Go to the additional addendum
to this report posted
on October 15, 2009

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project: Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach) Thursday 14a

Date/time of receipt of communication: October 8, 2008 @ 5:00pm

Location of communication: Menlo Park

Type of communication: Telephone

Person(s) initiating communication: Lennie Roberts, Mike Ferreria ORCA San Mateo

Detailed substantive description of content of communication:
ORCA supports the staff's position that the Vested Rights Agreement should not be withdrawn. They believe that there is no evidence for Vested Rights on this parcel.

They asked me to support the staff.

Commissioner

Wednesday, October 8, 2008
Date

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

Th14a

October 2, 2008

ADDENDUM

To: Commissioners & Interested Persons

From: South Coast District Staff & Staff Counsel

RE: Commission Meeting of Thursday, October 16, 2008, Item Th14a, Vested Rights Claim Application No. 5-07-412-VRC (Driftwood Properties LLC), Laguna Beach, Orange County

A. Letter dated September 24, 2008 from Latham & Watkins Requesting Withdrawal or Postponement of the Vested Rights Claim (attached)

B. Staff Response to Claimants Request to Withdraw or Postpone

Driftwood seeks to withdraw its claim for a vested right, while continuing to assert such vested right. As explained in further detail below, in the section to be added to the Commission's findings, Driftwood has no right to withdraw its application for a vested right as long as it continues to claim that it is exempt from permitting requirements due to the existence of a vested right. The Commission's regulations require that an applicant submit a claim for a vested right if such a right is asserted and they include no provisions that would allow for withdrawal of a vested rights application.

Not only is withdrawal under these circumstances prohibited by the Commission's regulations, but none of Driftwood's reasons for seeking to withdraw are persuasive. Driftwood's arguments and staff's response are outlined below:

1) DRIFTWOOD'S CLAIM: Driftwood is hopeful that it may resolve the enforcement case against it in the near future, so it wishes to withdraw its claim in the interim.

   STAFF'S RESPONSE: Driftwood's claim for a vested right is unrelated to the potential resolution of the enforcement matters, except that resolution of the claim could help clarify or narrow the issues before the Commission in the enforcement case. Thus, if anything, delay of the vested rights determination could negatively impact resolution of the enforcement action.

2) DRIFTWOOD'S CLAIM: Its vested rights claim raises "novel policy issues related to whether ESHA designation may be made based on a theory of what might occur in the future at the Project."

STAFF'S RESPONSE:

a) There are no novel policy issues related to ESHA presented by Driftwood's claim for a vested right. Dr. Dixon concluded that were it not for the repeated clearing of vegetation, all the graded areas on the site would consist of coastal sage scrub and maritime chaparral ESHA, not just the patches of disturbed ESHA that exist there today; and therefore, if the development was unpermitted, the area should be considered ESHA regardless of its current condition. This conclusion is consistent with the Commission's practice of evaluating a site as if unpermitted development had not occurred. Any other approach would reward an applicant for violating the Coastal Act by removing ESHA without a permit and later claiming there was no ESHA on site.
b) More importantly, whether the property consists of ESHA today is irrelevant to Driftwood's claim for a vested right and need not be considered by the Commission when determining whether such a right exists. The issue the Commission must consider is whether Driftwood has obtained a vested right to the graded pads themselves or to maintenance of the graded pads. This analysis is based solely on whether Driftwood obtained the necessary permits to grade and maintain the pads and performed substantial work and incurred substantial liabilities in reliance on those permits. The question of whether the property consists of ESHA is only relevant to determine whether Driftwood needs to obtain a permit to remove major vegetation from the property, which is not the issue before the Commission.

3) DRIFTWOOD'S CLAIM: Going forward with the hearing would "require the dedication of significant staff time to address Driftwood's response to the staff report" and will result in a long Commission hearing.

STAFF'S RESPONSE:

a) The length of the Commission hearing on this item will not vary based on whether it is heard in October or at some later date.
b) Staff will expend significantly more time preparing and mailing a third staff report on this claim than it would addressing Driftwood's response in an addendum. Thus, withdrawal and resubmission of this claim will waste far more staff resources than moving forward with the hearing in October.

In conclusion, the Commission's regulations do not allow withdrawal of a claim for a vested right if the applicant continues to assert such a right. Driftwood does continue to assert that it has such a vested right. Driftwood's arguments in favor of allowing withdrawal are not persuasive, as allowing withdrawal at this time will only delay the hearing and consume additional staff resources.

2. The Commission Should Deny Driftwood's Request to Postpone the Hearing on its Claim for a Vested Right.

Driftwood requests that if it cannot withdraw its claim for a vested right, it be granted a second postponement of the hearing that is now scheduled for October 16, 2008. Again,

the Commission's regulations are not supportive of a postponement. Claims for vested rights are intended to be heard expeditiously. Commission staff is required to set the vested rights claim for a hearing "at the next regularly scheduled meeting" after the Executive Director makes an initial determination of whether such a vested right exists (which must be within 30 days from the filing date). 14 CCR § 13203. This means that a claim for a vested right should be heard within two or three months after being filed as complete. Driftwood's application was deemed complete on June 9, 2008 As stated above, practical policy favors resolution of vested rights claims, and to that end the Commission's regulations allow the applicant only one right to postpone this hearing. 14 CCR §13073. Driftwood exercised that right and postponed the hearing that was set to take place at the August 2008 Commission meeting. Driftwood's arguments in support of its request for a second postponement are also unpersuasive. These arguments, as well as staff's response, are outlined below:

1) DRIFTWOOD'S CLAIM: Driftwood needs more time to present additional evidence to address the claims in the staff report related to the permits, other than grading permits, required at the time the grading took place.

   STAFF'S RESPONSE: Driftwood was well aware, as early as November 2007, but certainly no later than March 2008, that it needed to provide proof of all necessary governmental approvals, not just grading permits. Staff sent Driftwood two "incomplete" letters informing it that its application could not be considered complete until evidence of such permits was submitted to the Commission. Driftwood's response was that it had provided the Commission with all of the evidence necessary for the vested rights claim to be heard by the Commission (see timeline in footnote below).[1] Driftwood should not be allowed to postpone this hearing now to search for evidence it should have found before filing its claim for

[1] Here is the timeline of Driftwood's submissions and Commission staff's responses:

November 20, 2007: Driftwood submitted is application for a vested right without any accompanying evidence of permits or approvals.

November 29, 2007: Staff notified Driftwood that its application could not be considered complete until it provided the Commission with "all governmental approvals necessary to grade and maintain the subject pads." Staff explained that Driftwood was required to produce all applicable governmental permits and approvals.

March 7, 2008: Driftwood submitted additional materials in support of its claim for a vested right. It stated that it had researched the history of grading code requirements and determined that no grading permits were required when grading took place on the property. Driftwood also conducted an "exhaustive search of available public files for the Driftwood Property" but found no record of relevant permits.

March 17, 2008: Staff notified Driftwood again that it needed evidence of all governmental approvals necessary prior to grading. Staff reiterated that this requirement was not limited to grading permits and requested copies of all applicable laws, ordinances and regulations that were effective when grading commenced.

April 1, 2008: Driftwood responded to staff's March 17, 2008 letter. It claimed that it had already provided all evidence needed to establish that the prior owner of Driftwood Estates had graded the property in compliance with all government approvals that were necessary to grade and maintain the subject pads and that its application should be filed as complete.

April 2008: Commission staff spent one day researching the Orange County codes and found the applicable Orange County land use ordinances on which the staff report is based. These ordinances describe the permits, other than grading permits, that were required at the time the property was graded.

a vested right, particularly when it asserted that it had provided the Commission with all of the evidence necessary to consider the claim and that it has already undertaken an exhaustive search of available public records related to the site.

2) DRIFTWOOD'S CLAIM: In particular, Driftwood would like more time to respond to the discussion in the staff report regarding whether there was blasting on the subject site.

   STAFF'S RESPONSE: Staff is not recommending that the Commission base its denial of the claim of vested rights on the lack of a permit for the use of explosives. As it stands, staff does not have enough evidence to determine whether blasting occurred on the site and is not using this as a basis for denial, so postponing the hearing to let Driftwood investigate this matter further will not address the issues remaining in the staff report.

3) DRIFTWOOD'S CLAIM: It needs additional materials from Commission staff to prepare for the hearing.

   STAFF'S RESPONSE: Staff provided to Driftwood all of the documents staff relied on in preparing the staff report – the three items Driftwood claimed to have not received from staff were provided to Driftwood in May 2008 and, in one case, also attached to the staff report issued in July. Similarly, staff made all additional documents requested by Driftwood on September 23, 2008, that were related to the claim for a vested right, available to Driftwood for review in its Long Beach office on September 29, 2008. Driftwood has thus had the opportunity to review the relevant documents retained by staff.

Allowing Driftwood to postpone this hearing will only cause needless delay. Driftwood has had ten months since staff's first "incomplete" letter to conduct the necessary research to provide the Commission with evidence of all governmental approvals received prior to grading. It has also had more than two months since the first staff report related to Driftwood's claim to a vested right was published. Driftwood had the opportunity to and should have conducted any additional research it believed was necessary long before now. Therefore, the Commission should not grant Driftwood's request for a second postponement.

