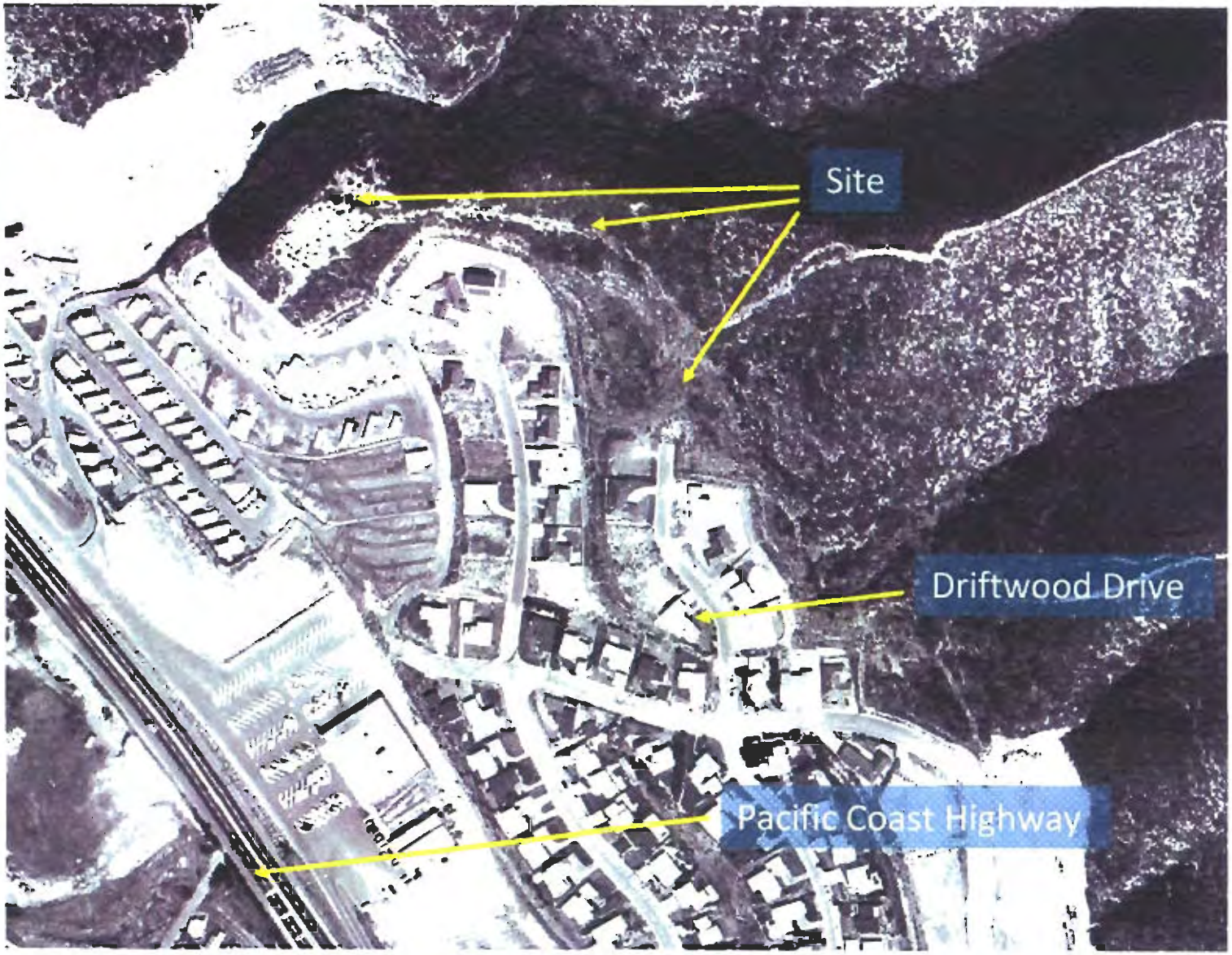

1959

Prior to grading

The Athens Group

1 Δ

1959 Photo Provided by Applicant Application No. 5-07-412-VRC

Exhibit #12
1 of 1

Aerial Photograph from UCSB Archive dated February 9, 1960

EXHIBIT#13
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5-07-412-VRC
California Coastal Commission

