Murphy, Bodine Elias, Debra Tyhurst, Sally Orbas, Lee Bartosh, Suzanne Schecter, Robert Chandler, Sal Penza, Mina Carr, Ted Kuepper, Nick Strangio, Guy Yamashige, Brenda Ryan, Donna Biess, Dick Chaiclin, Bob Bartosh, Gary Spritz, Don Abbott, Sam Goe, Clyde Meis, Ken Barrabee, Holly Hoberg, and Ray Anderson. Some speakers requested that if City Council intends to sell the parcels, the funds from the proceeds of the sale be prioritized for use in upgrading the Oxnard Shores neighborhood.

Mr. Joe Ruscio suggested the item be continued and staff be directed to meet with the neighborhood.

ACTION: Councilman Pinkard moved to close the public testimony portion of the public hearing. Mayor Pro Tem Zaragoza seconded; and the motion was unanimously adopted.

DISCUSSION: The Director stated the sites were never used as oil drilling sites and that any legislative action of the City Council would be subject to consideration by the State Coastal Commission.

Ms. Dorothy Maron commented on her recollection of City Council discussions regarding the sites when she was on the City Council.

ACTION: Councilmember Holden made a motion that staff conduct an audit of what is required to address the concerns of the residents: sound wall, streets, drainage and landscaping, provide an estimate of the costs of improvements, versus the revenue that would be generated from the sale of the lots and return to City Council. Mayor Pro Tem Zaragoza seconded; and the motion was adopted by the following vote: Ayes: Councilmembers Lopez, Maulhardt, Pinkard, Zaragoza and Holden.

CX00377

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: THOMAS J. HUTCHINS DATE MAY 10, 2004

CLERK: SANDY MCCARTY CASE NO.: CIV 217306

TITLE OF CASE:

DEIRDRE FRANK, RANDY HAINES,
MARGRET HAINES, and MARY SUSAN KYROPOULOS,
TRUSTEE of the BETTY M. KYROPOULOS TRUST

Plaintiffs,

v.

CITY OF OXNARD, a Municipal Corporation,
and DOES 1 through 10,

Defendants.

NATURE OF PROCEEDINGS: **STATEMENT OF DECISION**
RE: COURT TRIAL
(Taken under Submission 05/07/04)

This action came on regularly for trial before Superior Court Judge Thomas J. Hutchins on February 13, 2004. Mark T. Barney and Jacquelyn K. Phlegar of Ferguson, Case, Orr, Paterson & Cunningham LLP appeared as attorneys for plaintiffs DEIRDRE FRANK, RANDY HAINES, MARGARET HAINES, and MARY SUSAN KYROPOULOS, TRUSTEE of the BETTY M. KYROPOULOS TRUST, and David K. Hughes of Price, Postel & Parma LLP appeared as attorneys for defendant CITY OF OXNARD (the "City").

The matter was tried to the Court over the course of two days (February 13, 2004 and May 7, 2004) and in less than eight hours. The Court received oral and documentary evidence on February 13th and the attorneys appeared for oral argument on May 7th, 2004. In the interim, the attorneys filed their closing trial briefs.

On May 7, 2004, at the time set for oral argument, the parties submitted the matter to the Court for its decision. Neither side requested a Statement of Decision (CCP 632); nonetheless, the Court now issues its Statement of Decision setting forth the factual and legal basis for its decision as to each of the principal controverted issues at trial:

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SOUTH CENTRAL COAST DISTRICT

EX-6

TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.**Issue No. 1: Do the Plaintiffs Have Standing to Bring this Action for Reformation?**

Citizens and taxpayers have standing to bring an action to enforce a public right or to procure enforcement of a public duty. White v. Davis (1975) 13 Cal.3d 7575, 764; Green v. Obledo (1981) 29 Cal.3d 126, 144. Plaintiffs have brought this action for reformation in order to compel the City to perform an alleged public duty to maintain two properties transferred to the City by John Francis McGrath and Thomas Francis McGrath, trustees of two McGrath family trusts (the "McGraths") pursuant to an agreement entered into by the McGraths, their development company Oxnard Shores Development Co, and the City in December 1958 (Sites Nos. 1 and 2), for public playground, recreational and parking purposes (the "1958 Agreement") (Ex. 2). Code of Civil Procedure § 526a accords standing to a taxpayer to bring "[a]n action...preventing any illegal expenditure of, waste of, injury to, the estate, funds or other property of a ...city and county of the state." Plaintiffs FRANK and KYROPOLOUS testified to having paid taxes to the City within the year prior to the filing of this action, entitling them to bring this action as taxpayers under that statute.

In general, a party has standing to bring an action in which that party has a "*personal stake in the outcome of the controversy*." Baker v. Carr (1962) 369 U.S. 186, 204. In the instant action, plaintiffs FRANK and KYROPOLOUS testified that the plaintiffs have homes adjacent to or looking out upon Sites Nos. 1 or 2, and that plaintiffs' children and neighborhood children play on the currently vacant lots. This testimony establishes that plaintiffs have a sufficient interest in the City's proper use of the properties for purposes of standing.

This Court notes that the City did not aggressively dispute plaintiffs' standing to bring this action in its trial brief, merely asserting by way of argument and stipulated admitted facts that plaintiffs were not parties to the 1958 Agreement, nor to the agreement dated February 27, 1959 between the McGraths as Trustors, Title Insurance and Trust Company ("TITCO") as trustee, and the City as beneficiary which clarified ambiguities in the 1958 Agreement (the "1959 Agreement") (Ex. 6), and are not successors in interest to the McGraths. (See Statement of Admitted Facts, #1, 2 and 5).

Issue No. 2: Did Trustors John and Thomas McGrath Dedicate Lots Nos. 1 and 2 to the City for Public Purposes?

California law is clear that where property has been granted to a municipality for a specified purpose, the property must be used for that purpose. Slavich v. Hamilton (1927) 201 Cal. 299, 302. However, the evidence admitted at trial does not establish that Sites Nos. 1 and 2 were granted to the City by the McGraths for a specified purpose.

Neither the 1958 Agreement nor the 1959 Agreement contain language specifying or limiting the use of Sites Nos. 1 and 2 after transfer to the City. Neither the February 24, 1959 Grant Deed transferring the property to TITCO to hold for the benefit of the City (the "1959 deed")(Ex. 5), nor the 1995 Quitclaim

TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.

Deeds (the "1995 deeds")(Exs. 8 and 9) transferring the property to the City, restrict the use of the property. The 1959 deed merely reserved specified oil and mineral rights to the McGraths, as did the 1995 deeds.

A grant is to be interpreted in the same manner as any other contract, so as to give effect to the intention of the parties. Civil Code §§ 1066 and 1635; Boyer v. Murphy (1927) 202 Cal. 23, 29-30. For purposes of ascertaining that intention "the whole of the contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Civil Code § 1641, Id at 30. There is a legal presumption that executed documents, such as the 1959 Agreement and the 1959 deed, correctly express the intention of the parties. The prevailing rule is that a conveyance of land that describes the use to be made of the land, without limiting the conveyance with words such as "only" or similarly restrictive words, or by words of reversion, does not constitute a limitation on the grant or the use of the land. Manhattan Beach v. Superior Court (1996) 13 Cal.4th 232, 243-244.

This Court looked to the entire deeds and their underlying agreements to determine if the McGraths had clearly manifested an intent to limit the City's use of Sites Nos. 1 and 2. The only documentary evidence admitted at trial of an alleged intention by the McGraths to limit the use of Sites Nos. 1 and 2 by the City is an incomplete, unexecuted form deed attached as Exhibit B to the 1958 Agreement ("Exhibit B") which contains language stating that the grantors grant the property to the trustee for the City *"for public playground and recreation purposes and all purposes incidental thereto, and public parking purposes."* However, the 1958 Agreement merely references Exhibit B as a "form" of deed, and it is clear from a review of the form that Exhibit B is neither formal nor finalized. Exhibit B does not contain the property description, but the words, in parenthesis, "(Herein set forth the legal description of the two drill sites, Nos. 1 and 2)." Exhibit B references the retention of rights in fractional interests of oil and minerals rights to non-party predecessors in interest. The incomplete deed at Exhibit B could not have been used by the parties for the formal transfer of the properties to the City in accordance with the 1958 Agreement, and appears to have been no more than an exemplar, without legal effect.

This interpretation finds support in a comparison of the suggested language of Exhibit B and the final language of the 1959 Grant Deed. The language of the deed prepared and executed by the McGraths in 1959 deviated significantly from the form of the deed at Exhibit B, with the use language deleted entirely, the number of reservations reduced from three to one, and the remaining reservation being significantly reworded to limit access to oil, gas and minerals on the properties. The Court finds that the incomplete form of a deed at Exhibit B to the 1958 Agreement, and the multiple and express deviations from that form in the executed 1959 deed, establish that Exhibit B was intended by the McGraths as a non-binding exemplar only.

The 1959 deed incorporates the 1958 Agreement (containing Ex. B) into the section reserving certain rights in the property to the grantors, but the incorporation of an agreement imposing pre-conditions on

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transfer does not raise proposed post-transfer language in an exhibit to the level of a use restriction. Neither the 1958 Agreement, nor the 1959 Agreement, contain powers of termination tied to the City's use of Lots Nos. 1 and 2. The lack of a reversionary interest conditioned upon use of the property suggests that the McGraths did not intend to convey the property subject to a use restriction. See, e.g., Welton v. City of Red Bluff (1991) 2 Cal.App.4th 117. The reference to the 1958 Agreement in the reservation clause of the 1959 deed does not evince an intent by the McGraths to restrict the use of Sites Nos. 1 and 2 to the terms in the exemplar attached as Ex. B thereto, and does not create a use restriction thereby.

The Court may look to the facts and circumstances surrounding the transaction involving a deed, to determine if there appears to be an express intention on the part of the grantors to dedicate property for a specific purpose. See Slavich v. Hamilton (1927) 201 Cal. 299, 305. In the instant action, the facts referenced in the agreements entered into by the McGraths reveal an intention on the part of the McGraths to develop a beach front subdivision, while also leasing Sites Nos. 1 and 2 to Standard Oil for drilling purposes. The 1958 Agreement included many express provisions concerning the establishment by City of Oil Drilling Districts within the annexed subdivision. [Ex. 2, par 2(f)]. No transfer of the property to the City was to take place until drilling had been abandoned for a period of ten years. [Ex. 2, par 2(e)]. The focus of the agreement was upon the McGrath's use of the property, not the City's use, and the property transfer to the City was an incentive "to assure [the McGraths] that the City will take necessary steps to enable the owners to use the property in the manner desired...." [Ex. 2, par 2 (emphasis added)]. It does not appear that the McGraths, or their development, would have benefited from a restriction on use of Sites Nos. 1 and 2 upon transfer to the City, as the transfer was conditional and remote in time, and drilling within the development would continue on the properties for the immediate future.

The plaintiffs point to the City Council's Resolution No. 1939, [Ex. 1] dated February 11, 1958, authorizing the City's Mayor to "accept and consent to deeds or grants conveying to the City of Oxnard any interest in or easements upon real estate for public purposes," as evidence of an intent by the City to use Sites Nos. 1 and 2 for public purposes. However, this resolution was passed almost one year prior to the execution of the 1958 Agreement in December 1958, and makes no reference to Sites Nos. 1 or 2, and is not evidence of an express intention on the part of the City or the McGraths to restrict the use of Sites Nos. 1 and 2.

Neither do the resolutions from December 1958, Nos. 2055 [Ex. 3] and 2056 [Ex. 4], contain language restricting the use of Sites Nos. 1 and 2. The parties did not admit into evidence a resolution of the City Council regarding the 1959 Agreement executed by the McGraths and the City clarifying the terms of the 1958 Agreement. This Court finds that there are no facts or circumstances surrounding the deed transferring the property in 1959 demonstrating an express or implied intent by the McGraths or the City to restrict the use of Sites Nos. 1 and 2, let alone to restrict that use to playground, park or parking lot purposes.

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In summary, upon consideration of the documentary evidence, and the facts and circumstances surrounding the 1958 and 1959 agreements and deeds, this court finds that the McGraths did not intend to restrict the City's use of Sites Nos. 1 and 2 as part of their agreement to grant the properties to the City.

Issue No. 3: Did the City Accept the Property with a Use Restriction?

It is a general rule that a grant of land for restricted public use must be accepted by the public entity for the use restriction to apply. Baldwin v. City of Los Angeles (1999) 70 Cal.App.4th 819, 836. Here, there is no evidence that the City accepted the properties for restricted use.

Five months after the transfer of the property to TITCO on behalf of the City without express use limitations, the City Council made a reference to subdivision plans "designed for the ultimate use of such sites as parks, playgrounds or parking lots on cessation of drilling activity" in the recitals of its passage of a drilling variance to Standard Oil. [Resolution No. 2162]. [Ex. 7] Recitals have no legal force or effect, and can be used to interpret a document only if the operative words are in doubt. CCP 1068. However, the City's reference to use of the properties was made well after the transfer, in the form of a non-binding recital, and evinces no more than a possible future zoning restriction on the properties. Zoning restrictions do not constitute a deeded limitation on the use of property, and can be readily changed by a municipality, as demonstrated by the City's passage of a zoning variance on the application of Standard Oil. This Court finds that the reference to designs by the City for the use of Sites Nos. 1 and 2 as parks, playgrounds or parking lots does not establish an intent by the McGraths or the City to dedicate Sites Nos. 1 and 2 to such exclusive use.

The evidence establishes that the City did not take any action during acceptance of the property amounting to an irrevocable dedication of Sites Nos. 1 and 2 to public use for park, playground or parking lot purposes.

Issue No. 4: Did the City's Post-Transfer Offers of Sale Create a Dedication of Lots Nos. 1 and 2 to Public Use?

A municipality may irrevocably dedicate property to a public purpose by their acts, express or implied. Slavich at 306. Plaintiffs assert that the City, by its subsequent attempts to sell Sites Nos. 1 and 2 to public agencies for open-space purposes, expressed an intent to, and did thereby, restrict the use of that property for such purposes. The evidence submitted does not support plaintiffs' position.

The memo [Ex. 10] written by Deanna Walsh, City's Coastal Planner to the City's Mayor after the transfer of the property to the City, and dated October 14, 1996, clearly stated that "The property is no longer necessary for public purposes. Staff is recommending that the subject property be offered for sale which will return the property to the tax rolls. Funds received from the sale of the property will go

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to the City. The sale of the property would be in the best interest of the City and would be sold in conformance with Government Code Section 54220 et seq." [Ex. 10, p.1]. The property was declared surplus by adoption of Resolution No. 11,141 at the publicly-held Oxnard City Council meeting on October 22, 1996. [Ex. 11, p. 8]. Neither of these actions by the City's staff or council members demonstrates an intent to restrict the use of Sites No. 1 and 2. To the contrary, these actions express an intention to sell the properties for purposes of using these parcels to generate and collect taxes.