C. Staff Recommends the Commission Adopt the Following Additional Findings and Incorporate them into the staff report, on page 21 after Section H:

Text to be added shown in ***Bold, Italic, Underlined***:

I. Driftwood Has No Right to Withdraw Its Claim for a Vested Right

1. Withdrawal is Prohibited Under Section 13201 of the Commission's Regulations

Driftwood seeks to withdraw its claim for a vested right, but at the same time it continues to assert that it has a vested right and purports to reserve its right to resubmit its claim, potentially within six months. The Commission's regulations require submission of a claim for a vested right if such a claim is asserted and provide no mechanism for withdrawing such applications; therefore, Driftwood may not withdraw its claim.

Section 13201 states: "[a]ny person who claims that a development is exempt from the permit requirements of Public Resources Code Section 30600 or 30601 by reason of a vested right under Public Resources Code, Section 30608 must file a claim of vested rights with the commission and obtain approval under this subchapter." 14 CCR § 13201 (emphasis added). Under this regulation, a property owner must submit a claim for a vested right if he/she claims development is exempt from permitting requirements due to the existence of a vested right. Driftwood continues to assert that it has a vested right to the graded pads and to maintain the graded pads at Driftwood Estates. Thus, it is required to submit a claim for a vested right, which it did in November 2007.

There is no provision in the Commission's regulations that would allow Driftwood to withdraw its claim. The Commission's regulations include provisions for the withdrawal of all of the following types of applications, all of which are voluntary actions: Coastal Development Permits (14 CCR § 13071); Land Use Plans and Implementation Plans (Id. § 13535); Long Range Development Plans (Id. § 13535); Appeals (Id. §§ 13116 and 13338); Boundary Adjustment Requests (Id. § 13268); and Port Master Plans (Id. § 13633). There is no similar section allowing for the withdrawal of an application for a vested rights claim. Because there are regulations allowing the withdrawal of all of these other types of applications, it supports the conclusion that in the absence of such a provision in the section on vested rights, there is no right to withdraw, especially given the mandatory nature of the vested rights claim. While there is no requirement that property owners or local governments build on their property or plan create planning documents, once a vested right is claimed for an action, it is mandatory that a vested rights application be filed so that a vested right may be found or, if denied, so that any potential necessary CDP may be applied for and potential violations eliminated.

Finally, this interpretation of the regulations is supported by practical policy considerations. If applicants were allowed to withdraw and resubmit claims for vested rights, it would prolong the process for resolving such rights and allow for abuse of the Commission's process. Vested rights claims are frequently, as in this case, filed in response to an enforcement action, so allowing continued submittal and withdrawal of such claims could serve to delay such actions, contrary to the public interest in resolving violations of the Coastal Act.

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LATHAM & WATKINS LLP

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Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

043668-0003

September 24, 2008

VIA FEDERAL EXPRESS AND EMAIL

Mr. Karl Schwing
Supervisor, Regulation & Planning
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Request to Withdraw Or, In The Alternative, Postpone The Hearing Date For Driftwood Properties, LLC's Claim Of Vested Rights Application (No. 5-07-412-VRC)

Dear Mr. Schwing:

We are writing on behalf of our client, Driftwood Properties, LLC, regarding Driftwood's Claim of Vested Rights Application (No. 5-07-412-VRC) for the property generally known as Driftwood Estates and located at the northern terminus of Driftwood Drive, Laguna Beach, Orange County (the "Property"). Driftwood requests withdrawal of its Claim of Vested Rights Application, reserving the right to resubmit at a later time. While Driftwood believes it has a vested right in the graded pads on the Property, for the reasons discussed below, Driftwood does not need to confirm its vested right at this time.

As we have discussed, Driftwood originally submitted its Claim of Vested Rights Application regarding the graded pads in an attempt to resolve certain areas of dispute with Commission staff that were impeding resolution of Commission staff concerns regarding the replacement of sandbags and other storm water and erosion control devices on the Property, which were required to prevent impacts to surrounding neighbors and local water quality. These issues are the key matters raised in two notices of violation issued by the Commission – Notices of Intent to Record a Notice of Violation numbers V-5-06-029 and V-5-06-006 (collectively, "Notices"). Driftwood, however, has presented a proposal to enforcement staff aimed at resolving the Notices through a consent order that involves, among other things, restoration of certain areas of the Property and replacement of sandbags on the Property with a native plant vegetative solution. Enforcement staff currently is reviewing the proposal and Driftwood is looking forward to meeting as soon as Commission staff is available to do so.

Driftwood requests withdrawal of the Claim of Vested Rights Application for a number of reasons. As an initial matter, because consideration by the Commission of Driftwood's Claim of Vested Rights Application raises novel policy issues related to whether ESHA designation may be made based on a theory of what might occur in the future at the Project and because Driftwood does not plan to develop or alter the Property in the near term without any approval from the Commission, we believe it would be better to postpone consideration of these issues until the development of the Property (which most likely will be part of a larger development) is before the Commission. Additionally, because Driftwood disagrees with the Commission's staff report, continuing to pursue the Claim of Vested Rights Application at this time would require the dedication of significant staff time to address Driftwood's response to the staff report and would inevitably result in a long Commission hearing. Because we are hopeful that the enforcement actions against Driftwood can be addressed through a consent order, we do not believe it is necessary at this point for the Commission to expend resources on these issues if we can resolve cooperatively areas of dispute with staff through a consent order. Therefore, Driftwood asks Commission staff to allow it to withdraw Driftwood's Claim of Vested Rights Application, reserving Driftwood's right to re-submit it in the future should settlement discussions break down, provided that Commission staff agrees with our view that the six month ban on resubmission of an application does not apply to applications for claims of vested rights.

Driftwood discussed its desire to withdraw its Claim of Vested Rights Application with Commission Counsel on September 19, 22, and 24, 2008 and Commission Counsel informed us that since there is no regulation specifically permitting an applicant to withdraw a claim of vested rights application, Driftwood cannot do so. Driftwood does not believe that Commission regulations should be interpreted to prevent withdrawal of its Claim of Vested Rights Application, but if Commission staff decides that withdrawal is not permitted, Driftwood requests that the hearing for the Claim of Vested Rights Application be postponed until such time as the Commission considers the coastal development permit application for development on the Property, or discussions with Commission staff aimed at finalizing a consent order break down.

Driftwood asks the Commission staff to postpone the hearing on its Claim for Vested Rights Application, currently scheduled for October 2008, not only for the reasons detailed above, but also because "circumstances suggest that [Driftwood] may be able to provide additional information to substantiate [its] claim" and "that other evidence is pertinent to the claim." (*See* Commission Regulation § 13205.) First, we believe the staff report has raised a number of issues related to the legality of the historic grading on the Property beyond whether a grading permit was required. With additional time Driftwood may be able to present additional evidence to address the new issues raised in the staff report. For example, the staff report asserts, without foundation, that blasting occurred illegally on the Property and thus bars Driftwood's claim for vested rights. Driftwood is aware of no evidence that blasting occurred on the Property, and Driftwood therefore requests that the Commission provide any information it has to support this conclusion so that Driftwood can prepare a response. Driftwood also requests that the Commission provide any other information relevant to the staff report's determination. Additionally, as discussed in Driftwood's letter to Commission staff on September 23, 2008, referencing the Commission's response to Driftwood's Public Records Act Request originally sent on April 11, 2008, to allow Driftwood an opportunity to fully prepare for a hearing on

Driftwood's Claim of Vested Rights, Driftwood needs the documents responsive to Driftwood's Public Records Act Request. These documents may include additional information necessary for Driftwood to substantiate its claim. Thus, in light of regulations allowing the Commission staff to postpone a hearing under such circumstances, to fully protect Driftwood's property interests and due process rights, and to allow Driftwood sufficient time to review and respond to the documents and information the Commission provides Driftwood, Driftwood asks the Commission staff to postpone the hearing on Driftwood's Claim of Vested Rights Application (if it does not allow Driftwood to withdraw its application).

We appreciate your time and attention to this matter and please do not hesitate to contact me at (213) 891-8722 with any questions.

Very truly yours,

Rick Zbur / hjh

Rick Zbur
of LATHAM & WATKINS LLP

cc: Lisa Haage, CCC
Hope Schmeltzer, CCC
John Mansour, The Athens Group
Greg Vail, The Athens Group

FORM FOR DISCLOSURE OF EX-PARTE COMMUNICATIONS

Name or description of the project:: determination	Driftwood Properties, Vested Rights
Time/Date of communication:	7/24/08, 4pm
Location of communication:	22350 Carbon Mesa Rd, Malibu
Person(s) initiating communication:	Penny Elia
Person(s) receiving communication:	Sara Wan
Type of communication:	phone call

Talked about the fact that the pads are not vested. That there is no evidence that they ever received any type of approval from the government. If the development took place after 1961 then grading permits were required. If it took place earlier then it was under the 1935 ordinance which still required an approval. If they claim there was no intent to have this serve as a precursor to development of homes and/or mobile homes then they can't at the same time that they have a vested right to proceed to use the pads for development purposes
The burden of proof is on the applicant who is claiming a vested right. They must produce the proof. They haven't
As for the maintenance- there is no evidence that this was occurring on any sort of regular basis prior to the Coastal Act. There is no right to maintain this. In addition, their "maintenance" is far more than just brushing the pads. It involves significant changes to the area involved

Date: 7/27/08

Sara J. Wan

Commissioner's Signature

EX PARTE COMMUNICATIONS

Name of project:	Driftwood Properties LLC, Driftwood Estates Properties
Date and time of communication:	July 25, 2008; 11:30 a.m.
Location of communication:	Palo Alto, California
Type of communication:	Face-to-Face Meeting
Persons initiating communication:	Rick Zbur, Latham & Watkins LLP; Susan McCabe, McCabe & Company

Detailed substantive description of content of communication:

In a briefing with Mr. Zbur and Ms. McCabe on another matter before the Commission, I asked about the status of Driftwood's Claim of Vested Rights Application (No. 5-07-412-VRC), which had been on the agenda for August 7, 2008.