Pre-May 18, 1962

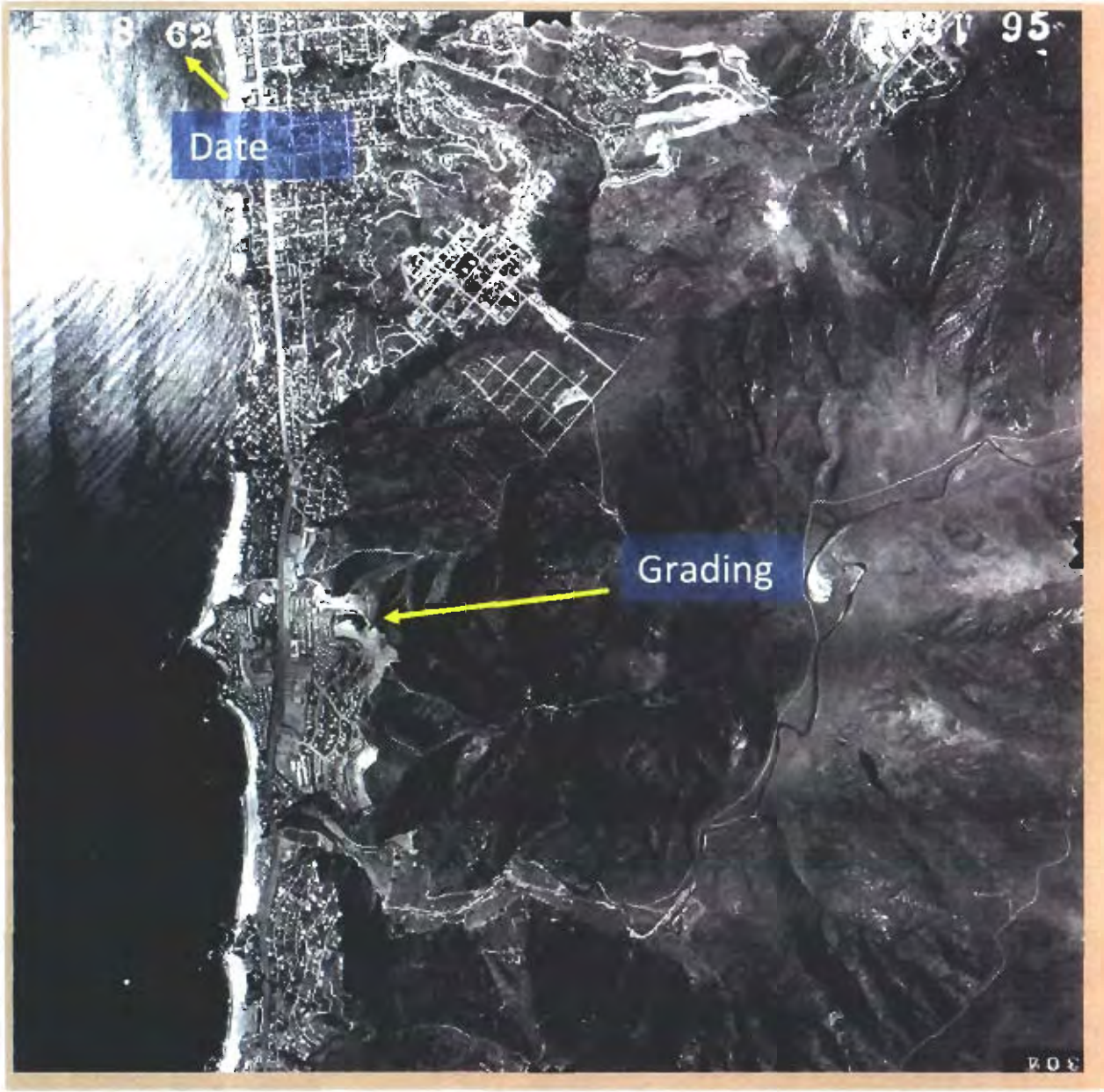
Site Graded

Exhibit 1C

The Athens Group

Pre-May 1962 Photo Provied by Applicant

Exhibit 14
1 of 1
5-07-412-VRC



May 18, 1962

Site Graded

Archival photo from University of California, Santa Barbara Collection

Exhibit 1D

The Athens Group

May 18, 1962 Photo Provided by Applicant

Exhibit #15
1 of 2
5-07-412-VRC

May 18, 1962

Zoom In Showing Site Graded

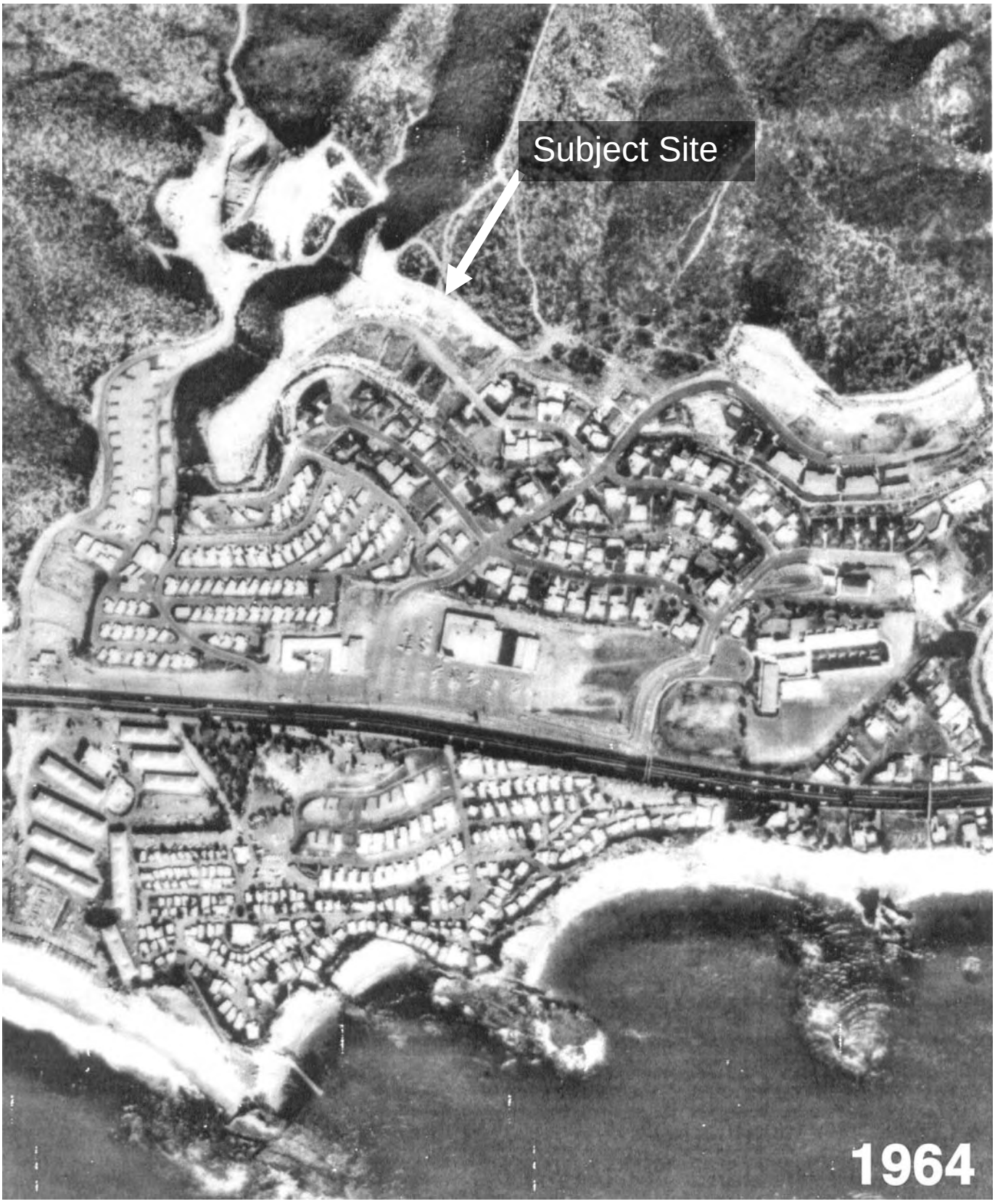
Archival photo from University of California, Santa Barbara Collection

Exhibit 1E

The Athens Group

May 18, 1962 Photo Provided by Applicant

Exhibit #15
2 of 2
5-07-412-VRC



Aerial Photograph from 1964 (CCC Archive)

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California Coastal Commission

1965

Grading evident at site

The Athens Group

Exhibit #17
1 of 1
5-07-412-VRC

1965 Photo Provided by Applicant

1972

California Coastal Act enacted

The Athens Group

1972 Photo Provided by Applicant

April 23, 1978 Aerial Photograph from CCC Archive

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Aerial Photo from 1979 (CCC Archive)