The day after the adoption of Resolution No. 11,141, the City's Coastal Planner, Deanna Walsh, mailed identical letters to a number of agencies offering to sell Sites No. 1 and 2, explaining that "This real property is hereby offered for sale or lease to your agency for park and recreation purposes or open space purposes pursuant to the mandate of Government Code (Govt C) Sections 54220, et seq., subject to the priorities as set forth thereunder." [Exs. 12-18]. Govt C 54222 requires that any local agency (which includes cities by definition at Govt C 54221(a)) "disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:....(b) A written offer to sell or lease for park and recreational purposes or open space purposes...." The City's compliance with Govt C 54222 as a prerequisite to disposing of Sites Nos. 1 and 2 does not evince an intent by the City to restrict the use of those parcels by the City or subsequent purchasers, except as to those purchasers receiving statutory priority pursuant to Govt C 54222(b).

Issue No. 5: Are the Plaintiffs Barred from Bringing this Action for Reformation by the Statute of Limitations?

This action was brought beyond the statute of limitations. The statute of limitations imposed on actions for relief from mistake is three years from accrual of the action, i.e., upon discovery by the aggrieved party of the facts constituting the mistake. CCP 338(d). Welsher v. Glickman (1969) 272 CA2d 134, 140. In general, a plaintiff's ignorance of a cause of action does not toll the running of the statute, but the delayed discovery rule is an exception that has been adopted to protect plaintiffs who are ignorant of their right of action through no fault of their own. Naftzger v. American Numismatic Society (1996) 42 Cal.App.4th 421, 428.

The recent case of Hogar v. Community Development Comm of the City of Escondido (2003) 110 CA4th 1288, explained the applicability of this rule in situations involving actions by public agencies. Where an individual plaintiff does not assert any individual loss, and a public entity's violation of a statutory duty has been disclosed in public hearings and public records, then the delayed discovery rule is not applicable to protect the plaintiff's substantive rights. In the instant action, the plaintiffs have not asserted any enforceable individual loss, but are seeking enforcement of a public duty for the benefit of their neighborhood community. The evidence submitted indicates that, at least since 1998, the City has disclosed in public hearings and public records that it was approving development of Sites Nos. 1 and 2 for residential housing.

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In Cumming v. City of San Bernardino Redevelopment Agency (2002) 101 Cal.App.4th 1229, the Court of Appeal determined that an agency's notice of sale of ten acres referred to documents "describing the full scope of the project, including the proposed collection of solid waste," which documents were available for review. Cumming at 1235. Although the issue was whether the notice was adequate to trigger the 180 day statute of limitations of the Public Resources Code, section 21167, in dicta the Cumming court noted that delayed discovery only extended a statute of limitations to when the complaining party either knew or reasonably should have known of the facts underlying the legal challenged. The evidence in the instant action establishes that full disclosure of the City's intentions was made, although not until 1998.

The City declared the property surplus on October 22, 1996 by adoption of Resolution 11,141. The property was subject to disposal through the statutorily mandated procedures of Govt C 54220, et seq, and in fact the City offered Sites No. 1 and 2 for sale or lease to other public agencies the very next day, October 1998, "for park and recreation purposes or open-space purposes." There was no evidence presented that the City offered the property for any other purpose, and these City documents would not place the public on notice that the City was planning to take action with regard to these properties for purposes contrary to the alleged use restriction.

However, beginning in 1998, the City's Planning Commission held public hearings and adopted resolutions giving the public clear notice of the City's intent to allow residential development on Sites Nos. 1 and 2. [See Ex. 22, p.5, Minutes regarding attendance at public meeting of the Planning Commission on November 19, 1998]. On November 19, 1998, the Planning Commission adopted Resolution No. 98-68 approving the application of a developer for a coastal development permit, which permit would terminate in twenty-four months "unless the proposed development or use has been diligently pursued." [Ex. 19, p.2]. Also on November 19, 1998, the Planning Commission adopted Resolution 98-69, setting forth development requirements, such as paying fees, submitting construction plans, submitting a grading plan, and installing public improvements. [Ex. 20]. That day it also approved the Tentative Subdivision Map submitted by the developer. [Ex. 21]. Plaintiffs correctly note that the developer is not identified by name in these resolutions, however, these resolutions clearly put the public on notice that a developer had applied for, and been granted, a development permit for residential homes on Sites Nos. 1 and 2. (Plaintiff DIERDRE FRANK attended the November 19, 1998 meeting).

On January 26, 1999, the City Council held a public meeting to consider a resolution to approve an amendment to the Local Coastal Program, to be forwarded to the Coastal Zoning Commission for further review and approval. [Ex. 23]. The partial minutes of that meeting submitted by the parties indicate that plaintiff DIERDRE FRANK and twenty-three neighbors attended the meeting and spoke to the council, with some "request[ing] that if the City Council intends to sell the parcels, the funds from the proceeds of the sale be prioritized for use in upgrading the Oxnard Shores neighborhood." In

TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.

addition, one council member requested an audit that sought an accounting, in part, of "the revenue that would be generated from the sale of the lots." [Ex. 23]. The proposed resolutions and the discussion at that public meeting made it very clear that the City intended to sell the property as well as develop it, and plaintiffs were on notice of the both the planned residential development and intended sale of Sites Nos. 1 and 2 no later than the date of that meeting.

This Court finds one case cited by the City, Utility Cost Mgmt v. Indian Wells Valley Water District (2001) 26 Cal.4th 1185, to be limited to the context of challenges to public utility fees. However, in that matter the California Supreme Court reasoned that when information is made publicly available, "a diligent plaintiff should be able to discover, within the statutory period, whether a cause of action exists," and that reasoning, which is echoed in Hogar, is applicable here. See Utility Cost Management at 1197.

Development of residential homes on Sites Nos. 1 and 2 would not be in compliance with a use restriction limited to playground, recreation and parking purposes, and the court finds that plaintiffs' cause of action for enforcement of such a use restriction through reformation accrued no later than November 19, 1998. This Court finds that the City repeatedly informed the public that it intended residential development and sale of Sites Nos. 1 and 2 from November 19, 1998. The public record gave sufficient notice to start the statute of limitations running.

The Court also finds that plaintiffs, through plaintiff DIERDRE FRANK, had actual notice of the City's intentions to use Sites Nos. 1 and 2 for purposes other than as a playground or recreation no later than November 19, 1998. The delayed discovery rule is intended to protect plaintiffs who are ignorant of their right of action through no fault of their own, and is inapplicable here, where plaintiffs were put on public notice of the City's intentions, and even participated in the discussions with regard to residential development. However, regardless of whether or not the delayed discovery rule is applied here, plaintiffs' complaint filed February 4, 2003 was more than three years after public and actual notice to plaintiffs on November 19, 1998, and beyond the three-year statute of limitations of CCP 338(d). Plaintiffs' action is barred.

Accordingly, the Court finds in favor of the defendant and against the plaintiffs. The Court directs the defendant to prepare, serve, and submit for signature by June 1st, 2004, a (Proposed) Judgment consistent with this decision. The defendant is the prevailing party entitled to costs per cost memo.

The clerk is directed to give notice.

MICHAEL D. PLANET
Executive Officer and Clerk

By: 

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

CASE NO. CIV 217306

CASE NAME: FRANK, et al. v. CITY OF OXNARD, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 3855-F Alamo Street, Simi Valley, CA 93063. On May 11, 2004, I served the following document described as:

ORDER ON RULING ON SUBMITTED MATTER

RE: COURT TRIAL

(Taken under submission 05/07/04)

By placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

**Jacqueline K. Phlegar, Esq.
Ferguson, Case, Orr, Paterson
& Cunningham LLP
1050 South Kimball Road
Ventura CA 93004**

**David K. Hughes, Esq.
Price, Postel & Parma LLP
200 East Carrillo Street 4th Floor
Santa Barbara CA 93101**

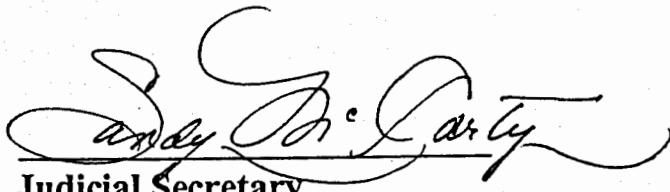
I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Simi Valley, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Simi Valley, California on May 11, 2004.

**MICHAEL D. PLANET,
Executive Officer and Clerk**

By:


Judicial Secretary

Declaration of Mailing





Breaker's Way Site, View is to the west



Breaker's Way Site, View is to the east

JAY AND CAROL VAUGHN
5344 DRIFTWOOD STREET
OXNARD, CA 93035

RECEIVED
MAR 06 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 3, 2007

California Coastal Commission
89 South California Street #200
Ventura, CA 93001

RE: City of Oxnard Local Coastal Program Amendment 1-07
Hearing: March 15, 2007 Item Th8c OPPOSED

Dear Commissioners:

The City of Oxnard and California Coastal Commission should be ashamed of themselves. How can you consciously allow the Oxnard Shores property Amendment 1-07 to be approved? Don't you realize how much new construction has ALREADY been approved within ONE BLOCK of this proposed development? The large development at Fifth and Harbor, three new townhouse developments on Driftwood Street, and just blocks away, the gigantic developments at Fifth and Victoria, and Wooley and Victoria. We moved into the immediate area two years ago and have not had a single day when we have not been inconvenienced by the noise and mess of construction. I cannot even imagine what the traffic will be like with new homes at each of these sites.

More importantly, the land proposed to be rezoned for development DID have "rare or endangered plant...species" before it was cleaned up and used as a parking lot for builders and city vehicles. This is an important fact being overlooked in protecting the land and maintaining its current zoning. The McGrath Family gave this land to the City of Oxnard trusting that it would retain its resource-protected designation. The greed with which the City has allowed development without concern for this request and concern for the infrastructure of our community is disgraceful.

Also, it is alleged that the property "does not maintain viable connections to the beach." But it is, in fact, the only paved sidewalk access to the beach for families living on Reef Way and Breakers Way. Using the streets to access the beach is dangerous as cars, garbage trucks, utility and construction vehicles pose a danger to children. There are no pedestrian sidewalks on these streets but the walkway accessed from the property is safe and free from motor vehicles.

Finally, the City builds parks everywhere but the beach. Beach children need parks, too. The only park available to our children is over a mile away. In keeping with the request of the McGraths, this area would avail itself perfectly as a naturally vegetated beach park where our children would have the opportunity to play and learn about the plants and vegetation unique to our community.

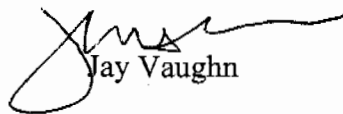
Exhibit 12
LCPA No. OXN-MAJ-1-07
Additional
Correspondence

We feel strongly that the vegetation be allowed to grow back on this land before you determine it meets the criteria for rezoning. Put up a fence to protect the land and you will see rare plants and ground cover continue to resurface. Just because you come in and clear off the plants does not mean they do not exist. This land is an "environmentally sensitive habitat" that has been temporarily destroyed by ruthless developers supported by greedy tax-motivated city officials. And, as a side note, how do you expect families to attend a hearing almost 300 miles away from home? I guess only the wealthy investors and politicians have the resources to testify.

Sincerely,



Carol Vaughn



Jay Vaughn

Cc: John Ainsworth, Deputy Director, South Central Coast District
Barbara Carey, Supervisor, Panning and Regulation
Deanna Christensen, Coastal Program Analyst
Steve Blank, Commissioner
Sara Wan, Commissioner
Dr. William Burke, Commissioner
Steven Kram, Commissioner
Mary Shallenberger, Commissioner
Patrick Kruer, Chair
Khatchik Achadjian, South Central Coast Rep
Dr. Holden, Mayor, City of Oxnard
Dean Maulhardt, Mayor Pro Tem, City of Oxnard
John Zaragoza, Councilmember, City of Oxnard
Andres Herrera, Councilmember, City of Oxnard
Timothy Flynn, Councilmember, City of Oxnard
Curtis Cannon, Community Development Director, City of Oxnard

RECEIVED

MAR 08 2007

March 7, 2007

Dear California Coastal Commission,

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

I am writing in regards to LCP Amendment MAJ-OX- 1-07
(Breakers Way Resource Protected Lot).

There are numerous reasons why this lot should not be rezoned from RP to RB-1.
I just want to mention the top 4 reasons as to why this land should not be rezoned.

Reason 1 - This lot was a gift to the city of Oxnard. It was given to the city as Resource Protected land and it should stay Resource Protected. If the city does not want Resource Protected land, they should sell it to someone who does want RP land.

Reason 2 - The neighborhood has very limited parking for beach access and more homes would only increase the parking problem.

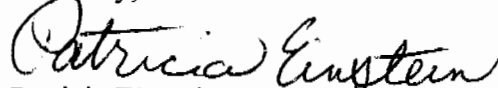
Reason 3 - No mitigation is being given for the loss this Breakers Way Lot. If the lot was in better conditions and there were species of concern on the land then the city would have to mitigate. The city of Oxnard helped to destroy this lot by annually cutting the plants with heavy equipment. This removed any ESHA over the past years. If you rezone the land it sends the message that in order to get RP land rezoned, it is a good thing to destroy it first.

Reason 4 - Even though only the Breakers Way RP lot has been submitted for rezoning, this land is still tied to the Whitecap ESHA lot. The city of Oxnard sold the two lots together on Jan. 9, 2007 to a Company named Elevar 7 so that both could be developed. I seriously doubt this development of non-residential to residential will have any percentage of low-income housing, which was of discussion at the last Coastal Commission hearing in San Diego. The city didn't even attempt to sell either lot to a conservancy for restoration and protection of these two coastal resources with any of the funding now available through Proposition 84.

Please do not rezone this land or Oxnard will continue to sell gifted land, neglect parking problems, destroy RP land and sell ESHA land so it can be destroyed rather than protected.

Please consider changing the staff recommendation and do not rezone Resource Protected land or at least mitigate the loss of the Breakers Way lot for the Protection on of the Whitecap ESHA lot.

Sincerely,



Patricia Einstein
2014 Long Cove Dr.
Oxnard, CA. 93036



The Beacon Foundation

PMB 352
3844 W Channel Islands Blvd
Oxnard, CA 93035

March 8, 2007

The California Coastal Commission
89 S. California St., 2nd Floor
Ventura, Ca 93001

RECEIVED
MAR 08 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: Th 8C

Dear Commissioners:

The City of Oxnard seeks an amendment to their certified LCP for the rezoning of a Parcel on Breakers Way/Reef in Oxnard Shores from Resource Protected "(RP) to "Single Family Beach" (R-B-1)

Originally, they sought rezoning of this same parcel with another on Whitecap Way, considering them a package. Indeed they have already sold them together to the same developer. This arouses deep suspicion because while Breakers Way/Reef has been degraded, it is believed that it can still be habitat for the silvery legless lizard and the Horned lizard. The Whitecap Way parcel has already proven to be habitat.

If degradation is all it takes to reduce priceless Resource Protected land to pricey commercial development land, an owner can achieve that on one parcel while building 12 homes on the other. Construction debris and the parking of heavy equipment and other abuse is what destroyed the habitat value of Breakers Way/Reef.