Mr. Zbur and Ms. McCabe said they believed their client intended to request postponement.

In addition, they did not want to brief me on the substantive issues at this time, as they understood Commission counsel had advised at least one Commissioner that he/she should not take ex parte briefings on Driftwood's Claim of Vested Rights Application because an enforcement action is pending against Driftwood; (even though there are no legal restrictions on the Commissioners' ability to take ex parte communications regarding the Claim of Vested Rights Application.)

Mr. Zbur and Ms. McCabe indicated that they disagreed with this advice and that they intended to speak to Commission counsel regarding the issue.

8/1/2008

Date

Signature of Commissioner

From: Vanessa Miller
Sent: Wednesday, July 30, 2008 8:30 AM
To: Sherilyn Sarb; Fa'alili Mahmoud; Teresa Henry
Subject: FW: EX-PARTE COMMUNICATIONS DISCLOSURE-- Commissioner Larry Clark
Importance: High

-----Original Message-----
From: Becky Clark
Sent: Tuesday, July 29, 2008 7:56 PM
To: Vanessa Miller
Subject: EX-PARTE COMMUNICATIONS DISCLOSURE-- Commissioner Larry Clark
Importance: High

EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication:	Penny Elia Sierra Club
Person(s) receiving communication:	Commissioner Larry Clark
Location of communication:	Rancho Palos Verdes City Hall
Time/Date of communication:	July 25, 2008 – 10 am
Type of communication:	Meeting

Name or description of the project(s)/topics of discussion:

Thursday, August 7, 2008 – Agenda Item 13a

a. **Claim of Vested Rights No. 5-07-412-VRC (Driftwood Properties, LLC, Laguna Beach)** Claim of vested rights by Driftwood Properties LLC for graded pads and right to maintain those pads, including fuel modification in compliance with requirements of City of Laguna Beach, at vacant land at northern terminus of Driftwood Drive, Laguna Beach, Orange County. (KFS-LB/LW-SF)

Discussion of vested rights for Hobo Aliso Ridge and support of staff's recommendation of denial based on the following two basic issues:

1. Vested Rights

Principle issue of vesting involves being able to prove landowner has appropriate government approval(s) or they have no vesting. It's that simple.

The burden of proof is on the landowner, and as such, no evidence has been submitted by the

landowner, their consultants or attorneys that show any type of government approval.

2. Right to maintain

There is no right to maintain if appropriate government approvals have not been secured. No entitlement.

Past and present landowners have done nothing but inflict destruction and fragmentation on ESHA for decades. They have never done anything to maintain the original unpermitted development, just continued with more unpermitted development.

It is time to move on from meritless claims of vested rights and after-the-fact permits to enforcement of several outstanding violations and restoration of ESHA and endangered species.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) — August 4th, 2008 – 9:00 a.m.

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) — Commissioner Neely's Eureka Office

Person(s) initiating communication: — Maggy Herbelin, ORCA Representative

Person(s) receiving communication: — Commissioner Bonnie Neely

Name or description of project: — Agenda Item – Th 13a –Driftwood Properties Vested Rights Claim

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Ms. Herbelin indicated the claim for vested rights is not substantiated and should be denied.

Date: August 4th, 2008

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

EX PARTE COMMUNICATIONS

Name or description of project:	Driftwood Properties LLC, Driftwood Estates Properties
Date and time of receipt of communication:	September 24, 2008; 8:00 a.m.
Type/Location of communication:	Telephone
Persons initiating communication:	Rick Zbur, Latham & Watkins, Susan McCabe, McCabe & Company

Detailed substantive description of content of communication:

Mr. Zbur and Ms. McCabe spoke to me about procedural issues for Driftwood's Vested Rights Application (No. 5-07-412-VRC), on the October 16, 2008 agenda.

They told me that the Commission counsel may tell Commissioners not to conduct ex parte communications about the substantive issues related to the Vested Rights Application (VRA.) Because some of these issues overlap with pending enforcement matters.

The applicant believes that the law does not restrict ex parte communications, but out of deference to staff's view they restricted their communications to procedural issues. However, if the hearing occurs, they would like to brief me on the substantive issues related to the VRA.

Applicants have asked to withdraw its VRA but Commission staff said that withdrawal was not allowed - citing that no specific regulation expressly permitted withdrawal of such a claim. Applicants disagreed and said they did not believe Commission regulations should be interpreted to block the withdrawal of a VRA.

If Driftwood is not permitted to withdraw its application, applicants would like to postpone the hearing - because staff has advised Commissioners not to discuss substantive issues. Driftwood believes not being able to discuss the issues deprives Commissioners and the public the opportunity to engage in briefings and fully understand the issues.

They felt this raised due process concerns as a key substantive issue is *whether the Coastal Act allows ESHA designation based on potential future conditions on a property*.

This is a significant policy issue for the Commission. Applicants felt that it shouldn't be hidden under an enforcement action effectively gagging the applicant from communicating with commissioners.

They believed that using enforcement actions to restrict communication between an applicant and the Commission on a non-enforcement matter before the Commission is a policy question that the full commission – not just staff- should address and decide.

Based on this, they believe Driftwood's VRA should be scheduled at a time the Commission can freely communicate with and be briefed by the applicant.

29 September 2008

Date

Signature of Commissioner

CALIFORNIA COASTAL COMMISSION
SOUTH COAST AREA DISTRICT
200 OCEANGATE, SUITE 1000
LONG BEACH, CA 90802
(562) 590-5071

Filed: 6/9/2008
Staff: Karl Schwing-LB; Louise Warren-SF
Staff Report: September 25, 2008
Hearing Date: October 16, 2008
Commission Action:

Th14a

CLAIM OF VESTED RIGHTS

STAFF REPORT AND RECOMMENDATION

CLAIM NO: 5-07-412-VRC

CLAIMANT: DRIFTWOOD PROPERTIES, LLC

PROJECT LOCATION: Northern terminus of Driftwood Drive, Laguna Beach, Orange County.

ASSESSOR'S PARCEL NO.: 056-240-65 and 656-191-40

DEVELOPMENT RIGHT CLAIMED: Right to graded pads and the right to maintain those pads, including fuel modification in compliance with the requirements of the City of Laguna Beach.

SUBSTANTIVE FILE DOCUMENTS: Latham and Watkins (2007) letter dated November 20, 2007 from Rick Zbur to California Coastal Commission Re Driftwood Properties Claim of Vested Rights Application…with attachments including vested rights claim application, vicinity map, aerial photographs dated 1959, 1962, 1965, and 1972, letters from the City of Laguna Beach to Driftwood Properties from October 2007, oblique aerial photograph dated 1956, and Grant Deed recorded in April 2004; Latham and Watkins (2008a) letter dated March 7, 2008 from Rick Zbur to Karl Schwing Re Driftwood Properties: Response to Commission's Notice of Incomplete Claim of Vested Rights…with attachments including vicinity map, aerial photos dated 1959, Pre-May 18, 1962, May 18, 1962, 1965 and 1972, receipts for various erosion control measures undertaken in 2004, bill for biological services from February 2008, letters from the City of Laguna Beach to Driftwood Properties from October 2007, copy of emergency Coastal Development Permit 5-07-440-G, copy of preliminary title report, and oblique aerial photograph dated 1956; Latham and Watkins (2008b) letter dated April 1, 2008 from Rick Zbur to Karl Schwing Re Driftwood Properties: Response to Commission's March 17, 2008 letter…with attachments including vicinity map, aerial photograph from 1959, aerial photograph titled 'Pre-May 18, 1962 Site Graded', aerial photograph dated May 18, 1962, aerial photograph dated 1965, aerial photograph dated 1972, copies of index cards related to grading on nearby sites, copies of various County of Orange Grading and Building Code Ordinances beginning with Ordinance 1183 from 1959, copies of various City of Laguna Beach Grading and Building Code ordinances beginning in 1976; Latham and Watkins (2008c) letter dated June 2, 2008 from Rick Zbur to Karl Schwing Re Driftwood Properties: Response to April 23, 2008 Commission Letter…with attachments including cost estimate to grade property today, 1958 Uniform