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California Coastal Commission

2001 Aerial Photograph from CCC Archives

EXHIBIT# 21
Page 1 of 1
Application Number:
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California Coastal Commission

Karl Schwing

From: Penny Elia [greenp1@cox.net]
Sent: Thursday, April 17, 2008 2:45 PM
To: Louise Warren; Andrew Willis; Karl Schwing
Cc: Mark Massara
Subject: Blasting in South Laguna - H&S Code s 12101

>
When the Esslingers were blasting the Hobo Canyon/Hobo Aliso Ridge area, historians tell us that the boulders were flying across Coast Hwy. and landing in the parking lot of the local coffee shop (Sea Fare Lodge). Patrons, including local architect, Fred Lang, were forced to run from the boulders coming across the highway. It was common knowledge that "Doc" Esslinger was blasting without a permit.

In speaking with several state and county agencies I have been advised that a permit for "ultra hazardous activities" has been required since "the beginning of time" to quote one agency rep.

> West's Ann.Cal.Health & Safety Code § 12101
>
> § 12101. Activities covered; applications; uses outside jurisdiction
> of issuing authority; conditions of use; duration; limitations on
> issuing permits if display of placards is required; persons
> unqualified to apply
>
> (a) No person shall do any one of the following without first having
> made application for and received a permit in accordance with this
> section:
>
> (1) Manufacture explosives.
>
> (2) Sell, furnish, or give away explosives.
>
> (3) Receive, store, or possess explosives.
>
> (4) Transport explosives.
>
> (5) Use explosives.
>
> (6) Operate a terminal for handling explosives.
>
> (7) Park or leave standing any vehicle carrying explosives, except
> when parked or left standing in or at a safe stopping place designated
> as such by the Department of the California Highway Patrol under
> Division 14 (commencing with Section 31600) of the Vehicle Code.
>
> (b) Application for a permit shall be made to the appropriate issuing
> authority.
>

Exhibit #22
1 of 1
E-Mail from Penny Elia dated 4/17/2008 5-07-412-VRC

CALIFORNIA COASTAL COMMISSION

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

March 17, 2008

Greg Vail
Driftwood Properties, LLC
c/o The Athens Group
31106 Coast Highway
Laguna Beach, CA 92651

Rick Zbur
Latham & Watkins LLP
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071-2007

SUBJECT: 2nd NOTICE OF INCOMPLETE CLAIM OF VESTED RIGHTS
Application No. 5-07-412-VRC
Site: Driftwood Estates, Laguna Beach
Applicant: Driftwood Properties, LLC
Agents: Rick Zbur and Loren Montgomery

Dear Mr. Vail and Mr. Zbur:

On March 10, 2008, our office received your response to the Notice of Incomplete Claim of Vested Rights we sent to you dated November 29, 2007. We have reviewed all of the materials you have submitted and have concluded that you have not fully responded to our prior request for information and/or that additional information must be submitted to support the claims you made in your latest response. Pursuant to Section 13202 of the Commission's regulations[1], a claim of vested rights "shall be filed only after the claimant has provided the commission with all the information called for by the [claim] form, as well as any other information which the executive director of the commission deems necessary to review the claim." Please accept this letter as notification that your claim is not "filed" for purposes of Sections 13201-206 pending receipt of additional information necessary for a thorough analysis of your claim by Commission staff.

In order to complete your claim form please submit the following:

1) We previously requested that you submit "[e]vidence showing the property owner in 1962 and/or claimant obtained all governmental approvals necessary to grade and maintain the subject pads, including, but not limited to, copies of valid permits obtained prior to incorporation and passage of the Coastal Act and any other relevant documents from the County of Orange permit files related to these approvals.[2]" Your response to this request was that 1) the Commission's "form" does not require that you submit such evidence; and 2) that the grading of the pads preceded the County's adoption of the Excavation and Grading Code, thus, no grading permit was necessary. First, Section 13202 of the Commission's regulations regarding Vested Rights Claims does not limit the Commission to asking for only that information requested on the form; it also provides that "… [a] claim of vested rights shall be filed only after the claimant has provided the commission with all the information called for by the form, as well as any other information which the executive director of the commission deems necessary to review the claim." [emphasis added] Furthermore, our request for information was not

[1] All subsequent section references are to the Commission's regulations, as codified in Title 14 of the California Code of Regulations, unless otherwise noted.