We are asking the Commission to preserve Resource Protection on both parcels since they were sold to the City by the McGrath family with the promise that they would be preserved as open space. There is rampant development along Harbor Blvd. which borders Oxnard Shores. Open space is increasingly rare and a treasure for human as well as wild life. Oxnard Shores is densely populated, heavily trafficked, and like all beach areas devoid of parking. 12 large homes are planned for the Breakers Way/Reef space and likely as many for the Whitecap piece. With 2 to 3 cars for each residence, that's about 72 more cars in that packed community. And the last hope for open space habitat for the lizards and the many birds who forage there will be lost forever.

If the Commission can not agree to save both of these open spaces, it is imperative That Whitecap Way be protected with a permanent ESHA.

You have to ask yourself why a developer would buy a protected parcel unless he is assured he can make it buildable in time. It is this incremental erosion of protection that this Commission is the last hope of preventing. Please exercise that ability.

Gratefully, Jean Rountree

The Beacon Foundation...an all volunteer, grassroots environmental group focused on the protection of Ventura County's coastal resources.

RECEIVED
MAR 08 2007

March 5, 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT
Dear California Coastal Commission,

We are writing in regards to LCP Amendment MAJ-OX- 1-07
(Breakers Way Resource Protected Lot).

The Oxnard Shores Community was designed prior to 1972 when most families only owned one car so a majority of the roads are called Ways and do not provide for public parking. Furthermore the community is very dense, and there are only five streets to accommodate public parking for access to the public beach.

We do not want to see Resource Protected Land rezoned for more houses. We want to protect the last remaining open spaces in this beach community.

We are disappointed that the Breakers Way Resource Protected Lot is being recommended for rezoning without mitigation. The city of Oxnard is stealing this land from the public. They city of Oxnard destroyed this lot and will be rewarded for it.

They annually cut down the native plants, which then allowed the non-native grasses to take over and killed any chance for the native coastal habitat to survive on the site. They also graded the site and dumped gravel on it so it could be used as a staging area for their heavy equipment when streets in the community were repaved.

The city of Oxnard never helped to protect this land. They only helped to remove any Environmentally Sensitive Habitat.

Please do not rezone this Resource Protected land without mitigation.

We would like to see the Whitecap Resource Protected lot, which the Coastal Commission found to be ESHA forever protected. We fear the city of Oxnard is desperate for money and will continue to ignore this precious coastal resource and will continue to destroy and neglect this land as it did to the Breakers Way Resource Protected Lot.

Please help to save the Whitecap ESHA Resource Protected Lot before it is forever destroyed.

We want to see the Whitecap ESHA Resource Protected Lot used as mitigation for the loss and rezoning of the Breakers Way Resource Protected Lot.

Thank you,

From the concerned citizens of Oxnard

1030 Mandalay Beach Rd
Oxnard, CA 93035
March 7, 2007

RECEIVED
MAR 12 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

Dear Sir or Madame,

This letter is regarding LCP Amendment MAJ-OX- 1-07. I am opposed to the Breakers Way or Reef Lot being rezoned. The lot was a foredune with sensitive habitat prior to the city using it for a parking area during street repaving in 2003.

The majority of community members in Oxnard Shores would like to see all protected land remain protected. The quality of the environment decreases as neighborhoods and communities are overcrowded. Oxnard Shores has limited open space currently, and we would like to see it remain open space.

The vegetation on the Reef lot can renew, and any animals that lived there can return. Please do not let any development occur at this lot. Please deny any rezone applications.

Thank you for your time and consideration.

Sincerely,



Susie Yovanno, Oxnard Shores Home Owner

COUNCIL APPROVAL

DATE: 01/09/07 AGENDA # 0-2(2)

OXNARD SHORES, OXNARD, CALIFORNIA
AGREEMENT OF PURCHASE AND SALE

This Agreement, dated as of December 27, 2006, is between THE CITY OF OXNARD, a municipal corporation ("**Seller**"), and ELEVAR SEVEN, LLC, a California limited liability company ("**Buyer**").

ARTICLE I

PURCHASE AND SALE OF PROPERTY

Breakers
way
parcel

Section 1.1 Sale.

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms, covenants and conditions set forth herein, all of Seller's right, title and interest in and to the following property (collectively, the "**Property**"):

(a) Real Property. That certain real property located in the City of Oxnard, State of California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**"), which Land consists of one (1) parcel consisting of twelve (12) proposed single-family lots, together with (1) all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, including all mineral rights, development rights, entitlements, air and water rights, and (2) all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land (collectively, the "**Real Property**"); and

(b) Intangible Personal Property. To the extent assignable at no cost to Seller, all intangible personal property, if any, owned by Seller and related to the Real Property, including, without limitation: any plans and specifications; any warranties; and any governmental permits, approvals and licenses (including any pending applications) (collectively, the "**Intangible Personal Property**").

Section 1.2 Purchase Price.

(a) The purchase price of the Property shall be Four Hundred Eighty Thousand Dollars (\$480,000.00) per approved single-family approved lot included as part of the Land, such that the total purchase price shall be Five Million Seven Hundred Sixty Thousand Dollars (\$5,760,000.00) (the "**Purchase Price**"). Notwithstanding the foregoing, if in connection with the recordation of the "Final Map" (as defined below), the Real Property consists of less than twelve (12) single-family lots, then the Purchase Price shall be reduced by \$480,000 per lot less than 12 lots. For example, if there are only ten (10) single-family lots, then the Purchase Price shall equal Four Million Eight Hundred Thousand Dollars (\$4,800,000.00).

(b) The Purchase Price shall be paid as follows:

(1) Within two (2) business days after the "**Effective Date**" (as defined in Section 9.13 below), Buyer shall deposit in escrow with Commerce Escrow Company, 100 Wilshire Boulevard, Los Angeles, California (the "**Escrow Company**")

Exhibit 13
LCPA No. OXN-MAJ-1-07
Purchase and Sale
Agreements

immediately available funds in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (the "**Initial Deposit**").

(2) Within two (2) business days after the expiration of the "**Contingency Period**" (as defined in Section 2.2 below), Buyer shall deposit with the **Escrow Company** additional cash or other immediately available funds in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (the "**Additional Deposit**") if Buyer approves its Contingency Period investigations of the Property and determines to proceed with the transaction.

As used herein, the term "**Deposit**" shall refer to the Initial Deposit and the Additional Deposit, collectively, and to any portion thereof held by Escrow Holder, as applicable. The Deposit, subject to any restrictions of Escrow Holder, shall be held in an interest-bearing account and all interest thereon, less investment fees, if any, shall be deemed a part of the Deposit. If the sale of the Property as contemplated hereunder is consummated, then the Deposit shall be paid to Seller at the Closing (as defined in Section 1.2(b)(2) below) and credited against the Purchase Price. If the sale of the Property is not consummated due to the failure of a condition precedent hereunder to be satisfied on or before the Closing Date, which is not the result of a default by Buyer hereunder and which terminates this Agreement, the Deposit shall be refunded to Buyer. If Seller fails to close the sale of the Property as contemplated in this Agreement, Buyer will be entitled to either (a) enforce specific performance, or (b) terminate this Agreement, receive a refund of the Deposit, and subject to Section 9.11, pursue all rights and remedies available to Buyer at law, equity or contract. **IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND SUCH LIQUIDATED DAMAGES SHALL BE THE EXCLUSIVE REMEDY OF SELLER FOR SUCH DEFAULT BY BUYER. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT PRIOR TO CLOSING, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 6.1, 9.3 AND 9.9.**

INITIALS:

SELLER 

BUYER 

(3) The balance of the Purchase Price, which is Five Million Five Hundred Ten Thousand Dollars (\$5,510,000.00) (plus or minus the prorations pursuant to Section 8.5 hereof and reductions pursuant to Section 1.2 above and 2.3(b) below) shall be paid

to Seller in cash or by wire transfer of other immediately available funds at the consummation of the purchase and sale contemplated hereunder (the "**Closing**").

ARTICLE II

CONDITIONS

Section 2.1 Buyer's Conditions Precedent.

Subject to the provisions of Section 9.3 hereof, Seller has provided and/or shall provide, Buyer and its consultants and other agents and representatives with access to the Property to perform Buyer's inspections and review and determine the present condition of the Property. Seller has delivered to Buyer, or shall within the Delivery Period (as defined below) deliver to Buyer, copies of all Due Diligence Materials (as defined in Section 2.1(b) below) in Seller's possession or control. The "**Delivery Period**" shall mean the period which ends ten (10) business days after the Effective Date (as defined in Section 9.13 below). Buyer's obligation to purchase the Property is conditioned upon Buyer's review and approval of the following, in Buyer's sole and absolute discretion, within the applicable time periods described in Sections 2.2 and 4.1 hereof:

(a) The Title Report (and underlying documents related thereto) and Survey Matters in accordance with Article IV below.

(b) Complete and legible copies of all documents, contracts, agreements (including, without limitation, all leases, licenses, permits, approvals, maps, easements and covenants, conditions and restrictions), reports (including, without limitation, soils/geotechnical reports, phase I and phase II environmental reports, engineering and architectural studies or plans, grading plans and topographical maps) and other items and materials related to the Property and prepared by or on behalf of Seller in connection with its ownership and/or operation of the Property (collectively, the "**Due Diligence Materials**"), including, but not limited to, all contracts pertaining to the operation of the Property, including any management, leasing, service and maintenance agreements, and equipment leases (collectively, the "**Service Contracts**").

(c) The physical condition of the Property.

(d) The zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

(e) The operating statements and books and records pertaining to the operation of the Property in each case for each of the three (3) most recent years during which the Property has been owned by Seller and for the current year (to the extent available), current real estate tax bills, any warranties, licenses, permits, certificates of occupancy, plans and specifications, and any current accounts receivable schedule in such form as Seller shall have in its possession for the Property, and other agreements or documents pertaining to the Property which will be binding on Buyer after Closing.

(f) Any other matters Buyer deems relevant to the Property.

Section 2.2 Contingency Period.

Buyer shall have until 5:00 p.m. Pacific Standard Time on the date that is forty-five (45) days following the later of the Effective Date and the date that Buyer receives complete and legible copies of all Due Diligence Materials, but in any event no later than sixty (60) days after the Effective Date (such period being referred to herein as the "**Contingency Period**") to review and approve the matters described in Sections 2.1(b)-(f) above in Buyer's sole discretion (title and survey review and approval shall be governed by the provisions of Section 4.1 below). If Buyer determines to proceed with the purchase of the Property, then Buyer shall, before the end of the Contingency Period, so notify Seller in writing (the "**Contingency Period Notice**"). If Buyer approves all of the matters set forth in Sections 2.1 (a) – (f), prior to the end of the Contingency Period, the Deposit shall become nonrefundable except as expressly provided herein. If before the end of the Contingency Period Buyer fails to deliver the Contingency Period Notice, then Buyer shall be deemed to have elected to terminate this Agreement, the Initial Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below.

Section 2.3 Entitlements.

(a) Buyer and Seller acknowledge and agree that it shall be a condition to Buyer's obligation to purchase the Property that Buyer have vested rights to construct twelve (12) single family residences on the Real Property. In order that such condition be satisfied, the following must occur: (i) Seller must use its commercially reasonable efforts to amend the existing zoning of the Real Property from RP to R-B-1 (the "**Zone Change**"), (ii) upon the final, non-appealable approval of the Zone Change from all applicable governmental agencies (including, without limitation, the California Coastal Commission [the "**Commission**"]), Seller must, at its sole cost and expense, use its commercially reasonable efforts to obtain final, non-appealable approval from all applicable governmental agencies of (a) a tentative tract map subdividing the Land into twelve (12) single family lots with conditions reasonably acceptable to Buyer ("**Tentative Map**"), and (b) a coastal development permit authorizing the subdivision of the Land into twelve (12) single family lots with conditions reasonably acceptable to Buyer ("**CDP**"), (iii) upon (A) the final, non-appealable approval of the Tentative Map and the CDP with conditions reasonably acceptable to Buyer, (B) the final, non-appealable approval of the "Development Agreement" (as defined below) and the "Exemption Determination" (as defined below), and (C) Buyer's receipt of the "Will Serve Letters" (as defined below), Buyer must, at its sole cost and expense, use commercially reasonable efforts to satisfy all conditions of approval to the Tentative Map required to record a final tract map against the Land creating twelve (12) legal lots (the "**Final Map**"), and upon satisfaction of such conditions, Buyer must, at its sole cost and expense, record the Final Maps, (iv) Seller must, promptly following the mutual execution of this Agreement, enter into good faith negotiations to achieve execution of a final, non-appealable (without any appeals being filed, or if filed, resolved in a manner reasonably acceptable to Buyer) Development Agreement with Buyer reasonably acceptable to Buyer vesting in Buyer the right to construct twelve (12) single family residences on the Land (the "**Development Agreement**"), (v) in accordance with Section 17-57(C)(2) of the Oxnard Municipal Code (the "**Municipal Code**"), the Development Services Director of the City of Oxnard must make a final non-appealable determination (without any appeals being filed, or if filed, resolved in a manner reasonably acceptable to Buyer), that the development and construction of a single family home

on each of the lots within the Real Property is categorically excluded from the permit provisions of Section 17-57 of the Municipal Code (the "**Exemption Determination**"), and (vi) the City of Oxnard must issue to Buyer "will serve" letters or the equivalent thereof obligating the City of Oxnard to provide water, sewer and municipal waste removal for each of the lots (the "**Will Serve Letters**"). The final, non-appealable approval of the Zone Change, the Tentative Map, the CDP, the Development Agreement and the Exemption Determination, the recordation of the Final Map and the issuance of the Will Serve Letters are collectively referred to herein as the "**Entitlement Conditions**." Additionally, all plans and specifications prepared by Seller with respect to any and all on-site and/or offsite improvements required under the Tentative Map and/or CDP shall (a) be subject to the reasonable approval of Buyer, and (b) be assigned to Buyer at Closing. Additionally, Seller shall reasonably cooperate with Buyer, at no expense to Seller, so that Buyer can satisfy the conditions of approval to the Tentative Map and record the Final Map prior to the Closing Date.

(b) The requirements set forth in Section 2.3(a) above are conditions to Buyer's obligations to purchase the Property under this Agreement. Subject to the terms of this Section 2.3(b), Seller shall use commercially reasonable efforts as an applicant and property owner to pursue satisfaction of the Entitlement Conditions. Additionally, Buyer will act diligently to satisfy all conditions of approval to the Tentative Map in accordance with Section 2.3(a) above. In addition, if an Entitlement Condition is not satisfied for any reason other than a default by Seller (i.e., failure to use commercially reasonable efforts as an applicant and property owner to pursue satisfaction of the Entitlement Conditions), the sole remedy of Buyer shall be to terminate this Agreement and recover the Deposit. Buyer and Seller acknowledge and agree that as used herein "commercially reasonable efforts to pursue satisfaction of the Entitlement Conditions" requires Seller to (i) bring as appropriate applications before appropriate governmental authorities to obtain the Zone Change, the Tentative Map, the CDP, the Development Agreement and the Exemption Determination, and (ii) pursue resolution of all administrative appeals to the Zone Change, the Tentative Map, the CDP, the Development Agreement and/or the Exemption Determination. Notwithstanding the foregoing to the contrary, "commercially reasonable efforts to pursue satisfaction of the Entitlement Conditions" does not require Seller to (A) challenge a final administrative decision in state or federal court, or (B) defend a challenge of a final administrative decision in state or federal court. Seller agrees, however, that Buyer shall have the right, in Buyer's sole discretion but at Buyer's sole cost and expense (except as otherwise set forth below), to challenge and/or defend any final administrative decisions in state or federal court. Seller shall reasonably cooperate with Buyer, at no cost to Seller, with any such challenge and/or defense, and Seller shall execute any documents reasonably required in order for Buyer to challenge and/or defend any final administrative decision in state or federal court. If the Closing occurs, all costs and expenses incurred by Buyer to challenge and/or defend any final administrative decisions in state or federal court, not to exceed \$500,000, shall be credited against the Purchase Price.