Building Code Volumes I and III, May 2008 Biological Report by PCR, and graphic identifying location of claim of vested right; Teasdale (2008) Brief in Support of Notice of Incomplete Claim of Vested Rights by Betty C. Carrie Teasdale dated April 8, 2008 with attachments including excerpts from 1927 Uniform Building Code, Health and Safety Code Section 19120 enacted in 1939, Health and Safety Code Sections 19130-19133 enacted in 1941, copy of ordinance 351, excerpts from The Codified Ordinances of the County of Orange adopted November 29, 1961 by Ordinance No. 1414; Copy of assessors map obtained from the County of Orange identifying zoning date stamped April 15, 1962; e-mail from Penny Elia to Louise Warren, Karl Schwing and Andrew Willis regarding Blasting in South Laguna dated April 17, 2008; e-mail with attachments from Penny Elia to Karl Schwing and Andrew Willis regarding Excerpt from Tracts 1616 and 2067 - contemporary permits in Hobo Aliso Ridge neighborhood; Erosion Control Plan, Driftwood Estates prepared by RBF Consulting dated 11/5/04 which depicts existing site topography; Copy of Ordinance No. 1008, adopted on November 12, 1957, amending Section 19 of Ordinance 351; Copy of Ordinance No. 561, adopted on November 9, 1949, amending Ordinance 351; aerial photograph dated February 9, 1960; Sections 12101-12110 of the California Health and Safety Code of 1959; Engineering Geologic and Soils Investigation, Driftwood Estates, Vesting Tentative Tract No. 29640, Laguna Beach, CA prepared for Highpointe Communities, Project No. 31301A.12 by LOR Geotechnical Group Inc. dated May 10, 2000; Preliminary Geologic Feasibility Investigation, Driftwood Estates, City of Laguna Beach, CA, Project No. 31301A.1 by LOR Geotechnical Group Inc. dated March 28, 2000; Letter from LOR Geotechnical Group to Steve Ludwig of Highpointe Communities dated October 31, 2000 Response to City of Laguna Beach Department of Community Development Geotechnical Report Review Checklist letter dated September 28, 2000; Photograph accompanying e-mail titled 'Evidence of Blasting from Hobo Aliso Ridge' from Penny Elia to Mark Johnsson dated September 3, 2008; Photograph accompanying e-mail titled 'Aerial photos 1931/1960 - Hobo Aliso Ridge area - South Laguna' from Penny Elia to Mark Johnsson and Louise Warren dated September 3, 2008; Photographs accompanying e-mail titled "penny's attachments 2 of 3' dated September 2008; Photograph accompanying e-mail titled "penny's attachments 3 of 3' dated September 2008.

ACTION: Commission Hearing and Vote

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights made by Driftwood Properties, LLC (Driftwood) regarding the graded pads and maintenance of said graded pads on the property referred to as Driftwood Estates and located at the northern end of Driftwood Drive in the City of Laguna Beach, Orange County (Driftwood Estates).

The Coastal Act requires a coastal development permit prior to undertaking development. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit if all other required permits were obtained at the time the development occurred and, in good faith reliance on those permits, the owner performed substantial work and incurred substantial liabilities.

Vested rights law is designed to allow people to complete fully authorized development despite an intervening change in the law that might affect those approvals. Thus, even if one had a vested right to complete fully authorized grading, that vested right only entitles one to complete the grading; any future development is subject to the law existing at the time of the future work. Driftwood asserts the grading on this property was completed before May 18, 1962. Even if such grading were fully authorized, once the grading was complete, any future use or development on such property is subject to existing law when that future development takes place, including the Coastal Act.

Driftwood has not provided the Commission with evidence that any permits or approvals were obtained prior to the grading. In the absence of any evidence that the appropriate permits for this development were obtained, Driftwood claims that no grading permits, or any other approvals, were required to extensively grade property in Orange County before August 1962. However, a review of the applicable Orange County land use ordinance, Ordinance 351, shows that the owner of Driftwood Estates was required to obtain, at a minimum, a certificate of use and occupancy and potentially an excavation permit and a variance before grading the property. In addition, some type of building permit may have been required before any grading took place. Thus, Driftwood has failed to meet its burden to prove that the grading for which it seeks a vested right was undertaken lawfully. Its claim for a vested right must therefore be denied.

Driftwood also claims that even if grading or other permits were required at the time the pads were graded, it is entitled to a presumption that the grading was undertaken lawfully. This argument is unsupported by the Coastal Act or by any case law interpreting the requirements for establishing vested rights under the Coastal Act. Driftwood's argument is that the Commission may simply assume as fact the primary evidence that Driftwood is required to produce to substantiate its claim. None of the legal authority cited by Driftwood supports this argument, particularly in the context of a claim for vested rights. Driftwood has thus failed to prove that it is entitled to a vested right to the graded pads, as it cannot base its claim for a vested right on a presumption that all necessary approvals were obtained.

Even if one were to assume that the grading that took place on the property needed no governmental approvals, as Driftwood claims, Driftwood has presented no clear evidence or documentation that the graded pads and adjacent areas were regularly cleared of vegetation or "maintained" after they were graded and prior to the enactment of the Coastal Act. An analysis of aerial photographs from 1962 through 1977 reveals that the graded pads in fact revegetated between 1962 and 1977. A 1970 image may provide evidence of vegetation removal in a limited area (less than .1 acre), but this is the only evidence of which Commission staff is aware of any possible vegetation removal in the approximately 15 years between grading and the effective date of the Coastal Act.

Moreover, even if some maintenance had occurred between 1962 and 1977, the graded pads were clearly vegetated at the time the Coastal Act was enacted, as shown in the January 1977 aerial photograph from the Commission's archives. (Exhibit #11, page 12).

In order to prevail on a claim for a vested right to continue clearing those pads, Driftwood would need to show that it had pre-Coastal Act authorizations to clear the pads and that the property owner had performed substantial work and incurred substantial liabilities in reliance on those authorizations. Driftwood has presented no such evidence; therefore it cannot sustain a claim for a vested right to clear these pads of vegetation.

For these reasons, staff concludes that there is no basis to find a vested right to the existing graded pads or to maintenance of those pads.

I. STAFF RECOMMENDATION FOR DENIAL OF CLAIM

The Executive Director has made an initial determination that Claim of Vested Rights 5-07-412-VRC has not been substantiated. Staff recommends that Claim of Vested 5-07-412-VRC be rejected.

Motion: *"I move that the Commission determine that Claim of Vested Rights 5-07-412-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Denial of Claim:

The Commission hereby determines that Claim of Vested Rights 5-07-412-VRC is not substantiated and adopts the Findings set forth below.

II. FINDINGS AND DECLARATIONS

A. Legal Authority and Standard of Review

The Coastal Act requires that a coastal development permit be obtained before development is undertaken in the coastal zone. Coastal Act section 30600(a)[1] states:

> *. . . in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . .wishing to perform or undertake* any *development in the coastal zone, . . . shall obtain a coastal development permit.*

Coastal Act section 30106 defines the term "development" as:

> . . . the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act … change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ….

One exception to the general requirement that one obtain a coastal development permit before undertaking development within the coastal zone is that if one has obtained a vested right to complete the development prior to enactment of the Coastal Act, a permit is not required. Section 30608 of the Coastal Act states:

> ***No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commencing with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.***

The effective date of the division, i.e., the Coastal Act, for the site at issue is January 1, 1977. The subject property was not subject to the Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative") because it was outside the area covered by Proposition 20, and therefore no coastal development permit was needed from the California Coastal Zone Conservation Commission prior to conducting development in the years 1973 through 1976. Pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no CDP would be required to complete that development. However, no substantial change in any such development may be made until obtaining either a CDP or approval pursuant to another provision of the Coastal Act.

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[1] The Coastal Act is at Public Resources Code sections 30000 to 30900.

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from CDP requirements to complete that specific development only. Any substantial changes to the development after January 1, 1977, will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

Section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development. Neither the Coastal Act nor the Commission's regulations articulate any standard for determining whether a person has obtained such a right. Thus, to determine whether the Coastal Act's vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence. That case law is discussed below.

"'"The vested rights theory is predicated upon estoppel of the governing body."'" *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 977.[2] Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government "is of sufficient dimension to justify any effect upon public interest or policy" that would result from the estoppel. *Raley*, 68 Cal.App.3d at 975.[3] Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project. *Raley*, 68 Cal.App.3d at 976.

The seminal decision regarding vested rights under the Coastal Act is *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In *Avco*, the California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete that construction in accordance with the terms of the permit. The court contrasted the affirmative approval of the proposed project through the issuance of a permit with the existence of a zoning classification, which provides no specific authorization for any given project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning. *Avco, supra,* at 796; *accord, Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357.

The acquisition of a vested right to continue an activity without complying with a change in the law thus depends on good faith reliance by the claimant on a governmental representation that

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[2] Quoting *Spindler Realty Corp. v. Monning*, 243 Cal. App.2d 255, 269, quoting *Anderson v. City Council*, 229 Cal. App.2d 79, 89.
[3] Quoting City of Long Beach v. Mansell, 3 Cal. 3d 462, 496-97.

the project is fully approved and legal. The scope of a vested right is limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel. One cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed. *Avco Community Developers, inc. v. South Coast Regional Commission, supra*, 17 Cal.3d 785.

There are many vested rights cases involving the Commission (or its predecessor agency). The courts consistently focused on whether the developers had acquired all of the necessary government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, and had begun their development before the Coastal Act (or its predecessor) took effect.[4] The frequently cited standard for establishing a vested right is that the claimant had to have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" in order to acquire a vested right to complete such construction. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976), 17 Cal.3d 785, 791.

Based on these cases, the standard of review for determining the validity of a claim of vested rights is summarized as follows:

> 1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would include a building permit or other legal authorization.
>
> 2. The claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. *Raley, supra*, 68 Cal.App.3d at 975-76.

There is also legal authority that suggests that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. *Urban Renewal Agency v. California Coastal Zone Conservation Commissio*n (1975) 15 Cal.3d 577.