[2] The claimant's assertion that such evidence is not necessary here is unavailing. The claimant bears the burden of proving its claim to a vested right, and it cannot establish such right unless it can show that it received all applicable governmental approvals needed to undertake the development. The cases cited by the claimant in support of its position do not hold that development is presumed legal in the context of a claim for vested rights.

limited merely to a grading permit. We requested evidence of ALL approvals that would have been required from any governmental entity at the time of the creation of the pads to be legally authorized to undertake not only the grading to establish the graded pads, but also the so-called 'maintenance' of those pads, which you have stated included 'fuel modification'. You have only provided information about the County's grading permit requirements at that time. It would seem likely that other governmental approvals were necessary prior to commencing the grading, not only under County laws, but under other State laws. This may be true, in part, because the grading was so clearly designed as part of a plan to subdivide the area, and we ask that you bear that fact in mind in identifying all required approvals. Please identify all such approvals/procedures that were necessary for the pad grading and maintenance and supply evidence that such approvals were obtained and complied with, as previously requested. Please also supply copies of all applicable laws, ordinances, regulations, etc. that you conclude were effective when the grading commenced and during the period of maintenance.

Also, with regard to your claim that the County did not have any grading permit requirements at the time grading was undertaken; please supply copies of all documents (e.g. ordinances) which you cite and/or which you collected in your research of this issue.

2) We previously requested that you supply "[e]vidence showing the property owner in 1962 and/or claimant carried out the development that was approved and complied with all conditions of all government approvals that were necessary to grade and maintain the subject pads." Your response was that our form does not require such evidence and that there is a presumption that the law was complied with in absence of evidence to the contrary. Again, as explained above, we are not limited to requesting only that information requested on our form. In addition, as stated above, the cases cited by the claimant in support of its position do not hold that development is presumed legal in the context of a claim for vested rights. You have the burden of proof.

3) We previously requested "[c]opies of the grading plans approved by the County of Orange." Your response was that our form does not require you to submit an approved grading plan. Again, as explained above, we are not limited to requesting only that information requested on our form. Please provide evidence of an approved grading plan or state affirmatively that you have no such approved grading plans.

4) We previously requested "[a]ll available records of expenses incurred since 1962 by the property owner and/or claimant to grade the pads and to maintain the pads since the original grading took place." You state that such records aren't available to the present owner because such work was conducted by a prior owner. We request that you make contact with the prior owner and make an effort to obtain such records and supply such records to the Commission.

5) We previously requested "[c]opies of any permits or authorizations obtained from the City of Laguna Beach for maintenance of the graded pads from date of incorporation to present, or evidence no permits are necessary.[emphasis added]. You supplied some evidence of recent (2007) authorizations from the City for vegetation thinning and clearance, and an emergency permit the Commission issued in 2007 for temporary

placement of sandbags[3], but did not supply any information about City authorizations preceding 2007 or the present entity's ownership. Please note that our request was for permits or authorizations obtained from the City, which incorporated South Laguna into its corporate boundary in the late 1980's, well before 2007 and the present entity's ownership. Please supply this previously requested information.

6) You have claimed a vested right to maintenance of the graded pads, including fuel modification (i.e. vegetation thinning and clearance). Please supply evidence (e.g. photographs) showing all vegetation thinning/clearance activities since the grading of the site, along with evidence that such clearance had all required governmental authorizations.

Thank you for your attention to these matters. When all the requested information is received, reviewed by staff and found to be adequate, your application will be filed. Please supply the information requested above by April 1, 2008. If we do not receive any additional information by that date and/or the information we have received is incomplete or unsatisfactory, Commission staff may still choose to deem the application 'filed' and proceed with a hearing before the Commission using whatever information is available at that time. Please note that, pursuant to Section 13200, as the claimant, you bear the burden of proof in this matter. Also, this letter only relates to the subject of your vested rights claim, i.e. grading and maintenance of the pads, and does not address any other development that may have occurred on the site since passage of the Coastal Act without benefit of a coastal development permit. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,
[original signed by]

Karl Schwing
Supervisor, Regulation & Planning
Orange County Area

cc: File

[3] Commission staff does not concede that any of these activities constitute 'maintenance' for Coastal Act purposes.