(c) Without limiting Seller's obligations above, nothing in this Agreement shall be interpreted to limit or constrain the City of Oxnard in the performance of its legislative, quasi-judicial, administrative or police powers. In particular, the City Council must make administrative, legislative and quasi-judicial determinations or perform other governmental functions in connection with the satisfaction of the Entitlement Conditions. This Agreement does not bind or constrain the City in those determinations.

ARTICLE III

BUYER'S EXAMINATION

Section 3.1 Representations and Warranties of Seller.

Subject to the disclosures contained in **Schedule 1** attached hereto and made a part hereof (the "**Disclosure Items**"), Seller hereby makes the following representations and warranties with respect to the Property.

(a) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**") and any related regulations.

(b) (i) This Agreement has been, and all documents executed by Seller which are to be delivered to Buyer at Closing will be, duly authorized, executed and delivered by Seller, (ii) this Agreement does not and such other documents will not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or, to the best of Seller's knowledge, the Property is subject, and (iii) no approval, authorization, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement or the transactions contemplated hereby, except such as have been duly obtained or made. The City Council of the City of Oxnard has approved the execution and delivery of this Agreement and the transactions contemplated hereby.

(c) There are no written or oral leases or other occupancy or use agreements presently in force for the Real Property and Seller has not sold or transferred the Property.

(d) There are no Service Contracts in effect for the Property.

(e) There is no litigation or governmental proceeding (including, but not limited to any condemnation proceeding) pending or threatened with respect to the Property, or with respect to Seller which impairs Seller's ability to perform its obligations under this Agreement.

(f) Seller has received no written notice from any governmental authority of any violation of any law applicable to the Property (including, without limitation, any "Environmental Law" (as defined below)) that has not been corrected.

(g) All of the Due Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are true and complete copies of such items in Seller's possession or control which are used by Seller in the operation of the Property.

(h) Seller has no actual knowledge of any "Hazardous Materials" (as defined below) located on, under or near the Real Property. Seller has not conducted any investigation concerning soils or existence of Hazardous Materials.

(i) Seller has not enlisted the services of any broker or finder in connection with the sale of the Property.

Each of the representations and warranties of Seller contained in this Section 3.1: (1) is true as of the Effective Date, and (2) shall, except as Seller may in writing inform Buyer, be true in all material respects as of the date of Closing, subject in each case to (A) the Disclosure Items and (B) other matters expressly permitted in this Agreement or otherwise specifically approved in writing by Buyer, and (3) shall survive the Closing and not be merged into the "Deed" (as defined below). For purposes of this Agreement, "**Hazardous Materials**" shall mean inflammable explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.) and any other applicable federal, state or local laws (collectively, "**Environmental Laws**").

Section 3.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

(a) This Agreement and all documents executed by Buyer which are to be delivered to Seller at Closing do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(b) Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(c) Buyer has been duly organized, is validly existing and is in good standing in the state in which it was formed, and, if required to do so, is qualified to do business in the state in which the Real Property is located. This Agreement has been, and all documents executed by Buyer which are to be delivered to Seller at Closing will be, duly authorized, executed and delivered by Buyer.

(d) Buyer has not received any written notice that Buyer is not in compliance with any laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to Buyer and all beneficial owners of Buyer, including, without limitation, the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control. Department of the Treasury ("**OFAC**")

and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**"). Neither Buyer nor any beneficial owner of Buyer;

(1) to Buyer's knowledge, is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**");

(2) has been determined by competent authority to be subject to the prohibitions contained in the Orders;

(3) is owned or controlled by, nor acts for or on behalf of, any person or entity who, to Buyer's actual knowledge, is on the Lists or any other person or entity who has to Buyer's actual knowledge been determined by competent authority to be subject to the prohibitions contained in the Orders; or

(4) shall transfer or permit the transfer of any interest in Buyer or any beneficial owner in Buyer to any person who, to Buyer's actual knowledge, is or whose beneficial owners are listed on the Lists.

Each of the representations and warranties of Buyer contained in this Section shall be deemed remade by Buyer as of the Closing and shall survive the Closing.

ARTICLE IV

TITLE

Section 4.1 Conditions of Title.

(a) Upon execution of this Agreement, Seller shall order an updated preliminary title report or commitment (the "**Title Report**") from First American Title Company, 1889 N. Rice Avenue, Oxnard, California 93030 (the "**Title Company**"), which shall be delivered to Buyer, together with legible copies of all underlying documents relating to title exceptions referred to therein, promptly upon Seller's receipt thereof, but no later than ten (10) business days after the Effective Date. Seller has no survey of the Property. Buyer may order a survey (the "**Survey**") if desired by Buyer or if necessary to support the issuance of the Title Policy (as defined in Section 4.2 below). Buyer shall pay the entire cost of the Survey, if any.

(b) At least five (5) days prior to the last day of the Contingency Period (the "**Title Review Date**"), Buyer shall furnish Seller with a written statement of objections, if any, to the title to the Property, including, without limitation, any objections to any matter shown on the Survey (collectively, "**Objections**"). In the event the Title Company amends or updates the Title Report after the Title Review Date (each, a "**Title Report Update**"), Buyer shall furnish Seller with a written statement of Objections to any matter first raised in a Title Report Update within

three (3) business days after its receipt of such Title Report Update (each, a "**Title Update Review Period**"). Should Buyer fail to notify Seller in writing of any Objections in the Title Report prior to the Title Review Date, or to any matter first disclosed in a Title Report Update prior to the Title Update Review Period, as applicable, Buyer shall be deemed to have approved such matters which shall be considered to be "**Conditions of Title**" as defined in Section 4.1(e) below.

(c) If Seller receives a timely Objection in accordance with Section 4.1(b) ("**Buyer's Notice**"), Seller shall have the right, but not the obligation, within ten (10) business days after receipt of Buyer's Notice ("**Seller's Response Period**"), to elect to attempt to cure any such matter upon written notice to Buyer ("**Seller's Response**"). If Seller does not give any Seller's Response, Seller shall be deemed to have elected not to attempt to cure any such matters. Notwithstanding the foregoing, Seller shall in any event be obligated to cure all matters or items (i) that are mechanics' liens, judgment liens, tax liens, mortgage or deed of trust liens or security interests against the Property, (ii) real estate tax liens, other than lien for taxes and assessments not yet due and payable, and (iii) that have been voluntarily placed against the Property by Seller after the date of this Agreement and that are not otherwise permitted pursuant to the provisions hereof (collectively, the "**Mandatory Cure Matters**"). Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of such liens, and may cure any Objection by causing the Title Company to insure against collection of the same out of the Property. Notwithstanding anything to the contrary contained herein, Buyer shall be responsible for the payment of any assessment bonds and owners association dues applicable to the Property during Buyer's period of ownership of the Property, and Seller shall be responsible for any such assessment bonds or owners association dues applicable to Seller's period of ownership of the Property.

(d) If Seller elects (or is deemed to have elected) not to attempt to cure any Objections raised in any Buyer's Notice timely delivered by Buyer to Seller pursuant to Section 4.1(b), or if Seller notifies Buyer that it elects to attempt to cure any such Objection but then does not for any reason effect such cure on or before the Closing Date (except with respect to the Mandatory Cure Matters, which Seller is obligated to cure), then Buyer, as its sole and exclusive remedy, shall have the option of terminating this Agreement by delivering written notice thereof to Seller within five (5) business days after (as applicable) (i) its receipt of Seller's Response stating that Seller will not attempt to cure any such Objection or (ii) the expiration of Seller's Response Period if Seller does not deliver a Seller's Response or (iii) Seller's failure to cure by the Closing Date any Objection which Seller has previously elected to attempt to cure pursuant to a Seller's Response. In the event of such a termination, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If no such termination notice is timely received by Seller hereunder, Buyer shall be deemed to have waived all such Objections in which event those Objections shall become "**Conditions of Title**" under Section 4.1(e). In the event of a cancellation pursuant to this paragraph 4.1(d), and unless Buyer is in default, Buyer and Seller shall each be responsible for one-half of any title or escrow cancellation charges.

(e) At the Closing, Seller shall convey title to the Property to Buyer by deed in the form of **Exhibit C** attached hereto (the "**Deed**") subject to no exceptions other than:

- (1) Matters created by or with the written consent of Buyer;
- (2) Non-delinquent liens for real estate taxes and assessments not yet due and payable; and
- (3) Any exceptions disclosed by the Title Report and any Title Report Update which are approved or deemed approved by Buyer in accordance with this Article IV above, and any other exceptions to title disclosed by the public records or which would be disclosed by an inspection and/or survey of the Property.

All of the foregoing exceptions shall be referred to collectively as the “**Conditions of Title.**”

Section 4.2 Evidence of Title.

Delivery of title in accordance with the foregoing shall be evidenced by, and a condition to Buyer's obligations to close hereunder shall be, the irrevocable and unconditional commitment of the Title Company to issue, at Closing, its Owner's ALTA Extended Coverage Policy of Title Insurance in the amount of the Purchase Price showing title to the Real Property vested in Buyer (or Buyer's assignee), subject to the Conditions of Title (the “**Title Policy**”). The Title Policy may contain such endorsements as are reasonably required by Buyer, provided that Buyer shall obtain the commitment of the Title Company to issue such endorsements prior to the expiration of the Title Review Period or the Title Update Review Period, as applicable. Seller shall pay for the portion of the cost of the Title Policy attributable to CLTA coverage, and Buyer shall pay for the portion of the cost of the Title Policy attributable to ALTA extended coverage, including the expense of the Survey, and to all such endorsements. Seller shall execute and deliver to Title Company any such certificates, instruments and/or affidavits as Title Company shall reasonably require in order to issue the Title Policy.

ARTICLE V

CONDEMNATION

Section 5.1 Minor Condemnation.

Buyer shall be bound to purchase the Property for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any condemnation of any portion of the Property, provided that: (a) the diminution in the value of the remaining Property as a result of a partial condemnation is not material (as hereinafter defined) and (b) upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any condemnation awards collected by Seller as a result of any such condemnation, less any sums reasonably expended by Seller toward the collection of such awards. If awards have not been collected as of the Closing, then such awards shall be assigned to Buyer (and Seller shall reasonably cooperate with Buyer after the Closing to collect such awards), except to the extent needed to reimburse Seller for sums expended to collect such awards, and Seller shall retain the rights to such awards to such extent.

Section 5.2 Major Condemnation.

If the diminution in the value of the remaining Property as a result of a condemnation is material (as hereinafter defined), then Buyer may, at its option to be exercised within five (5) business days of Seller's written notice of the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement by delivering written notice thereof to Seller or fails to give Seller notice within such five (5) business day period that Buyer will proceed with the purchase, then this Agreement shall terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If Buyer elects to proceed with the purchase, then upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any condemnation awards collected by Seller as a result of any such condemnation, less any sums reasonably expended by Seller toward the collection of such awards. If the awards have not been collected as of the Closing, then such awards shall be assigned to Buyer (and Seller shall reasonably cooperate with Buyer after the Closing to collect such awards), except to the extent needed to reimburse Seller for sums expended to collect such awards the Property, and Seller shall retain the rights to such awards to such extent. A condemnation shall be deemed material if: (i) the diminution in the value of the remaining Property as a result of such condemnation exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) in the estimate of a broker selected by Buyer and reasonably acceptable to Seller, or (ii) more than five percent (5%) of the total area of the Property is taken, or (iii) the existing access to the Real Property is materially and adversely affected.

ARTICLE VI

BROKERS AND EXPENSES

Section 6.1 Brokers.

The parties represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction. If any person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "**Indemnified Party**") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, court costs and reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 6.1 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

Section 6.2 Expenses.

Except as expressly provided in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

OTHER AGREEMENTS

Section 7.1 Buyer's Approval of New Agreements Affecting the Property.

Between the Effective Date and the Closing, Seller shall continue to operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property, provided that from the Effective Date until the date which is three (3) business days prior to the expiration of the Contingency Period, Seller shall not enter into any new agreement affecting the Property, or modify or terminate any existing agreement affecting the Property, which will be binding on the Property after Closing, except as approved in advance by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. From the date which is three (3) business days prior to the expiration of the Contingency Period until the Closing, Seller shall not enter into any new agreement affecting the Property, or modify or terminate any existing agreement affecting the Property, which will be binding on the Property after Closing, except as approved in advance by Buyer, which approval may be given or withheld in Buyer's sole and absolute discretion. If Seller desires to seek Buyer's approval of any such agreement, Seller shall deliver a copy of such agreement to Buyer, and Buyer shall have five (5) business days to approve or disapprove the same. Buyer's failure to approve or disapprove such agreement within such five (5) day business period shall be deemed Buyer's disapproval of the same. Buyer shall specify in detail the reasons for its disapproval of any such agreement for which Seller seeks Buyer's approval from the Effective Date until the date which is three (3) business days prior to the expiration of the Contingency Period. Buyer agrees to reasonably cooperate with Seller in enabling Seller to complete any such proposed transaction which Buyer has approved pursuant to the terms of this Section.

ARTICLE VIII

CLOSING AND ESCROW

Section 8.1 Escrow Instructions.

Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Company, and this instrument shall serve as the instructions to the Escrow Company for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

Section 8.2 Closing.

(a) The Closing hereunder shall occur on the date that is the later to occur of (a) thirty (30) calendar days after the expiration of the Contingency Period, and (b) ten (10) business days following the satisfaction of all of the Entitlement Conditions, or such other earlier date and time

as Buyer and Seller may mutually agree upon in writing (the "**Closing Date**"). Except as expressly provided herein, the Closing Date may not be extended without the prior written approval of both Seller and Buyer. If the Entitlement Conditions are not satisfied (or waived by Buyer), other than as a result of a Buyer default hereunder, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. Notwithstanding the foregoing to the contrary, if the Closing Date has not occurred on or before five (5) years after the Effective Date for any reason other than a default of Buyer or Seller hereunder or a failure of Buyer to satisfy the conditions required to record the Final Map, then at any time after such five (5) year period either Buyer (if it is not in default hereunder) or Seller (if it is not in default hereunder) shall have the right to terminate this Agreement, in which event the Deposit shall be returned to Buyer and neither Buyer nor Seller shall have any rights or obligations to each other under this Agreement except for such rights or obligations which specifically survive the termination of this Agreement.