The burden of proof is on the claimant to substantiate the claim of vested right. (14 CCR §13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. *Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588. A narrow view of

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[4] *See, e.g., Patterson v. Central Coast Regional Commission* (1976), 58 Cal. App. 3d. 833; *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785; *Tosh v. California Coastal Commission* (1979) 99 Cal.App.3d 388; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729. *Halaco Engineering Co. v. South Central Coast Regional Commission* (1986), 42 Cal. 3d 52 (metal recycling); *Monterey Sand Co., Inc. v. California Coastal Commission* (1987), 191 Cal. App. 3d 169 (sand dredging).

vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. *Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, (*citing, Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797)). In evaluating a claimed vested right to continue a nonconforming business or activity (i.e., a use that fails to conform to current zoning laws/regulations), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687 (holding that a property owner had obtained a vested right to continue mining operations at a quarry that had been in continuous use for more than 50 years).

B. Background Regarding Property

1. The Property

The property at issue is a 5.8 acre portion of approximately 69 acres (consisting of two legally created parcels) located at the northern terminus of Driftwood Drive in Laguna Beach in Orange County (Exhibits 1 and 2).[5] The property is currently zoned R1, which would allow one single family residence per parcel. The steeply sloping hillside property contains large areas of dense southern maritime chaparral (a rare, sensitive plant community) and big-leaved Crownbeard (listed as 'threatened' by the State and Federal governments). A watercourse extends across the eastern region of the property, terminating near a municipal water tank. Hobo Canyon and a second significant drainage course border the northwestern edge of the property. Crownbeard inhabits the watercourses and adjacent areas and the graded pads.

Driftwood alleges that an approximately 8.1 acre portion of the property was graded prior to May 1962, creating approximately 14 flat graded pads. Based on an analysis provided by the applicant, an estimated 127,000 cubic yards of soil was excavated. Information from local citizens suggests that the property was graded in part by using dynamite to blast the existing bedrock on the steep slopes, and Driftwood has not presented evidence as to how the building sites were initially graded. (Exhibit #22). The Commission's staff geologist, Dr. Mark Johnsson, has reviewed pictures of the site and a geology report related to the site, and he is unable to definitively determine whether the property was graded using dynamite or other explosive materials.

The subject property is currently owned by Driftwood Properties LLC and is identified as Assessor Parcel Numbers 056-240-65 and 656-191-40. Driftwood Properties LLC acquired a total of 120.99 acres, including the subject property, from the Esslinger Family Trust in spring 2004. A member of the Esslinger family, or the Esslinger Family Trust, held title to the property when the initial grading took place. The property is currently managed by the Athens Group.

[5] There is some question as to the exact boundaries of the property at issue, as the City of Laguna Beach approved two lot line adjustments on the property in 1995, but did not issue the necessary CDPs for these adjustments. A determination of the exact boundaries of the property generally is not critical to the determination of Driftwood's claim for a vested right, therefore the Commission does not address the boundary issue in this report. By not discussing this issue, however, the Commission is in no way conceding that the current configuration of the lots is legal, nor does the Commission waive its right to seek enforcement action related to the illegal lot line adjustments through a separate action.

2. Previous Commission Action

Several prior permits (with amendments thereto) have been granted by the Commission to the predecessor in interest to Driftwood Properties LLC, the Esslinger Family Trust, for storm drain improvements within their property that included a mobile home park and the subject property now owned by Driftwood Properties LLC: coastal development permits G5-95-286, 5-95-286, 5-95-286 A, 5-96-048, and 5-98-151. In addition, there have been several enforcement actions connected with this site, including actions related to clearance of major vegetation on the site, placement of sandbags near the graded pads, and whether a coastal development permit was needed or obtained for a lot line adjustment. For details on the substance of these permits and enforcement actions please see Exhibit #5.

C. Development Claimed As Exempt From Coastal Act Requirements

Driftwood claims that it has a vested right to an unspecified number of graded pads on a 5.8 acre portion of the property commonly known as Driftwood Estates and that it may maintain those pads, including, but not limited to, removing vegetation on the pads for fire safety purposes, as required by the City of Laguna Beach. Driftwood has submitted aerial photographs from 1962 (Exhibits #14 and #15), 1965 (Exhibit #17) and 1972 (Exhibit #18) that show generalized outlines of the graded areas to which it is claiming a vested right. In its June 2, 2008 submission to the Commission, Driftwood clarified that it claims a vested right to all graded areas within a 5.8 acre portion on the site, as depicted in the attached exhibit. (Exhibit #2).

D. Evidence Presented by Claimant

In support of its application, Driftwood has presented the following factual evidence: (1) aerial photographs depicting the site in 1959 (Exhibit #12), an unspecified date pre-May 1962 (Exhibit #14), May 18, 1962 (Exhibit #15), 1965 (Exhibit #17) and 1972 (exhibit #18), which, as of 1962, show the generalized outlines of the graded pads; (2) letters dated October 2007 from the City of Laguna Beach regarding fire hazards; (3) a grant deed recorded in 2004 conveying the subject property from the Esslinger Family Trust to Driftwood Properties, LLC; (4) invoices from October 2004 related to placement of sandbags on the property, and an invoice from the City of Laguna Beach for "Biological Support Services" dated February 29, 2008; (5) an emergency permit for placement of up to 300 sandbags on the property from the California Coastal Commission dated December 13, 2007; (6) a preliminary title report; (7) copies of what appear to be index cards relating to the issuance of select grading permits by the County of Orange from 1963-1966 for properties in the general area of the subject site, but they do not appear to relate to the graded area that is the subject of this vested rights claim (these index cards generally include the date, an address, a permit number and the amount of grading); (8) various ordinances approved by the County of Orange relating to adoption of building or grading codes from 1959 to 2003; (9) various ordinances approved by the City of Laguna Beach adopting grading codes from 1976 to 2004; (10) a grading cost estimate for the cost of grading the property if it were graded in 2008; (11) Volumes I and III of the 1958 Uniform Building Code; (12) "Driftwood Properties Biological Resources/ESHA Assessment" prepared by PRC Services Corporation in

May 2008; and (13) a diagram showing the areas of the property where Driftwood claims a vested right (Exhibit #2).

In order to evaluate a claim of a vested right, the relevant evidence focuses on what development took place and when, what governmental authorizations were required at that time, whether those authorizations were secured, and the liabilities the developer incurred in conducting the development in good faith reliance on such governmental authorizations. Thus, in this case, the evidence submitted by Driftwood that is relevant to the Commission's determination of its claim to a vested right are the aerial photographs showing development on the property and evidence pertaining to ordinances and approvals required by Orange County[6] or other governmental entities when the grading took place. (Exhibits #3, #4, #12, #14-15, #17-18).

The aerial photographs show that the property was not graded in 1959. A May 18, 1962 aerial photograph, apparently obtained from the University of California at Santa Barbara (UCSB) archives, depicts several graded areas on the property. The generalized outlines of these pads are visible in aerial photographs in 1965 and 1972, and the pads themselves appear to revegetate over time.[7] Although not submitted by Driftwood, Commission staff has located aerial photographs of the property from 1970 (Exhibit #11, page 11), 1977 (Exhibit #11, page 12), 1979 (Exhibit #20), 1986 (Exhibit #11, page 13), 1993 (Exhibit #11, page 14), 2001 (Exhibit #21) and 2007 (Exhibit #11, page 15). In addition, the Commission received an aerial photograph showing the graded pads dated February 9, 1960, also apparently obtained from the UCSB archives (Exhibit #13). Thus, the grading most likely took place in late 1959 or early 1960. The post-1960 images of the property show the pads in the process of revegetating, although the area consisting of the three graded pads immediately north of APN 056-191-29 (approximately .1 acres) appear to have been subject to vegetation removal prior to May 1970 and in between 1978 and 1986. (Exhibit #11)

The only pre-grading ordinance Driftwood has supplied to the Commission is Ordinance Number 1183, adopted on March 11, 1959, wherein the County of Orange adopts the 1958 Uniform Building Code (UBC) to regulate construction in Orange County and the 1958 UBC itself (Exhibit #8). The July 1962 Orange County ordinance submitted by Driftwood, adopting an excavation and grading code, as well as the various copies of cards referring to grading permits after the grading took place at Driftwood Estates, show only that grading permits were required in Orange County after August 1962, but they do not prove what permits were required prior to those dates, when the grading took place at Driftwood Estates.

The evidence submitted by Driftwood related to work undertaken on the property after the enactment of the Coastal Act, such as receipts from 2004 and letters from the City dated 2007, do not shed light on activities undertaken or permits required before the Coastal Act was passed, which is the relevant inquiry here.

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[6] At the time of the grading the subject site was within unincorporated Orange County. Subsequently, in the 1980's, the area was annexed to the City of Laguna Beach.

[7] With the exception of the May 18, 1962 photograph, Commission staff has not been provided with the source of the photographs submitted by Driftwood nor has it been able to verify the dates of those photographs.

E. Analysis of Claim of Vested Rights for the Graded Pads.

A vested rights exemption enables one who obtains all valid governmental approvals for development and performs substantial work and incurs substantial liabilities in good faith reliance on those approvals, to complete the development, even if the law changes prior to completion. A vested right does not allow any other new development to be completed without compliance with existing laws. *Avco*, 17 Cal.3d at 791 (a property owner may obtain a vested right solely to complete construction according to the terms of a permit).