(b) It shall be a condition to Buyer's obligation to purchase the Property from Seller and Seller's obligation to sell the Property to Buyer that the other party not, as of the Closing Date, be in material default under the City of Oxnard Agreement No. ____ between Buyer and Seller pertaining to thirteen (13) lots in the Oxnard Shores area.

Section 8.3 Deposit of Documents.

(a) At least one (1) business day before the Closing, Seller shall deposit into escrow the following items:

(1) the duly executed and acknowledged Deed in the form attached hereto as **Exhibit C** conveying the Real Property to Buyer subject to the Conditions of Title;

(2) four (4) duly executed counterparts of an Assignment and Assumption Agreement in the form attached hereto as **Exhibit D** pursuant to the terms of which Buyer shall assume all of Seller's obligations under the documents and agreements affecting the Property (the "**Assignment and Assumption**");

(3) an affidavit pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and

(4) Intentionally omitted.

(b) At least one (1) business day before Closing, Buyer shall deposit into escrow the following items:

(1) immediately available funds necessary to close this transaction, including, without limitation, the Purchase Price (less the Deposit and interest thereon net of investment fees, if any) and funds sufficient to pay Buyer's closing costs and plus or minus Buyer's share of prorations, costs or credits hereunder; and

(2) four (4) duly executed counterparts of the Assignment and Assumption.

(c) Seller and Buyer shall each execute and deposit a closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Escrow Company and/or the Title Company or otherwise required to close the escrow and consummate the acquisition of the Property in accordance with the terms hereof.

(d) Within five (5) business days after the Closing Date, Seller shall deliver or make available to Buyer: originals of any items which Seller was required to furnish Buyer copies of or make available to Buyer pursuant to Sections 2.1(b) or (e) above, to the extent in Seller's possession or control, except for Seller's general ledger and other internal books or records which shall be retained by Seller. Seller shall deliver possession of the Property to Buyer as required hereunder on the Closing Date.

Section 8.4 Prorations.

(a) Real property taxes and assessments; water, sewer and utility charges; amounts payable under any Service Contracts or other agreements or documents; annual permits and/or inspection fees (calculated on the basis of the period covered); and any other expenses of the operation and maintenance of the Property (including, without limitation, expenses prepaid by Seller and expenses already paid by Seller but which are being amortized over time by Seller and with respect to which Seller shall receive a credit at Closing in the amount of the prepaid or unamortized portion thereof), shall all be prorated between Buyer and Seller as of 11:59 p.m. on the day immediately prior to Closing (i.e., Seller is entitled to the income and responsible for the expenses before the Closing Date and Buyer is entitled to the income and responsible for the expenses on and after the Closing Date), on the basis of actual days in a month and a 365-day year.

Seller and Buyer hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date, and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall pay said sum to the other party within thirty (30) days thereafter. Any amounts not paid within such thirty (30) day period shall bear interest from the date actually received by the payor until paid at the greater of (i) seven percent (7%) per annum or (ii) the prime rate (or base rate) reported from time to time in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger United States money center commercial banks plus two (2) percent.

(b) Seller shall pay the premium for the CLTA (standard coverage) portion of the Title Policy and all transfer taxes and recording fees. Buyer shall pay the cost of any extended (ALTA) title insurance coverage and any endorsements to the Title Policy and the cost of deleting any "Survey Exception" from the Title Policy. Seller and Buyer each shall pay one-half of the escrow fee charged by the Escrow Company. Except as provided in Section 9.5 below, and otherwise specifically provided in this Agreement, all other costs and expenses of the escrow for the sale (including, without limitation, other title insurance costs, any state, county or local sales, excise or deed recording taxes or other impositions attributable to the sale, escrow and closing fees) shall be paid by Buyer and Seller in accordance with prevailing local custom in the city, county and state in which the Property is located as determined by the Escrow Company.

- (c) The provisions of this Section 8.4 shall survive the Closing.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To Buyer: Elevar Seven, LLC
501 Spectrum Circle
Oxnard, CA 93030
Attention: Bernard Huberman
Fax No.: (805) 278-8221

with a copy to: Friedman & Solomon LLP
9665 Wilshire Boulevard, Suite 810
Beverly Hills, CA 90212
Attention: Robert Solomon, Esq.
Fax No.: 310-553-7458

To Seller: City of Oxnard
300 West Third Street, Third Floor
Oxnard, CA 93030
Attention: Michael More, Financial Services Manager

with a copy to: City of Oxnard
300 West Third Street, Third Floor
Oxnard, CA 93030
Attention: Gary Gillig, City Attorney

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication sent as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of

transmission, if sent by facsimile. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Any notice sent by the attorney representing a party, shall qualify as notice under this Agreement.

Section 9.2 Entire Agreement.

This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

Section 9.3 Entry and Indemnity.

In connection with any entry by Buyer, or its agents, employees or contractors onto the Property, Buyer shall give Seller not less than one (1) business day advance notice of such entry and shall conduct such entry and any inspections in connection therewith in compliance with all applicable laws. Without limiting the foregoing, prior to any entry to perform any on-site physical testing, including but not limited to any borings, drillings or samplings, Buyer shall give Seller written notice thereof. Buyer shall permit Seller or its representative to be present to observe any testing or other inspection or due diligence review performed on or at the Property. Upon the request of Seller, at Seller's sole cost and expense, Buyer shall promptly deliver to Seller, without representation or warranty, copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its agents, representatives, employees, contractors or consultants. Buyer shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and Buyer shall provide Seller with evidence of such insurance coverage upon request by Seller. If Seller requests such evidence of insurance coverage, Buyer may not enter the Property until Seller has received in writing satisfactory evidence that such coverage exists. Buyer shall indemnify and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by Buyer, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Agreement, including, without limitation, any release of hazardous materials or any damage to the Property; provided that Buyer shall not be liable to Seller solely as a result of the discovery by Buyer of a pre-existing condition on the Property to the extent the activities of Buyer, its agents, representatives, employees, contractors or consultants do not exacerbate the condition. The foregoing indemnity shall survive the Closing. Buyer's right of entry, as provided in this Section 9.3, shall continue up through the date of Closing.

Section 9.4 Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein.

Section 9.5 Attorneys' Fees.

If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, whether prior to or after Closing, or if any party defaults in payment of its post-Closing financial obligations under this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 9.6 Assignment.

Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of Seller in Seller's sole discretion. Notwithstanding the foregoing, Buyer shall have the right, without the necessity of obtaining Seller's consent but with prior written notice to Seller, to assign its right, title and interest in and to this Agreement to (i) an entity and/or entities that controls, is controlled by or under common control of Buyer and/or an entity owned by Buyer or its principal(s), (ii) project limited liability companies formed for the purposes of developing and owning the Property, or (iii) an exchange intermediary for the purpose of completing an exchange of Buyer at any time before the Closing Date. Buyer shall in no event be released from any of its obligations or liabilities hereunder in connection with any assignment. Subject to the provisions of this Section, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 9.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State in which the Real Property is located.

Section 9.9 [Intentionally Omitted]

Section 9.10 Interpretation of Agreement.

The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "**person**" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

Section 9.11 Remedies. Notwithstanding any provision of this Agreement to the contrary, in the event that Seller defaults under its obligation under this Agreement, Buyer's sole and exclusive remedy shall be either (a) to terminate the Agreement and receive a full reimbursement of the Deposit, and pursue any cause of action it may possess for damages, which damages may not to exceed three Hundred Thousand Dollars (\$300,000) plus all costs and expenses incurred by Buyer to satisfy the conditions of Final Map approval imposed by the Tentative Map and all costs and expenses incurred by Buyer to record the Final Map; (b) waive said failure or breach and proceed to the Closing; or (c) pursue specific performance (and if Buyer is the prevailing party under such specific performance action, Buyer shall be entitled to seek from Seller its attorneys' fees in accordance with Section 14 below); provided, however, that if specific performance is not available for any reason whatsoever, then Buyer shall have all rights and remedies available, without regard to the cap set forth in subsection (a) above. In no event shall Seller's officers, employees, or council members thereof have any liability for any claim, cause of action or other liability arising out of or relating to this Agreement or the Property, whether based on contract, common law, statute, equity or otherwise.

Section 9.12 Amendments.

This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller. The City Manager of the City of Oxnard may amend or modify this Agreement on behalf of Seller without the need to obtain further approval from any city agency, including, without limitation, the City Council; provided the City Attorney provides advice to the City Manager that the modifications are not substantial or are not materially substantive; provided, further however, that the City Manager may amend this Agreement to extend any deadline or time period provided in this Agreement for up to ninety (90) days without the approval from any city agency or the advice of the City Attorney.

Section 9.13 Drafts Not an Offer to Enter Into a Legally Binding Contract.

The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, and both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission) (the "Effective Date").

Section 9.14 No Partnership.

The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

Section 9.15 No Third Party Beneficiary.

The provisions of this Agreement are not intended to benefit any third parties.

Section 9.16 Survival.

Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of the parties contained herein shall survive the Closing.

Section 9.17 Survival of Article IX.

The provisions of this Article IX shall survive the Closing.

ARTICLE X

"AS-IS SALE"

Section 10.01 "As-Is" Sale

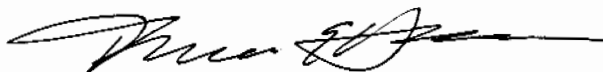
Seller's sale of the Property is "as-is", "with all faults". Buyer must satisfy itself in all respects as to all conditions and aspects of the Property, and its suitability for Buyer's intended use. Except as otherwise set forth in this Agreement, Buyer shall have no recourse to Seller on account of any physical condition or physical aspect whatsoever of the Property. Except as stated in Section 3.1(h), Seller makes no representations concerning Hazardous Materials, the condition of the soil of the Property, or its suitability for Buyer's intended use. Without limiting Seller's obligations under Section 2.3 above, Seller makes no warranties or representations concerning the use to which the Property may be put or to Buyer's ability to obtain entitlements or permits. Without limiting Seller's obligations under Section 2.3 above, nothing in this Agreement limits or constrains the City of Oxnard in the performance of its legislative, administrative, or police powers.

[signature page follows]

The parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

Seller:

CITY OF OXNARD,
a municipal corporation



Thomas E. Holden, Mayor

Buyer:

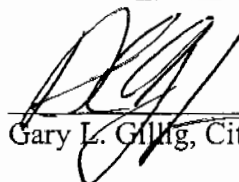
ELEVAR SEVEN, LLC,
a California limited liability company

By: 

Name LEONARD HUBERSON

Its: MANAGER

APPROVED AS TO FORM:



Gary L. Gillig, City Attorney

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Real Property Description
Exhibit B	Intentionally Omitted
Exhibit C	Deed
Exhibit D	Assignment and Assumption Agreement

SCHEDULES

Schedule 1	Disclosure Items
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EXHIBIT A

REAL PROPERTY DESCRIPTION

(APN 191-033-15)

Being a part of Mandalay Unit No. 1, in the City of Oxnard, as per map recorded in Book 13, Page 58 of Miscellaneous Records (Maps), records of the Ventura County Recorder, State of California, more particularly described as follows:

COMMENCING at the most Northerly corner of Lot 15, Block 149 of said Mandalay Unit No. 1; thence South $24^{\circ}46'56''$ East along the Northeasterly line of said lot, 10 feet; thence South $65^{\circ}13'04''$ West, 40 feet to the **TRUE POINT OF BEGINNING**; thence continuing South $65^{\circ}13'04''$ West, 40 feet; thence Southwesterly along a tangent curve, concave Northwesterly and having a radius of 1690 feet, an arc distance of 265 feet; thence North $15^{\circ}47'53''$ West and radial to said curve, 210 feet; thence Northeasterly along a curve having a radius of 1480 feet and being concentric with and distant 210 feet measured radially from the hereinbefore mentioned curve having a radius of 1690 feet, an arc distance of 232.17 feet; thence North $65^{\circ}13'04''$ East and tangent to said curve, 40 feet; thence South $24^{\circ}46'56''$ East, 210 feet to the **TRUE POINT OF BEGINNING**.

EXHIBIT B

INTENTIONALLY OMITTED

Exhibit C

DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

MAIL TAX STATEMENTS TO:

Documentary Transfer Tax is not of public record SPACE ABOVE THIS LINE FOR
RECORDER'S USE
and is shown on a separate sheet attached to this deed.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the
City of Oxnard, a municipal corporation ("Grantor") hereby grants to _____
("Grantee") the real property in the City of Oxnard, County of Ventura, State of California,
described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

Dated: _____, 2006

GRANTOR:

By: _____
Name: _____
Its: _____

COUNCIL APPROVAL

DATE: 01/09/07 AGENDA # 0-2(1)

**OXNARD SHORES, OXNARD, CALIFORNIA
AGREEMENT OF PURCHASE AND SALE**

This Agreement, dated as of December 27, 2006, is between THE CITY OF OXNARD, a municipal corporation ("**Seller**"), and ELEVAR SEVEN, LLC, a California limited liability company ("**Buyer**").

ARTICLE I

PURCHASE AND SALE OF PROPERTY

Whitecap
way
parcel

Section 1.1 Sale.

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms, covenants and conditions set forth herein, all of Seller's right, title and interest in and to the following property (collectively, the "**Property**"):

(a) Real Property. That certain real property located in the City of Oxnard, State of California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**"), which Land consists of one (1) parcel consisting of thirteen (13) proposed single-family lots, together with (1) all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, including all mineral rights, development rights, entitlements, air and water rights, and (2) all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land (collectively, the "**Real Property**"); and

(b) Intangible Personal Property. To the extent assignable at no cost to Seller, all intangible personal property, if any, owned by Seller and related to the Real Property, including, without limitation: any plans and specifications; any warranties; and any governmental permits, approvals and licenses (including any pending applications) (collectively, the "**Intangible Personal Property**").

Section 1.2 Purchase Price.

(a) The purchase price of the Property shall be Five Hundred Fifty Six Thousand Nine Hundred Twenty Three and 08/100 Dollars (\$556,923.08) per approved single-family approved lot included as part of the Land, such that the total purchase price shall be Seven Million Two Hundred Forty Thousand Dollars (\$7,240,000.00) (the "**Purchase Price**"). Notwithstanding the foregoing, if in connection with the recordation of the "Final Map" (as defined below), the Real Property consists of less than thirteen (13) single-family lots, then the Purchase Price shall be reduced by \$556,923 per lot less than 13 lots. For example, if there are only ten (10) single-family lots, then the Purchase Price shall equal Five Million Five Hundred Sixty Nine Thousand Two Hundred Thirty Dollars (\$5,569,230.00).

(b) The Purchase Price shall be paid as follows:

(1) Within two (2) business days after the "**Effective Date**" (as defined in Section 9.13 below), Buyer shall deposit in escrow with Commerce Escrow Company, 1545

Wilshire Boulevard, Los Angeles, California (the "**Escrow Company**") cash or other immediately available funds in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (the "**Initial Deposit**").