Once a property owner has completed the development allowed through existing approvals, he must comply with all current laws. *Spindler*, 243 Cal.App.2d at 268-69 (property owner had a vested right to complete authorized grading, but it had to comply with new zoning laws when obtaining permits for additional development on the property, even though the completed grading was designed for structures that were no longer allowed under the new zoning); *Avco*, 17 Cal.3d at 793 ("government cannot be estopped to enforce the laws in effect when the permit is issued.").

Driftwood may therefore only prove a vested right to complete development begun, after securing all necessary governmental approvals, prior to January 1, 1977. If the development was completed lawfully (i.e. with all required permits) prior to the enactment of the Coastal Act, any future modifications to that development are still subject to existing law at the time those new modifications or development take place. *Id.* For example, if one were claiming a vested right to complete construction of a house that had been fully authorized prior to the enactment of the Coastal Act, one could obtain a vested right to complete the house as approved, but any future maintenance, additions, or remodels of the house would be subject to the requirements of the Coastal Act.

Thus, even if Driftwood could sustain its burden of proving the owner of Driftwood Estates had secured all necessary permits when it graded the property, which it cannot, as discussed below, any subsequent development on the property is still subject to any existing laws at the time the new development takes place. Driftwood must therefore comply with the provisions of the Coastal Act in order to undertake any development, such as removal of major vegetation from the graded pads, regardless of whether it has a vested right in those pads.

1. Driftwood Has Presented No Evidence of Any Necessary Approved Permits Obtained Prior to the Commencement or Completion of Grading.

In order to establish a vested right, a claimant must present evidence that <u>all</u> necessary government approvals were obtained prior to the development for which it seeks to establish a vested right. Although Driftwood claims that the law in effect in early 1962 required no approvals in order to undertake extensive grading at Driftwood Estates, the evidence shows that at a minimum, Orange County did require a certificate of use and occupancy and, likely, an excavation permit, a variance, and possibly some type of building permit and an explosives permit, if explosives were used to grade the pads when they were graded sometime in late 1959 or early 1960. Driftwood has presented no evidence that these or any other permits were

obtained prior to grading the property.[8] It has therefore failed to sustain its burden of proof to establish a vested right to the subject graded pads.

As described above, the legal basis for a vested rights claim is equitable estoppel. *Billings v. California Coastal Commission,* (1980) 103 Cal.App.3d 729, 735 ("The vested rights rule is neither a common law rule nor a constitutional principle, but a manifestation of equitable estoppel"). The theory supporting these claims is that if one has obtained all necessary permits to undertake development, and one has performed substantial work or incurred substantial liability in good faith reliance on those permits, then it would be unjust for a government agency to rescind those approvals after a change in the applicable law. Thus, in order to establish a vested right, the claimant must show that it had all necessary government authorizations. *J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844, (citing, *People v. County of Kern* (1974) 39 Cal.App.3d 830, 838 (unless owner possesses all necessary permits, the mere expenditure of funds or commencement of construction does not vest any rights in the development).)

Here, Driftwood has not submitted a permit or other evidence of any approvals obtained prior to the commencement of grading at Driftwood Estates. It simply claims that the owner of Driftwood Estates needed no governmental approvals before it graded the pads on the property. In support of this claim, Driftwood has submitted an Orange County ordinance from 1959 (Ordinance #1183) wherein Orange County adopted the 1958 Uniform Building Code to regulate construction of buildings and structures in Orange County. The 1958 UBC focuses on regulation of the construction of structures, so it does not include regulations explicitly related to grading. Driftwood also submitted Ordinance #1504, dated July 25, 1962, in which the Board of Supervisors adopted an excavation and grading code. Finally, Driftwood has submitted index cards that evidence grading permits obtained by a number of different entities after the date on which the Driftwood Estates property was graded. This evidence shows that after the subject grading took place, Orange County adopted an excavation and grading code and that various entities obtained grading permits, although from what Commission staff can discern none of these index cards relate to grading on the 5.8 acres subject to this vested rights claim. This evidence does not prove that a grading permit, or other type of permit, was not necessary prior to those dates, when the grading on the property actually took place. In fact, the Orange County zoning code makes reference to a required excavation permit, suggesting that such permits were required when the subject grading took place. Orange County Ordinance #351 §23 (1935), amended by Ordinance #561 §23 (1949) ("No permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy").

Regardless of whether the owner of Driftwood Estates needed a specific grading permit, however, it still needed some governmental authorizations prior to grading, as described below. Driftwood cannot sustain its vested rights claim without presenting evidence that these approvals were obtained.

[8] The opponents of Driftwood's vested rights application have submitted a brief describing other reasons why Driftwood's claim is unsubstantiated. That brief is a substantive file document and is available upon request.

In the late 1950s and early 1960s, Orange County Ordinance #351[9] required a certificate of use and occupancy before vacant land could be occupied or used, except for use for agricultural purposes not relevant to this claim for a vested right. (Exhibit #6, #7a, #7b). The ordinance, as amended in 1949 by Ordinance #561, required a "[w]ritten application for a certificate of use and occupancy for use of vacant land or for a change in the character of the use of land, … before any such land shall be so occupied or used." Ordinance #561, §23 (Exhibit #7a, page 11). Each certificate of use and occupancy was required to include a statement that the proposed use of the land complied with all of the provisions of the applicable zoning code. *Id*.

Extensive grading of undeveloped land consists of a use of land as well as a "change in the character of the use of land," for which a certificate of use and occupancy was required. Such certificates certified that the proposed use of vacant land was consistent with the applicable zoning code. The portion of the applicant's property that was graded was located in the R1 zone, as it is today. Under Ordinance #351, one single family residence was allowed per legal parcel in the R1 zone. Ordinance #351, §10(a)(5). The subject property spans two legal parcels, so at most, two single family residences would have been allowed in the graded area consistent with the R1 zoning designation. In addition, Ordinance #351 specified that the minimum building site size in the R1 zone was 6,000 square feet. *Id.* at §10(c).

The graded site consists of approximately 14 flat graded building pads, rather than the two that would have been allowed under the zoning code, and at least nine of those pads are well under the minimum allowed building site, as they range in size from 900 square feet to 2,600 square feet. Thus, the property as it was graded was inconsistent with the Orange County zoning code.

A certificate of use and occupancy therefore would not have been issued for this grading, unless the owner of the property had obtained a variance to develop the property inconsistent with the zoning code. In order to obtain a variance, the applicant would have needed to show that the variance was "necessary for the preservation and enjoyment of a substantial property right, possessed and enjoyed by other properties in the neighborhood." Ordinance #351, §19, amended by Ordinance #561, §19 (1949), amended by Ordinance #1008, §19(B)(2)(b) (1957). The Board of Supervisors had the authority to issue such variances if "the integrity and character of the neighborhood will be maintained and the general intent and purpose of this ordinance will be assured." *Id.* at §19(B)(4). Thus, the owner of Driftwood Estates would have had to have shown that construction of approximately 14 closely-spaced graded pads on two parcels that allowed one single family home each was necessary for enjoyment of its property right and that the general intent of the ordinance, which was to limit development to one single family residence per parcel, would have been met if the variance were issued. Driftwood bears the burden of proving that the prior owner obtained the required certificate of use and occupancy and a variance for the grading that took place on the site in late 1959 or early 1960. It has not presented any evidence that these authorizations were obtained or that they could have been obtained for the development on the property.

Furthermore, Ordinance #351 references a requirement for an excavation permit. Specifically, it states: "[n]o permit for excavation for any building shall be issued before application has been

[9] All references to ordinances herein are to Orange County ordinances, unless otherwise indicated.

made for a certificate of use and occupancy." Ordinance #351 §23, as amended by Ordinance #561 (Exhibit #7a, top of page 11). While Commission staff has been unable to find the specific section of this code that contained the excavation permit requirements, clearly such a requirement existed when the property was graded, or it would not have been referenced in relation to the application requirements for a certificate of use and occupancy. Driftwood's claim for a vested right should therefore be rejected on the additional ground that it has not provided the Commission with evidence that an appropriate permit for excavation was obtained before the grading took place.

It also appears that the prior owner of the property would have needed to obtain a building permit before undertaking grading on the property. Section 22 of Ordinance #351 required an applicant to obtain a building permit from the Building Inspector before "commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure …" (emphasis added). *Id.* A building permit wouldn't have been required if the grading was intended solely for agricultural or other purposes not related to buildings or structures. Thus, if the grading that took place on the property in late 1959 or early 1960 pertained to the erection, construction or moving of any building or structure then a building permit would have been required for such work. Driftwood has not presented any evidence that a building permit was obtained prior to the commencement of grading on the property.

Finally, members of the local community have presented evidence that the property was graded using explosive materials.[10] (Exhibit #22) Section 12101 of the 1959 Health and Safety Code required that the local fire chief issue a permit before any person could receive or possess explosives. Cal. Health & Safety Code (1959) §12101. (Exhibit #9). The application for such permit required the place where and the purposes for which the explosives were intended to be used. *Id.* at § 12102(b). If explosives were used to grade the Driftwood Estates property, as alleged by local residents, then a permit would have been required prior to such use. Driftwood has not presented evidence that such a permit was obtained before explosives were used on the property. Because Commission staff cannot state definitively at this time whether explosives were used to grade the property, Driftwood's failure to present such a permit is not a sufficient basis on which to deny its claim for a vested right.