(2) Within two (2) business days after the expiration of the "**Contingency Period**" (as defined in Section 2.2 below), Buyer shall deposit with the **Escrow Company** additional cash or other immediately available funds in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (the "**Additional Deposit**") if Buyer approves its Contingency Period investigations of the Property and determines to proceed with the transaction.

As used herein, the term "**Deposit**" shall refer to the Initial Deposit and the Additional Deposit, collectively, and to any portion thereof held by Escrow Holder, as applicable. The Deposit, subject to any restrictions of Escrow Holder, shall be held in an interest-bearing account and all interest thereon, less investment fees, if any, shall be deemed a part of the Deposit. If the sale of the Property as contemplated hereunder is consummated, then the Deposit shall be paid to Seller at the Closing (as defined in Section 1.2(b)(2) below) and credited against the Purchase Price. If the sale of the Property is not consummated due to the failure of a condition precedent hereunder to be satisfied on or before the Closing Date, which is not the result of a default by Buyer hereunder and which terminates this Agreement, the Deposit shall be refunded to Buyer. If Seller fails to close the sale of the Property as contemplated in this Agreement, Buyer will be entitled to either (a) enforce specific performance, or (b) terminate this Agreement, receive a refund of the Deposit, and subject to Section 9.11, pursue all rights and remedies available to Buyer at law, equity or contract. **IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND SUCH LIQUIDATED DAMAGES SHALL BE THE EXCLUSIVE REMEDY OF SELLER FOR SUCH DEFAULT BY BUYER. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT PRIOR TO CLOSING, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 6.1, 9.3 AND 9.9.**

INITIALS:

SELLER 

BUYER 

(3) The balance of the Purchase Price, which is Six Million Nine Hundred Eighty Nine Thousand Nine Hundred Ninety Nine Dollars (\$6,989,999.00) (plus or minus the prorations pursuant to Section 8.5 hereof and reductions pursuant to Section 1.2 above

and 2.3(b) below) shall be paid to Seller in cash or by wire transfer of other immediately available funds at the consummation of the purchase and sale contemplated hereunder (the "Closing").

ARTICLE II

CONDITIONS

Section 2.1 Buyer's Conditions Precedent.

Subject to the provisions of Section 9.3 hereof, Seller has provided and/or shall provide, Buyer and its consultants and other agents and representatives with access to the Property to perform Buyer's inspections and review and determine the present condition of the Property. Seller has delivered to Buyer, or shall within the Delivery Period (as defined below) deliver to Buyer, copies of all Due Diligence Materials (as defined in Section 2.1(b) below) in Seller's possession or control. The "**Delivery Period**" shall mean the period which ends ten (10) business days after the Effective Date (as defined in Section 9.13 below). Buyer's obligation to purchase the Property is conditioned upon Buyer's review and approval of the following, in Buyer's sole and absolute discretion, within the applicable time periods described in Sections 2.2 and 4.1 hereof:

(a) The Title Report (and underlying documents related thereto) and Survey Matters in accordance with Article IV below.

(b) Complete and legible copies of all documents, contracts, agreements (including, without limitation, all leases, licenses, permits, approvals, maps, easements and covenants, conditions and restrictions), reports (including, without limitation, soils/geotechnical reports, phase I and phase II environmental reports, engineering and architectural studies or plans, grading plans and topographical maps) and other items and materials related to the Property and prepared by or on behalf of Seller in connection with its ownership and/or operation of the Property (collectively, the "**Due Diligence Materials**"), including, but not limited to, all contracts pertaining to the operation of the Property, including any management, leasing, service and maintenance agreements, and equipment leases (collectively, the "**Service Contracts**").

(c) The physical condition of the Property.

(d) The zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

(e) The operating statements and books and records pertaining to the operation of the Property in each case for each of the three (3) most recent years during which the Property has been owned by Seller and for the current year (to the extent available), current real estate tax bills, any warranties, licenses, permits, certificates of occupancy, plans and specifications, and any current accounts receivable schedule in such form as Seller shall have in its possession for the Property, and other agreements or documents pertaining to the Property which will be binding on Buyer after Closing.

- (f) Any other matters Buyer deems relevant to the Property.

Section 2.2 Contingency Period.

Buyer shall have until 5:00 p.m. Pacific Standard Time on the date that is forty-five (45) days following the later of the Effective Date and the date that Buyer receives complete and legible copies of all Due Diligence Materials, but in any event no later than sixty (60) days after the Effective Date (such period being referred to herein as the "**Contingency Period**") to review and approve the matters described in Sections 2.1(b)-(f) above in Buyer's sole discretion (title and survey review and approval shall be governed by the provisions of Section 4.1 below). If Buyer determines to proceed with the purchase of the Property, then Buyer shall, before the end of the Contingency Period, so notify Seller in writing (the "**Contingency Period Notice**"). If Buyer approves all of the matters set forth in Sections 2.1 (a) – (f), prior to the end of the Contingency Period, the Deposit shall become nonrefundable except as expressly provided herein. If before the end of the Contingency Period Buyer fails to deliver the Contingency Period Notice, then Buyer shall be deemed to have elected to terminate this Agreement, the Initial Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below.

Section 2.3 Entitlements.

(a) Buyer and Seller acknowledge and agree that it shall be a condition to Buyer's obligation to purchase the Property that Buyer have vested rights to construct thirteen (13) single family residences on the Real Property. In order that such condition be satisfied, the following must occur: (i) Seller must use its commercially reasonable efforts to amend the existing zoning of the Real Property from RP to R-B-1 (the "**Zone Change**"), (ii) upon the final, non-appealable approval of the Zone Change from all applicable governmental agencies (including, without limitation, the California Coastal Commission [the "**Commission**"]), Seller must, at its sole cost and expense, use its commercially reasonable efforts to obtain final, non-appealable approval from all applicable governmental agencies of (a) a tentative tract map subdividing the Land into thirteen (13) single family lots with conditions reasonably acceptable to Buyer ("**Tentative Map**"), and (b) a coastal development permit authorizing the subdivision of the Land into thirteen (13) single family lots with conditions reasonably acceptable to Buyer ("**CDP**"), (iii) upon (A) the final, non-appealable approval of the Tentative Map and the CDP with conditions reasonably acceptable to Buyer, (B) the final, non-appealable approval of the "Development Agreement" (as defined below) and the "Exemption Determination" (as defined below), and (C) Buyer's receipt of the "Will Serve Letters" (as defined below), Buyer must, at its sole cost and expense, use commercially reasonable efforts to satisfy all conditions of approval to the Tentative Map required to record a final tract map against the Land creating thirteen (13) legal lots (the "**Final Map**"), and upon satisfaction of such conditions, Buyer must, at its sole cost and expense, record the Final Maps, (iv) Seller must, promptly following the mutual execution of this Agreement, enter into good faith negotiations to achieve execution of a final, non-appealable (without any appeals being filed, or if filed, resolved in a manner reasonably acceptable to Buyer) Development Agreement with Buyer reasonably acceptable to Buyer vesting in Buyer the right to construct thirteen (13) single family residences on the Land (the "**Development Agreement**"), (v) in accordance with Section 17-57(C)(2) of the Oxnard Municipal Code (the "**Municipal Code**"), the Development Services Director of the City of Oxnard must make a final

non-appealable determination (without any appeals being filed, or if filed, resolved in a manner reasonably acceptable to Buyer), that the development and construction of a single family home on each of the lots within the Real Property is categorically excluded from the permit provisions of Section 17-57 of the Municipal Code (the "**Exemption Determination**"), and (vi) the City of Oxnard must issue to Buyer "will serve" letters or the equivalent thereof obligating the City of Oxnard to provide water, sewer and municipal waste removal for each of the lots (the "**Will Serve Letters**"). The final, non-appealable approval of the Zone Change, the Tentative Map, the CDP, the Development Agreement and the Exemption Determination, the recordation of the Final Map and the issuance of the Will Serve Letters are collectively referred to herein as the "**Entitlement Conditions**." Additionally, all plans and specifications prepared by Seller with respect to any and all on-site and/or offsite improvements required under the Tentative Map and/or CDP shall (a) be subject to the reasonable approval of Buyer, and (b) be assigned to Buyer at Closing. Additionally, Seller shall reasonably cooperate with Buyer, at no expense to Seller, so that Buyer can satisfy the conditions of approval to the Tentative Map and record the Final Map prior to the Closing Date.

(b) The requirements set forth in Section 2.3(a) above are conditions to Buyer's obligations to purchase the Property under this Agreement. Subject to the terms of this Section 2.3(b), Seller shall use commercially reasonable efforts as an applicant and property owner to pursue satisfaction of the Entitlement Conditions. Additionally, Buyer will act diligently to satisfy all conditions of approval to the Tentative Map in accordance with Section 2.3(a) above. In addition, if an Entitlement Condition is not satisfied for any reason other than a default by Seller (i.e., failure to use commercially reasonable efforts as an applicant and property owner to pursue satisfaction of the Entitlement Conditions), the sole remedy of Buyer shall be to terminate this Agreement and recover the Deposit. Buyer and Seller acknowledge and agree that as used herein "commercially reasonable efforts to pursue satisfaction of the Entitlement Conditions" requires Seller to (i) bring as appropriate applications before appropriate governmental authorities to obtain the Zone Change, the Tentative Map, the CDP, the Development Agreement and the Exemption Determination, and (ii) pursue resolution of all administrative appeals to the Zone Change, the Tentative Map, the CDP, the Development Agreement and/or the Exemption Determination. Notwithstanding the foregoing to the contrary, "commercially reasonable efforts to pursue satisfaction of the Entitlement Conditions" does not require Seller to (A) challenge a final administrative decision in state or federal court, or (B) defend a challenge of a final administrative decision in state or federal court. Seller agrees, however, that Buyer shall have the right, in Buyer's sole discretion but at Buyer's sole cost and expense (except as otherwise set forth below), to challenge and/or defend any final administrative decisions in state or federal court. Seller shall reasonably cooperate with Buyer, at no cost to Seller, with any such challenge and/or defense, and Seller shall execute any documents reasonably required in order for Buyer to challenge and/or defend any final administrative decision in state or federal court. If the Closing occurs, all costs and expenses incurred by Buyer to challenge and/or defend any final administrative decisions in state or federal court, not to exceed \$500,000, shall be credited against the Purchase Price.

(c) Without limiting Seller's obligations above, nothing in this Agreement shall be interpreted to limit or constrain the City of Oxnard in the performance of its legislative, quasi-judicial, administrative or police powers. In particular, the City Council must make administrative, legislative and quasi-judicial determinations or perform other governmental

functions in connection with the satisfaction of the Entitlement Conditions. This Agreement does not bind or constrain the City in those determinations.

ARTICLE III

BUYER'S EXAMINATION

Section 3.1 Representations and Warranties of Seller.

Subject to the disclosures contained in Schedule 1 attached hereto and made a part hereof (the "**Disclosure Items**"), Seller hereby makes the following representations and warranties with respect to the Property.

(a) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**") and any related regulations.

(b) (i) This Agreement has been, and all documents executed by Seller which are to be delivered to Buyer at Closing will be, duly authorized, executed and delivered by Seller, (ii) this Agreement does not and such other documents will not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or, to the best of Seller's knowledge, the Property is subject, and (iii) no approval, authorization, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement or the transactions contemplated hereby, except such as have been duly obtained or made. The City Council of the City of Oxnard has approved the execution and delivery of this Agreement and the transactions contemplated hereby.

(c) There are no written or oral leases or other occupancy or use agreements presently in force for the Real Property and Seller has not sold or transferred the Property.

(d) There are no Service Contracts in effect for the Property.

(e) There is no litigation or governmental proceeding (including, but not limited to any condemnation proceeding) pending or threatened with respect to the Property, or with respect to Seller which impairs Seller's ability to perform its obligations under this Agreement.

(f) Seller has received no written notice from any governmental authority of any violation of any law applicable to the Property (including, without limitation, any "Environmental Law" (as defined below)) that has not been corrected.

(g) All of the Due Diligence Materials delivered or made available by Seller to Buyer in connection with the Property are true and complete copies of such items in Seller's possession or control which are used by Seller in the operation of the Property.

(h) Seller has no actual knowledge of any "Hazardous Materials" (as defined below) located on, under or near the Real Property, other than such Hazardous Materials identified in that certain Geotechnical Data Collection Report dated July 12, 2006 prepared by

Construction Testing and Engineering, Inc. Except for such investigations conducted on July 12, 2006 by Construction Testing and Engineering, Inc. on behalf of Seller, Seller has not conducted any investigation concerning soils or existence of Hazardous Materials.

(i) Seller has not enlisted the services of any broker or finder in connection with the sale of the Property.

Each of the representations and warranties of Seller contained in this Section 3.1: (1) is true as of the Effective Date, and (2) shall, except as Seller may in writing inform Buyer, be true in all material respects as of the date of Closing, subject in each case to (A) the Disclosure Items and (B) other matters expressly permitted in this Agreement or otherwise specifically approved in writing by Buyer, and (3) shall survive the Closing and not be merged into the "Deed" (as defined below). For purposes of this Agreement, "**Hazardous Materials**" shall mean inflammable explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.) and any other applicable federal, state or local laws (collectively, "**Environmental Laws**").

Section 3.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

(a) This Agreement and all documents executed by Buyer which are to be delivered to Seller at Closing do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(b) Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(c) Buyer has been duly organized, is validly existing and is in good standing in the state in which it was formed, and, if required to do so, is qualified to do business in the state in which the Real Property is located. This Agreement has been, and all documents executed by Buyer which are to be delivered to Seller at Closing will be, duly authorized, executed and delivered by Buyer.

(d) Buyer has not received any written notice that Buyer is not in compliance with any laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to Buyer and all beneficial owners of Buyer, including, without limitation, the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control. Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**"). Neither Buyer nor any beneficial owner of Buyer;

(1) to Buyer's knowledge, is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**");

(2) has been determined by competent authority to be subject to the prohibitions contained in the Orders;

(3) is owned or controlled by, nor acts for or on behalf of, any person or entity who, to Buyer's actual knowledge, is on the Lists or any other person or entity who has to Buyer's actual knowledge been determined by competent authority to be subject to the prohibitions contained in the Orders; or

(4) shall transfer or permit the transfer of any interest in Buyer or any beneficial owner in Buyer to any person who, to Buyer's actual knowledge, is or whose beneficial owners are listed on the Lists.

Each of the representations and warranties of Buyer contained in this Section shall be deemed remade by Buyer as of the Closing and shall survive the Closing.

ARTICLE IV

TITLE

Section 4.1 Conditions of Title.

(a) Upon execution of this Agreement, Seller shall order an updated preliminary title report or commitment (the "**Title Report**") from First American Title Company, 1889 N. Rice Avenue, Oxnard, California 93030 (the "**Title Company**"), which shall be delivered to Buyer, together with legible copies of all underlying documents relating to title exceptions referred to therein, promptly upon Seller's receipt thereof, but no later than ten (10) business days after the Effective Date. Seller has no survey of the Property. Buyer may order a survey (the "**Survey**") if desired by Buyer or if necessary to support the issuance of the Title Policy (as defined in Section 4.2 below). Buyer shall pay the entire cost of the Survey, if any.

(b) At least five (5) days prior to the last day of the Contingency Period (the "**Title Review Date**"), Buyer shall furnish Seller with a written statement of objections, if any, to the title to the Property, including, without limitation, any objections to any matter shown on the Survey (collectively, "**Objections**"). In the event the Title Company amends or updates the Title Report after the Title Review Date (each, a "**Title Report Update**"), Buyer shall furnish Seller with a written statement of Objections to any matter first raised in a Title Report Update within three (3) business days after its receipt of such Title Report Update (each, a "**Title Update Review Period**"). Should Buyer fail to notify Seller in writing of any Objections in the Title Report prior to the Title Review Date, or to any matter first disclosed in a Title Report Update prior to the Title Update Review Period, as applicable, Buyer shall be deemed to have approved such matters which shall be considered to be "**Conditions of Title**" as defined in Section 4.1(e) below.

(c) If Seller receives a timely Objection in accordance with Section 4.1(b) ("**Buyer's Notice**"), Seller shall have the right, but not the obligation, within ten (10) business days after receipt of Buyer's Notice ("**Seller's Response Period**"), to elect to attempt to cure any such matter upon written notice to Buyer ("**Seller's Response**"). If Seller does not give any Seller's Response, Seller shall be deemed to have elected not to attempt to cure any such matters. Notwithstanding the foregoing, Seller shall in any event be obligated to cure all matters or items (i) that are mechanics' liens, judgment liens, tax liens, mortgage or deed of trust liens or security interests against the Property, (ii) real estate tax liens, other than lien for taxes and assessments not yet due and payable, and (iii) that have been voluntarily placed against the Property by Seller after the date of this Agreement and that are not otherwise permitted pursuant to the provisions hereof (collectively, the "**Mandatory Cure Matters**"). Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of such liens, and may cure any Objection by causing the Title Company to insure against collection of the same out of the Property. Notwithstanding anything to the contrary contained herein, Buyer shall be responsible for the payment of any assessment bonds and owners association dues applicable to the Property during Buyer's period of ownership of the Property, and Seller shall be responsible for any such assessment bonds or owners association dues applicable to Seller's period of ownership of the Property.

(d) If Seller elects (or is deemed to have elected) not to attempt to cure any Objections raised in any Buyer's Notice timely delivered by Buyer to Seller pursuant to Section 4.1(b), or if Seller notifies Buyer that it elects to attempt to cure any such Objection but then does not for any reason effect such cure on or before the Closing Date (except with respect to the Mandatory Cure Matters, which Seller is obligated to cure), then Buyer, as its sole and exclusive remedy, shall have the option of terminating this Agreement by delivering written notice thereof to Seller within five (5) business days after (as applicable) (i) its receipt of Seller's Response stating that Seller will not attempt to cure any such Objection or (ii) the expiration of Seller's Response Period if Seller does not deliver a Seller's Response or (iii) Seller's failure to cure by the Closing Date any Objection which Seller has previously elected to attempt to cure pursuant to a Seller's Response. In the event of such a termination, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If no such termination notice is timely received by Seller hereunder, Buyer shall be deemed to have waived all such Objections in which event those Objections shall become "**Conditions of Title**" under Section 4.1(e). In the event of a

cancellation pursuant to this paragraph 4.1(d), and unless Buyer is in default, Buyer and Seller shall each be responsible for one-half of any title or escrow cancellation charges.

(e) At the Closing, Seller shall convey title to the Property to Buyer by deed in the form of **Exhibit C** attached hereto (the "**Deed**") subject to no exceptions other than:

- (1) Matters created by or with the written consent of Buyer;
- (2) Non-delinquent liens for real estate taxes and assessments not yet due and payable; and
- (3) Any exceptions disclosed by the Title Report and any Title Report Update which are approved or deemed approved by Buyer in accordance with this Article IV above, and any other exceptions to title disclosed by the public records or which would be disclosed by an inspection and/or survey of the Property.

All of the foregoing exceptions shall be referred to collectively as the "**Conditions of Title.**"

Section 4.2 Evidence of Title.

Delivery of title in accordance with the foregoing shall be evidenced by, and a condition to Buyer's obligations to close hereunder shall be, the irrevocable and unconditional commitment of the Title Company to issue, at Closing, its Owner's ALTA Extended Coverage Policy of Title Insurance in the amount of the Purchase Price showing title to the Real Property vested in Buyer (or Buyer's assignee), subject to the Conditions of Title (the "**Title Policy**"). The Title Policy may contain such endorsements as are reasonably required by Buyer, provided that Buyer shall obtain the commitment of the Title Company to issue such endorsements prior to the expiration of the Title Review Period or the Title Update Review Period, as applicable. Seller shall pay for the portion of the cost of the Title Policy attributable to CLTA coverage, and Buyer shall pay for the portion of the cost of the Title Policy attributable to ALTA extended coverage, including the expense of the Survey, and to all such endorsements. Seller shall execute and deliver to Title Company any such certificates, instruments and/or affidavits as Title Company shall reasonably require in order to issue the Title Policy.

ARTICLE V

CONDEMNATION

Section 5.1 Minor Condemnation.

Buyer shall be bound to purchase the Property for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any condemnation of any portion of the Property, provided that: (a) the diminution in the value of the remaining Property as a result of a partial condemnation is not material (as hereinafter defined) and (b) upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any condemnation awards collected by Seller as a result of any such condemnation, less any sums reasonably expended by Seller toward the collection of such awards. If awards have not been collected as of the Closing, then such awards shall be assigned to Buyer (and Seller shall

reasonably cooperate with Buyer after the Closing to collect such awards), except to the extent needed to reimburse Seller for sums expended to collect such awards, and Seller shall retain the rights to such awards to such extent.

Section 5.2 Major Condemnation.

If the diminution in the value of the remaining Property as a result of a condemnation is material (as hereinafter defined), then Buyer may, at its option to be exercised within five (5) business days of Seller's written notice of the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement by delivering written notice thereof to Seller or fails to give Seller notice within such five (5) business day period that Buyer will proceed with the purchase, then this Agreement shall terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. If Buyer elects to proceed with the purchase, then upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any condemnation awards collected by Seller as a result of any such condemnation, less any sums reasonably expended by Seller toward the collection of such awards. If the awards have not been collected as of the Closing, then such awards shall be assigned to Buyer (and Seller shall reasonably cooperate with Buyer after the Closing to collect such awards), except to the extent needed to reimburse Seller for sums expended to collect such awards the Property, and Seller shall retain the rights to such awards to such extent. A condemnation shall be deemed material if: (i) the diminution in the value of the remaining Property as a result of such condemnation exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) in the estimate of a broker selected by Buyer and reasonably acceptable to Seller, or (ii) more than five percent (5%) of the total area of the Property is taken, or (iii) the existing access to the Real Property is materially and adversely affected.

ARTICLE VI

BROKERS AND EXPENSES

Section 6.1 Brokers.

The parties represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction. If any person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "**Indemnified Party**") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, court costs and reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 6.1 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

Section 6.2 Expenses.

Except as expressly provided in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

OTHER AGREEMENTS

Section 7.1 Buyer's Approval of New Agreements Affecting the Property.

Between the Effective Date and the Closing, Seller shall continue to operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property, provided that from the Effective Date until the date which is three (3) business days prior to the expiration of the Contingency Period, Seller shall not enter into any new agreement affecting the Property, or modify or terminate any existing agreement affecting the Property, which will be binding on the Property after Closing, except as approved in advance by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. From the date which is three (3) business days prior to the expiration of the Contingency Period until the Closing, Seller shall not enter into any new agreement affecting the Property, or modify or terminate any existing agreement affecting the Property, which will be binding on the Property after Closing, except as approved in advance by Buyer, which approval may be given or withheld in Buyer's sole and absolute discretion. If Seller desires to seek Buyer's approval of any such agreement, Seller shall deliver a copy of such agreement to Buyer, and Buyer shall have five (5) business days to approve or disapprove the same. Buyer's failure to approve or disapprove such agreement within such five (5) day business period shall be deemed Buyer's disapproval of the same. Buyer shall specify in detail the reasons for its disapproval of any such agreement for which Seller seeks Buyer's approval from the Effective Date until the date which is three (3) business days prior to the expiration of the Contingency Period. Buyer agrees to reasonably cooperate with Seller in enabling Seller to complete any such proposed transaction which Buyer has approved pursuant to the terms of this Section.

ARTICLE VIII

CLOSING AND ESCROW

Section 8.1 Escrow Instructions.

Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Company, and this instrument shall serve as the instructions to the Escrow Company for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

Section 8.2 Closing.

(a) The Closing hereunder shall occur on the date that is the later to occur of (a) thirty (30) calendar days after the expiration of the Contingency Period, and (b) ten (10) business days following the satisfaction of all of the Entitlement Conditions, or such other earlier date and time as Buyer and Seller may mutually agree upon in writing (the "**Closing Date**"). Except as expressly provided herein, the Closing Date may not be extended without the prior written approval of both Seller and Buyer. If the Entitlement Conditions are not satisfied (or waived by Buyer), other than as a result of a Buyer default hereunder, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 6.1, 9.3 and 9.9 below. Notwithstanding the foregoing to the contrary, if the Closing Date has not occurred on or before five (5) years after the Effective Date for any reason other than a default of Buyer or Seller hereunder or a failure of Buyer to satisfy the conditions required to record the Final Map, then at any time after such five (5) year period either Buyer (if it is not in default hereunder) or Seller (if it is not in default hereunder) shall have the right to terminate this Agreement, in which event the Deposit shall be returned to Buyer and neither Buyer nor Seller shall have any rights or obligations to each other under this Agreement except for such rights or obligations which specifically survive the termination of this Agreement.

(b) It shall be a condition to Buyer's obligation to purchase the Property from Seller and Seller's obligation to sell the Property to Buyer that the other party not, as of the Closing Date, be in material default under the City of Oxnard Agreement No. ____ between Buyer and Seller pertaining to twelve (12) lots in the Oxnard Shores area.

Section 8.3 Deposit of Documents.

(a) At least one (1) business day before the Closing, Seller shall deposit into escrow the following items:

(1) the duly executed and acknowledged Deed in the form attached hereto as **Exhibit C** conveying the Real Property to Buyer subject to the Conditions of Title;

(2) four (4) duly executed counterparts of an Assignment and Assumption Agreement in the form attached hereto as **Exhibit D** pursuant to the terms of which Buyer shall assume all of Seller's obligations under the documents and agreements affecting the Property (the "**Assignment and Assumption**");

(3) an affidavit pursuant to Section 1445(b)(2) of the Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and

(4) Intentionally omitted.

(b) At least one (1) business day before Closing, Buyer shall deposit into escrow the following items:

(1) immediately available funds necessary to close this transaction, including, without limitation, the Purchase Price (less the Deposit and interest thereon net of

investment fees, if any) and funds sufficient to pay Buyer's closing costs and plus or minus Buyer's share of prorations, costs or credits hereunder; and

(2) four (4) duly executed counterparts of the Assignment and Assumption.

(c) Seller and Buyer shall each execute and deposit a closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Escrow Company and/or the Title Company or otherwise required to close the escrow and consummate the acquisition of the Property in accordance with the terms hereof.

(d) Within five (5) business days after the Closing Date, Seller shall deliver or make available to Buyer: originals of any items which Seller was required to furnish Buyer copies of or make available to Buyer pursuant to Sections 2.1(b) or (e) above, to the extent in Seller's possession or control, except for Seller's general ledger and other internal books or records which shall be retained by Seller. Seller shall deliver possession of the Property to Buyer as required hereunder on the Closing Date.

Section 8.4 Prorations:

(a) Real property taxes and assessments; water, sewer and utility charges; amounts payable under any Service Contracts or other agreements or documents; annual permits and/or inspection fees (calculated on the basis of the period covered); and any other expenses of the operation and maintenance of the Property (including, without limitation, expenses prepaid by Seller and expenses already paid by Seller but which are being amortized over time by Seller and with respect to which Seller shall receive a credit at Closing in the amount of the prepaid or unamortized portion thereof), shall all be prorated between Buyer and Seller as of 11:59 p.m. on the day immediately prior to Closing (i.e., Seller is entitled to the income and responsible for the expenses before the Closing Date and Buyer is entitled to the income and responsible for the expenses on and after the Closing Date), on the basis of actual days in a month and a 365-day year.

Seller and Buyer hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date, and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall pay said sum to the other party within thirty (30) days thereafter. Any amounts not paid within such thirty (30) day period shall bear interest from the date actually received by the payor until paid at the greater of (i) seven percent (7%) per annum or (ii) the prime rate (or base rate) reported from time to time in the "Money Rates" column or section of The Wall Street Journal as being the base rate on corporate loans at larger United States money center commercial banks plus two (2) percent.

(b) Seller shall pay the premium for the CLTA (standard coverage) portion of the Title Policy and all transfer taxes and recording fees. Buyer shall pay the cost of any extended (ALTA) title insurance coverage and any endorsements to the Title Policy and the cost of deleting any "Survey Exception" from the Title Policy. Seller and Buyer each shall pay one-half of the escrow fee charged by the Escrow Company. Except as provided in Section 9.5

below, and otherwise specifically provided in this Agreement, all other costs and expenses of the escrow for the sale (including, without limitation, other title insurance costs, any state, county or local sales, excise or deed recording taxes or other impositions attributable to the sale, escrow and closing fees) shall be paid by Buyer and Seller in accordance with prevailing local custom in the city, county and state in which the Property is located as determined by the Escrow Company.

(c) The provisions of this Section 8.4 shall survive the Closing.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To Buyer:	Elevar Seven, LLC 501 Spectrum Circle Oxnard, CA 93030 Attention: Bernard Huberman Fax No.: (805) 278-8221
with a copy to:	Friedman & Solomon LLP 9665 Wilshire Boulevard, Suite 810 Beverly Hills, CA 90212 Attention: Robert Solomon, Esq. Fax No.: 310-553-7458
To Seller:	City of Oxnard 300 West Third Street, Third Floor Oxnard, CA 93030 Attention: Michael More, Financial Services Manager
with a copy to:	City of Oxnard 300 West Third Street, Third Floor Oxnard, CA 93030 Attention: Gary Gillig, City Attorney

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication sent as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of transmission, if sent by facsimile. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Any notice sent by the attorney representing a party, shall qualify as notice under this Agreement.

Section 9.2 Entire Agreement.

This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

Section 9.3 Entry and Indemnity.

In connection with any entry by Buyer, or its agents, employees or contractors onto the Property, Buyer shall give Seller not less than one (1) business day advance notice of such entry and shall conduct such entry and any inspections in connection therewith in compliance with all applicable laws. Without limiting the foregoing, prior to any entry to perform any on-site physical testing, including but not limited to any borings, drillings or samplings, Buyer shall give Seller written notice thereof. Buyer shall permit Seller or its representative to be present to observe any testing or other inspection or due diligence review performed on or at the Property. Upon the request of Seller, at Seller's sole cost and expense, Buyer shall promptly deliver to Seller, without representation or warranty, copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its agents, representatives, employees, contractors or consultants. Buyer shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and Buyer shall provide Seller with evidence of such insurance coverage upon request by Seller. If Seller requests such evidence of insurance coverage, Buyer may not enter the Property until Seller has received in writing satisfactory evidence that such coverage exists. Buyer shall indemnify and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by Buyer, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Agreement, including, without limitation, any release of hazardous materials or any damage to the Property; provided that Buyer shall not be liable to Seller solely as a result of the discovery by Buyer of a pre-existing condition on the Property to the extent the activities of Buyer, its agents, representatives, employees, contractors or consultants do not exacerbate the condition.