The foundation for any vested rights claim is that the claimed activity was undertaken based on appropriate governmental approvals. A claimant cannot establish a vested right to development without first proving that it obtained the necessary authority to develop. In the absence of any evidence of appropriate approvals, a claimant cannot show that he relied on such approvals to his detriment, so he cannot estop a government agency, through a claim for vested rights, from applying applicable laws. Driftwood has presented no evidence that any governmental approvals were obtained before the grading took place at Driftwood Estates. Driftwood instead relies on its tenuous claim that not a single governmental authorization was required before the prior owner undertook extensive grading at the site. This claim is not credible, as, at a minimum, the owner

[10] Dr. Johnsson is generally familiar with the type of rock formations found in this part of Laguna Beach. He concurs that this rock formation tends to be quite hard, which means that it is possible that blasting would have been required to grade the property. Based on the information he has reviewed to date, however, he cannot conclude that the property was graded using explosive materials.

of the site needed a certificate of use and occupancy and possibly a variance an excavation permit and some type of building permit before the property was graded. Because Driftwood has presented no evidence of these required approvals, it has failed to sustain its burden of proof, and it therefore has no vested right to the graded pads.

2. For a Vested Rights Claim, There Is No Presumption That The Grading Was Conducted Lawfully.

Although Driftwood claims that no governmental approvals were necessary before grading the property prior to May 1962, it alternately asserts that even if permits were necessary, it still has a vested right to the graded pads because it is entitled to a presumption that the pads were graded legally. Driftwood is essentially claiming that it may simply rely on a general presumption to prove an essential element of its claim for a vested right. Driftwood has not cited a single case in which a court found a vested right by assuming the necessary governmental approvals had been obtained. The very basis of a claim for a vested right is that the development subject to the right was begun in good faith reliance on the necessary governmental authorization, and no court has simply presumed that such activities were lawful, much less that they were undertaken in good faith reliance on such approvals. If this argument were adopted, it would inappropriately shift the burden of proof from the applicant to the agency, as the applicant could claim in every case that it is simply entitled to a presumption that it obtained all necessary governmental approvals prior to undertaking development. This novel argument is clearly contrary to the substantial body of vested rights law.

The analysis for a vested rights claim starts with a review of the permits obtained by the applicant and an analysis of the scope of those approvals. *See, e.g., Avco* 17 Cal.3d at 789, *Billings* 103 Cal.App.3d at 733-34, *Aries*, 48 Cal.App.3d at 544-46, *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 722-23. In order to prevail in a claim for vested rights, the applicant must show that he obtained governmental approvals and that he relied on those approvals to his detriment. *Raley v. California Tahoe Regional Planning Agency,* (1977) 68 Cal.App.3d 965, 977-78 ("the vested rights rule establishes a stage of progress when reliance upon governmental assurances estops the government from asserting new or different regulations."). Without presenting evidence of governmental approvals, the applicant has not sustained its burden of proving that he relied on those approvals to his detriment. As the court stated in *Anderson v. City Council* (1964) 229 Cal.App.2d 79, 89, ("[w]here no … permit has been issued, it is difficult to conceive of any basis for … estoppel.").

In *Aries v. California Coastal Commission*, the court reiterated that an essential element of a vested rights claim is evidence of valid governmental approvals.

> In other words, an owner of property acquires a vested right to construct a building only where the conduct of the government amounts to a representation that such construction is fully approved and legal, subject only to minor alterations, and in reliance on such representation the owner materially changes position. Good faith reliance on a governmental permit is essential to the acquisition of a vested right. *Aries*, 48 Cal.App.3d at 548.

It is difficult to conceive of how a property owner could prove justifiable reliance without presenting any evidence of the permit or authorization on which he supposedly relied. The Commission staff is not aware of a vested rights case in which a court found a vested right to development in the absence of any evidence establishing that the claimant had obtained necessary approvals for the subject development. Without any legal support, therefore, Driftwood is asking the Commission to simply assume one of the key elements of a claim for vested rights – that the applicant received all necessary approvals to undertake the development.

Driftwood has presented no evidence to support its claim that the owner of Driftwood Estates obtained all necessary permits for the grading; it instead relies on several provisions of the California Evidence Code to suggest that it is entitled to a presumption that the prior owner obtained the appropriate permits for the grading. The very code on which Driftwood relies, however, states that "a presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." Cal. Evidence Code §600(a) (emphasis added).[11] A presumption cannot take the place of the evidence that Driftwood must produce to establish its claim. In addition, as explained in Evidence Code §600, a presumption is based on established facts in a case – Driftwood has not presented any facts from which a presumption that the prior owner of Driftwood Estates obtained necessary permits can be drawn. None of the other authorities Driftwood cites support an argument that, in the absence of supporting facts, a court may simply assume the key evidence needed for a plaintiff to establish his case, especially where, as here, the evidence supports the opposite assumption. As described in the prior section, the evidence shows that the grading was inconsistent with applicable zoning code requirements, so it is unlikely that any approvals or authorizations could have been obtained by the prior owner for development that was inconsistent with applicable law. Driftwood claims that it undertook an extensive search of the records of Orange County and found no record of approvals for the subject grading, and then concludes that because no such records were found the Commission should assume no such approvals were necessary. However, Ordinance #351 required that a record of all certificates of use and occupancy be kept on file in the offices of the Building Inspector. Ordinance #351, §23, as amended by Ordinance #561 (1949). If such a certificate of use and occupancy existed, therefore, Driftwood should have found it when searching the County's and/or City's archives.

Driftwood relies on the case of *Ehlers v. Bihn* (1925) 71 Cal.App. 479, 487 to claim that there is a presumption that the law has been obeyed. In *Ehlers*, however, the facts related to performance under a contract to sell grapes, and it was not a vested rights claim. In that case, the

[11] Driftwood also cites various other sections of the California Evidence Code to support its claim that a necessary piece of evidence may simply be presumed. Section 606 states that presumptions affecting the burden of proof shift the burden of proof to the party against whom the presumption operates. Cal. Evid. Code §606. Section 660 defines certain types of presumption that affect the burden of proof. *Id.* §660. Section 664 creates a presumption that an official duty has been regularly performed. *Id.* §664. Taken together, these code sections mean that the burden of proof may shift to a party claiming that an official duty has not been regularly performed. Even if such statutory presumptions could be brought to bear here to obviate Driftwood's obligation to present evidence in support of its claim, Driftwood has not identified what presumption of a regularly performed official duty could support its claim that it received necessary permits prior to grading. It is not the regularly performed duty of county officials to solicit applications for land use permits.

testimony showed that the plaintiff had delivered her grapes in good condition and that there was no evidence presented by the defendant to the contrary. *Id.* The court then stated that in the absence of evidence to the contrary, the presumption is that the law has been obeyed. *Id.* In this context, the court was supporting its conclusion that, given the evidence showing the grapes had been delivered as required under the contract, and in the absence of evidence to the contrary, it could presume that the contract had been obeyed. The court did not simply presume, in the absence of supporting evidence, that the plaintiff had performed her obligations under the contract. This is the factual leap that Driftwood would like the Commission to take here.

In *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, another case relied upon by Driftwood but which is also not a vested rights case, the court reviewed the entire administrative record related to San Diego's adoption of an EIR for new development and with one exception noted that the City of Poway pointed to no evidence that San Diego did not appropriately exercise independent review of the relevant EIR. *Id.* at 1042. Ample evidence, in the form of the entire administrative record, was produced in that case to support a presumption that the City obeyed applicable law when reviewing the EIR. Here, Driftwood has not presented any evidence at all to support a presumption that the grading was performed legally.[12]

In sum, Driftwood cannot meet its burden of proof to establish a vested rights claim by asserting that the Commission may just assume the subject grading was conducted lawfully – no case or statute supports this position.[13] Driftwood's argument would allow one to assume the existence of the primary evidence necessary to establish a vested rights claim – the governmental approval upon which the claimant justifiably relied. Neither the cases cited by Driftwood nor the Evidence Code sections it cites support its position. To the contrary, these authorities make it clear that presumptions must be based on established facts and that presumptions do not constitute evidence. Driftwood has presented no evidence on the basis of which the Commission could find that Driftwood's predecessor had obtained the appropriate permits to grade Driftwood Estates. Instead, the evidence shows that the grading violated applicable zoning standards and therefore was unlikely to have received necessary authorizations. Thus, Driftwood has not sustained its burden of establishing a vested right to the graded pads.

F. Analysis of Claim of Vested Rights to "Maintain" the Graded Pads.

Even if one could obtain a vested right in a topographical feature, such as a graded pad, as opposed to a right to complete already authorized development, Driftwood has not presented the evidence that would be required to substantiate such a claim, such as evidence that the prior

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[12] Driftwood suggests that the absence of a notice of violation from the County, the City of Laguna Beach or the Commission supports its presumption that the grading was legal. Neither the City nor the Commission had jurisdiction over the property when it was originally graded. As to the County, Driftwood has not presented any evidence that the County was even aware of the grading, much less that, had it been so aware, it would have had an affirmative duty to issue a notice of violation of any applicable land use codes. The existence of such a duty would have been extremely unlikely, as it would be contrary to generally accepted principles of prosecutorial discretion. Thus, one cannot presume, solely based on the absence of notices of violation, that there were no violations.