The foregoing indemnity shall survive the Closing. Buyer's right of entry, as provided in this Section 9.3, shall continue up through the date of Closing.

Section 9.4 Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein.

Section 9.5 Attorneys' Fees.

If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, whether prior to or after Closing, or if any party defaults in payment of its post-Closing financial obligations under this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 9.6 Assignment.

Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of Seller in Seller's sole discretion. Notwithstanding the foregoing, Buyer shall have the right, without the necessity of obtaining Seller's consent but with prior written notice to Seller, to assign its right, title and interest in and to this Agreement to (i) an entity and/or entities that controls, is controlled by or under common control of Buyer and/or an entity owned by Buyer or its principal(s), (ii) project limited liability companies formed for the purposes of developing and owning the Property, or (iii) an exchange intermediary for the purpose of completing an exchange of Buyer at any time before the Closing Date. Buyer shall in no event be released from any of its obligations or liabilities hereunder in connection with any assignment. Subject to the provisions of this Section, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 9.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State in which the Real Property is located.

Section 9.9 [Intentionally Omitted]

Section 9.10 Interpretation of Agreement.

The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "**person**" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

Section 9.11 Remedies. Notwithstanding any provision of this Agreement to the contrary, in the event that Seller defaults under its obligation under this Agreement, Buyer's sole and exclusive remedy shall be either (a) to terminate the Agreement and receive a full reimbursement of the Deposit, and pursue any cause of action it may possess for damages, which damages may not to exceed three Hundred Thousand Dollars (\$300,000) plus all costs and expenses incurred by Buyer to satisfy the conditions of Final Map approval imposed by the Tentative Map and all costs and expenses incurred by Buyer to record the Final Map; (b) waive said failure or breach and proceed to the Closing; or (c) pursue specific performance (and if Buyer is the prevailing party under such specific performance action, Buyer shall be entitled to seek from Seller its attorneys' fees in accordance with Section 14 below); provided, however, that if specific performance is not available for any reason whatsoever, then Buyer shall have all rights and remedies available, without regard to the cap set forth in subsection (a) above. In no event shall Seller's officers, employees, or council members thereof have any liability for any claim, cause of action or other liability arising out of or relating to this Agreement or the Property, whether based on contract, common law, statute, equity or otherwise.

Section 9.12 Amendments.

This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller. The City Manager of the City of Oxnard may amend or modify this Agreement on behalf of Seller without the need to obtain further approval from any city agency, including, without limitation, the City Council; provided the City Attorney provides advice to the City Manager that the modifications are not substantial or are not materially substantive; provided, further however, that the City Manager may amend this Agreement to extend any deadline or time period provided in this Agreement for up to ninety (90) days without the approval from any city agency or the advice of the City Attorney.

Section 9.13 Drafts Not an Offer to Enter Into a Legally Binding Contract.

The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, and both Seller and

Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission) (the "Effective Date").

Section 9.14 No Partnership.

The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

Section 9.15 No Third Party Beneficiary.

The provisions of this Agreement are not intended to benefit any third parties.

Section 9.16 Survival.

Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of the parties contained herein shall survive the Closing.

Section 9.17 Survival of Article IX.

The provisions of this Article IX shall survive the Closing.

ARTICLE X

"AS-IS SALE"

Section 10.01 "As-Is" Sale

Seller's sale of the Property is "as-is", "with all faults". Buyer must satisfy itself in all respects as to all conditions and aspects of the Property, and its suitability for Buyer's intended use. Except as otherwise set forth in this Agreement, Buyer shall have no recourse to Seller on account of any physical condition or physical aspect whatsoever of the Property. Except as stated in Section 3.1(h), Seller makes no representations concerning Hazardous Materials, the condition of the soil of the Property, or its suitability for Buyer's intended use. Without limiting Seller's obligations under Section 2.3 above, Seller makes no warranties or representations concerning the use to which the Property may be put or to Buyer's ability to obtain entitlements or permits. Without limiting Seller's obligations under Section 2.3 above, nothing in this Agreement limits or constrains the City of Oxnard in the performance of its legislative, administrative, or police powers.

[signature page follows]

The parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

Seller:

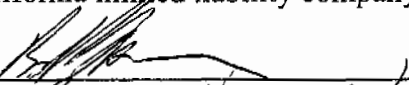
CITY OF OXNARD,
a municipal corporation



Thomas E. Holden, Mayor

Buyer:

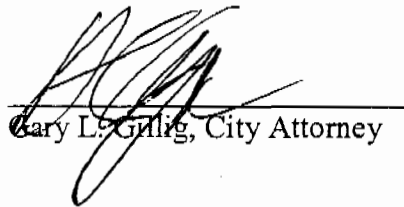
ELEVAR SEVEN, LLC,
a California limited liability company

By: 

Name LEONARD HOBERMAN

Its: MANAGER

APPROVED AS TO FORM:



Gary L. Gullig, City Attorney

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Real Property Description
Exhibit B	Intentionally Omitted
Exhibit C	Deed
Exhibit D	Assignment and Assumption Agreement

SCHEDULES

Schedule 1	Disclosure Items
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EXHIBIT A

REAL PROPERTY DESCRIPTION

(APN 191-082-07)

Being a part of Mandalay Unit No. 1, in the City of Oxnard, as per map recorded in Book 13, Page 58 of Miscellaneous Records (Maps), records of the Ventura County Recorder, State of California, more particularly described as follows:

COMMENCING at the most easterly corner of Lot 53, Block 143, of said Mandalay Unit No. 1; thence North $65^{\circ}13'04''$ East along the Northeasterly prolongation of the Southeasterly line of said Lot 53, 100 feet; thence North $24^{\circ}46'56''$ West and parallel with the Northeasterly line of said Lot 53, 216 feet; thence Northeasterly along a curve, tangent at its point of beginning to a line bearing North $65^{\circ}13'04''$ East, concave Southerly, and having a radius of 1252 feet, an arc distance of 80 feet to the **TRUE POINT OF BEGINNING**; thence continuing Northeasterly along said curve, an arc distance of 257 feet; thence North $09^{\circ}21'36''$ West and radial to said curve, 226 feet; thence Southwesterly along a curve having a radius of 1478 feet and being concentric with and distant 226 feet measured radially from the hereinbefore mentioned curve having a radius of 1252 feet, an arc distance of 303.39 feet; thence South $21^{\circ}07'16''$ East and radial to said curve, 226 feet to the **TRUE POINT OF BEGINNING**.

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 J. MATTHEW RODRIQUEZ
Senior Assistant Attorney General
3 JAMEE JORDAN PATTERSON, State Bar No.
100967
4 Supervising Deputy Attorney General
110 West A Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2023
7 Fax: (619) 645-2012
E-mail: Jamee.Patterson@doj.ca.gov
8 Attorneys for California Coastal Commission

VENTURA
SUPERIOR COURT
FILED

JUL 17 2007

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____ Deputy

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF VENTURA
12

EX PARTE RESERVATION No. 53533

14 CITY OF OXNARD, a municipal corporation,

Petitioner,

16 v.

17 CALIFORNIA COASTAL COMMISSION, a State
Agency; and DOES 1-10, inclusive,

19 Respondents.

56-2007-00283553-CU-WM-
VTA

STIPULATION TO
ISSUANCE OF WRIT OF
MANDATE

Date: n/a
Time: n/a
Dept: n/a
Judge: Honorable
Frederick H.
Bysshe
Trial Date: n/a
Action Filed: May 7, 2007

23 Petitioner City of Oxnard and respondent California Coastal Commission through their
24 respective attorneys of record enter into the following stipulation.

25 Whereas, the Commission denied the City's request to amend its local coastal program
26 to rezone the Breakers Way Parcel, LCP Amendment No. OXN-MAJ-1-07 on March 15, 2007;

27 Whereas, the City filed this litigation challenging the Commission's denial of the LCP
28 Amendment;

1 Whereas, the Parties have engaged in settlement discussions in an attempt to resolve
2 this matter;

3 Whereas, the City provided the Commission with copies of the Agreements for
4 Purchase and Sale of the Breakers Way Parcel as well as the Whitecap Parcel, which were not
5 available at the March 15, 2007 hearing and which demonstrate that the sales of the parcels are
6 separate transactions;

7 Whereas, the City has agreed that the Breakers Way Parcel and the Whitecap Parcel
8 will be sold, if at all, under separate purchase and sale agreements and the sale of either parcel
9 will not close or be consummated unless and until the Commission has approved a rezone as to
10 that parcel; and

11 Whereas the Parties desire to resolve this matter without further litigation if at all
12 possible.

13 Accordingly, the Parties hereby stipulate and agree as follows:

14 1. This matter shall be stayed with the Court retaining jurisdiction pending the
15 outcome of the procedure set forth below.

16 2. The City will sell the Breakers Way Parcel and the Whitecap Parcel, if at all, under
17 separate purchase and sale agreements and the sale of either parcel to a non-public entity will not
18 close or be consummated unless and until the Commission has approved a rezone as to that
19 parcel. If the City sells either the Breakers Way Parcel or the Whitecap Parcel to a public entity,
20 the property will not need to be rezoned so long as the public entity will use the property for
21 purposes allowed under the current zoning.

22 3. The Commission will accept a stipulated writ of mandate remanding this matter to
23 the Commission to reconsider the LCP Amendment and the Commission will schedule the matter
24 for a new hearing at the earliest possible meeting subject to workload and staff availability. The
25 Commission will make every effort to schedule the matter for the August meeting.

26 4. The Commission's staff agrees to make the same recommendation of approval that
27 it made on March 15, 2007.

28 5. The Commission retains the full discretion provided under the Coastal Act to

1 approve, deny or approve with suggested modifications the City's request to amend the LCP
2 pursuant to LCP Amendment No. OXN-MAJ-1-07.

3 6. The Commission will file a return to the stipulated writ within twenty (20) days of
4 the Commission's action on the Breakers Way Parcel LCP Amendment, indicating the
5 Commission's action on the stipulated writ of mandate.

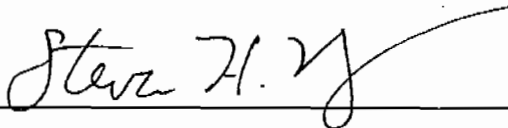
6 7. In the event the City is satisfied with the Commission's decision on remand and the
7 return to the writ, the City will ask the Court to discharge the writ and dismiss this litigation in its
8 entirety.


9 8. In the event the City is not satisfied with the Commission's decision on remand and
10 return to the writ, the stay of this matter may be lifted and the City may elect to pursue this
11 litigation based on the administrative record for the Commission's March 15, 2007 decision and
12 may file a supplemental petition or seek other appropriate relief, and the Commission will adopt
13 revised findings based on that record.

14 9. Each side will bear its own costs and attorneys fees for purposes of the remand.

15
16 Dated: *July 9, 2007*

Dated: *July 6, 2007*

17
18 
19
20 STEVEN H. KAUFMANN
21 Attorney at Law
22 RICHARDS, WATSON & GERSHON
23 Attorneys for petitioner City of Oxnard
24


JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General
EDMUND G. BROWN JR.
J. MATTHEW RODRIQUEZ
OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA
Attorneys for respondent California Coastal
Commission

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PROOF OF SERVICE

I, Regina Pegues, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On July 16, 2007, I served the within documents:

STIPULATION TO ISSUANCE OF WRIT OF MANDATE

- [] by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- [X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.
- [] by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- [] by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- [] by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

Jamee J. Patterson
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92185-5266

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 16, 2007.


REGINA PEGUES

ORIGINAL

VENTURA
SUPERIOR COURT
FILED

JUL 17 2007

MICHAEL D. PLANET

Executive Officer and Clerk

BY: Debra Hebert Deputy
DEBRA HEBERT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

CITY OF OXNARD, a municipal corporation,

Petitioner,

v.

**CALIFORNIA COASTAL COMMISSION, a State
Agency; and DOES 1-10, inclusive,**

Respondents.

EX PARTE RESERVATION NO. 53533

56-2007-00283553-CU-WM-
VTA

**STIPULATED WRIT OF
MANDATE**

Date: n/a
Time: n/a
Dept: 41
Judge: Honorable
Frederick H.
Bysshe
Trial Date: n/a
Action Filed: May 7, 2007

The Court, having considered the parties' Stipulation to Issuance of Writ of Mandate and finding good cause, issues this stipulated writ of mandate remanding this case to respondent California Coastal Commission consistent with the stipulation.

The California Coastal Commission is ordered and directed to set aside its decision dated March 15, 2007 denying the City of Oxnard's request to amend its local coastal program to rezone the Breaker's Way Parcel in Oxnard Shores, LCP Amendment No. OXN-MAJ-1-07. The Commission shall schedule the matter for a new hearing as soon as possible and shall reconsider the City's request. The Commission's staff will make the same recommendation of approval that it made on March 15, 2007. The Commission has full discretion under the Coastal Act to approve, deny or approve with suggested modifications the City's request to rezone the property.

The Commission shall file a return to this writ within twenty (20) days of filing of this writ.

**Exhibit 15
LCPA No. OXN-MAJ-1-07
Stipulated Writ of Mandate**

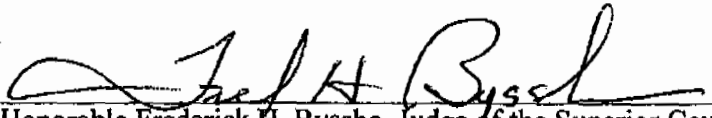
1 action on the LCP Amendment indicating what it has done to comply with this writ. In the event
2 the City is satisfied with the Commission's decision on remand and return to stipulated writ, the
3 City will ask this Court to discharge this writ and dismiss this case in its entirety. In the event the
4 City is not satisfied with the Commission's decision on remand, the City may pursue this matter
5 based on the administrative record for the March 15, 2007 decision by filing a supplemental
6 petition for writ of mandate or other appropriate relief, and the Commission will adopt revised
7 findings based on that record.

8 This matter shall be stayed with the Court retaining jurisdiction over this matter until
9 such time as the above procedure has been completed and the writ of mandate is discharged.

10 The parties will bear their own costs and attorneys fees for purposes of this remand.

11 IT IS SO ORDERED.

12 7/18/07

13 
14 Honorable Frederick H. Bysshe, Judge of the Superior Court
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PROOF OF SERVICE

I, Regina Pegues, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On July 18, 2007, I served the within documents:

NOTICE OF ISSUANCE OF STIPULATED WRIT OF MANDATE

- ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

Jamee J. Patterson
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92185-5266

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 18, 2007.


REGINA PEGUES