[13] In a March 7, 2008 letter from Rick Zbur to Karl Schwing (Exhibit 4), Driftwood cites four additional cases that it claims support its presumption that the grading was legal. None of these cases support a claim that a court may use a presumption, in the absence of any supporting facts, to assume the existence of evidence the plaintiff must produce to meet its burden of proof.

owner consistently removed vegetation from the graded pads between 1962 and 1977. Ultimately, Driftwood seeks to establish a vested right to remove vegetation from the graded pads without presenting evidence that such maintenance activities took place prior to the enactment of the Coastal Act.

1. Driftwood Has Not Presented Any Evidence That The Property Contained Cleared, Graded Pads on January 1, 1977.

One cannot sustain a claim for a vested right without establishing that one has all necessary approvals for such development and has performed substantial work and incurred substantial liabilities in good faith reliance on those approvals. Thus, the development to which one asserts a vested right must have actually been started before a vested right can be established. Driftwood has not presented any clear evidence that vegetation was regularly removed from the graded pads after the initial grading took place and before January 1, 1977.

Although Driftwood seeks a determination that it has a vested right to clear vegetation from the graded pads at Driftwood Estates, it has not demonstrated that on January 1, 1977, the effective date of the Coastal Act, these pads were clear of vegetation or in the process of being cleared of vegetation. It has not provided the Commission with evidence that the development to which it claims a vested right took place prior to the effective date of the Coastal Act. The available evidence instead shows that it is unlikely that any regular vegetation clearance took place between the time of the initial grading and the effective date of the Coastal Act.

A review of aerial photographs shows that the graded pads appear to have revegetated between 1962 and 1979. (Exhibit #s 11-21). In particular, the January 16, 1977 image (Exhibit #11, page 12) clearly illustrates the conditions on-site and shows vegetation in the area of the graded pads. The evidence therefore supports the conclusion that the pads were vegetated on January 1, 1977. Thus, Driftwood cannot obtain a vested right to clear these graded pads when as of the effective date of the Coastal Act they were vegetated.

2. Driftwood Has Failed to Substantiate Its Claim to a Vested Right to Maintain the Graded Pads.

Even if Driftwood had presented evidence that the graded pads were cleared of vegetation, pursuant to all required permits, on January 1, 1977, this does not provide it with the right to continually clear the graded pads without complying with Coastal Act requirements. As discussed above, a vested right provides a claimant with the right to complete fully authorized development, but any future activity must still comply with current existing laws. Thus, one could complete construction of a building to which one had a vested right, but any subsequent work on that building would have to comply with existing laws, such as building permit requirements.

The case law defining the scope of a vested rights claim assesses one's right to complete development already approved by a governmental authority, despite a change in the law that might affect the completion of such development. *See, e.g., Avco,* 17 Cal.3d at 791 ("It has long

been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." (emphasis added)); *Billings*, 103 Cal.App.3d at 735 ("A vested right to complete the project arises only after the property owner has performed substantial work, incurred substantial liability and shown good faith reliance upon a governmental permit." (emphasis added)). Once the work authorized under existing permits has been completed, existing laws apply to any future use or development of the property. *Avco*, 17 Cal.3d at 793. Thus, at most, Driftwood could complete development it had substantially performed pursuant to necessary permits before the Coastal Act was enacted. It cannot start new development on the property without obtaining any new permits required for such activity.

Furthermore, even if one could obtain a vested right for "maintenance," which is a dubious assertion, Driftwood has presented no evidence that the graded pads were "maintained" prior to the enactment of the Coastal Act. In its March 17, 2007 letter Commission staff specifically requested that Driftwood present evidence of maintenance activities at Driftwood Estates, but Driftwood has presented no evidence of ongoing maintenance at the site, much less that the property owner obtained necessary approvals for this maintenance. (Exhibit #23). In fact, the available aerial photographs show that these pads were allowed to revegetate after the initial grading in 1962. (Exhibits #11-21). Any maintenance activities on the graded pads would therefore be subject to the provisions of the Coastal Act, as the evidence shows that the pads were not "maintained" prior to the enactment of the Coastal Act, so Driftwood could not have a vested right to such maintenance activities.

3. Removal of Major Vegetation From the Graded Pads Is Not Exempt Repair and Maintenance.

As explained above, Driftwood's clearance of vegetation from the graded pads is subject to the provisions of the Coastal Act, as it has no vested right to such ongoing maintenance. The Coastal Act provides a separate exemption for maintenance of legal structures. *See* Cal. Pub. Res. Code § 30610(d). Driftwood asserts in its vested rights claim that the only development it is currently proposing on the property is "exempt" ongoing maintenance. Driftwood Properties, LLC's "Claim of Vested Right," p. 2, question #6 ("No new development is currently proposed related to this claim other than exempt ongoing maintenance activities.")(Exhibit #3, page 5).

Section 30610 of the Coastal Act exempts "repair or maintenance activities that do not result in addition to, or enlargement or expansion of, the object of those repair or maintenance activities" from the requirement to obtain a coastal development permit. Pub. Resources Code § 30610(d). It also provides, however, that this exemption will not apply to repair and maintenance activities that the Commission determines "involve a risk of substantial adverse environmental impact." *Id.* Section 13252 of the Commission's regulations defines the types of repair and maintenance activities that require CDPs. These include: "Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, … [or] within 50 feet of a[n] … environmentally sensitive habitat area." 14 CCR §13252(a)(3) (emphasis added).

Even assuming that Driftwood had a vested right to the graded pads, which it doesn't, Driftwood's maintenance of these pads would still only be exempt only if this work did not take place in an environmentally sensitive habitat area (ESHA) or within 50 feet of such area. The Commission's biologist, John Dixon, has determined that the area immediately surrounding the graded pads constitutes ESHA. (Exhibits #10-11). This determination is uncontroverted, as Driftwood agrees that these areas constitute ESHA. (Exhibit #2). Therefore, any development of the graded pads would take place within 50 feet of ESHA and would not be exempt repair and maintenance under Section 13232(a)(3). Thus, even if Driftwood had a vested right to the graded pads, it is still subject to current law and would be required to obtain a CDP prior to removing major vegetation from the graded pads.

In addition, Dr. Dixon has determined that the graded pads themselves should be considered degraded ESHA, as they would be ESHA today were it not for past unpermitted vegetation clearance, so for this reason, too, removal of vegetation on these pads would require the Commission's approval through issuance of a CDP. (Exhibit #s 10-11). Driftwood disagrees with Dr. Dixon's determination and claims that the graded pads do not consist of degraded ESHA. Regardless of whether Dr. Dixon or Driftwood's analysis is correct on this point, however, removal of vegetation on these graded pads requires a CDP because this removal would take place within 50 feet of ESHA, even under Driftwood's analysis of the location of ESHA on the site. Thus, the Commission need not determine at this time whether the graded pads consist of degraded ESHA. Driftwood is required to obtain a CDP to remove vegetation from the graded pads because they are within 50 feet of ESHA, regardless of whether the pads themselves are ESHA, and it has not done so.

G. The Statute of Limitations Does Not Bar Driftwood's Vested Rights Claim.

Driftwood claims that the Coastal Act's statute of limitation, set forth at Section 30805.5, bars any challenge to its predecessor in interest's grading of the property. Driftwood Claim of Vested Right, Attachment A; March 7, 2008 letter from Rick Zbur to Karl Schwing, pg. 5 (Exhibit #4, page 5). The application before the Commission, however, is Driftwood's affirmative assertion that it has a vested right to the graded pads at Driftwood Estates. The Commission cannot of its own accord initiate a claim to establish a vested right, so it cannot forfeit its right to hear such claims due to a lapse in time, when it has no control over when such claims are brought. The ability to bring a claim for a vested right rests with the property owner or other entity attempting to establish that right. Any delay in bringing this claim is thus the result of Driftwood's, or its predecessor in interest's, own failure to assert its claim in a more timely manner. The Coastal Act's statute of limitation is unrelated to Driftwood's own attempt to establish a vested right to development that took place prior to the enactment of the Coastal Act.[14]

[14] If Driftwood were correct that the Commission is unable to deny a claim for a vested right brought more than three years after the completion of such development, it would lead to the absurd result that the Commission would have been under an obligation to fully adjudicate all vested rights claims for development constructed prior to January 1, 1977 throughout the entire Coastal Zone by January 1, 1980. Even if the Commission were able to initiate claims for vested rights, which it is not, it would have been impossible for it to have considered all such claims within three years of January 1, 1977. Driftwood's argument thus has no basis in law and would lead to an absurd result.

The Coastal Act statute of limitation is also irrelevant to the vested rights claim because it pertains solely to actions brought to recover civil fines or penalties. Section 30805.5 states: "Any action pursuant to Sections 30805 or 30822 to recover civil fines or penalties under this chapter shall be commenced not later than three years from the date on which the cause of action for the recovery is known or should have been known." Pub. Res. Code §30805.5. The Commission has not brought an action against Driftwood to obtain civil fines or penalties based on the grading that took place on the Driftwood Estates property. Even if it had, that is not the subject of the vested rights application that Driftwood has submitted, and it is not relevant to the Commission's determination that Driftwood has no such vested right. Therefore, the statute of limitations in Section 30805.5 does not bar the Commission from hearing and ruling on Driftwood's application to establish a vested right.

H. Conclusion

For all the reasons set forth above, the Commission finds that Driftwood has not met the burden of proving its claim of vested rights for the graded pads or "maintenance" of the graded pads located at Driftwood Estates.

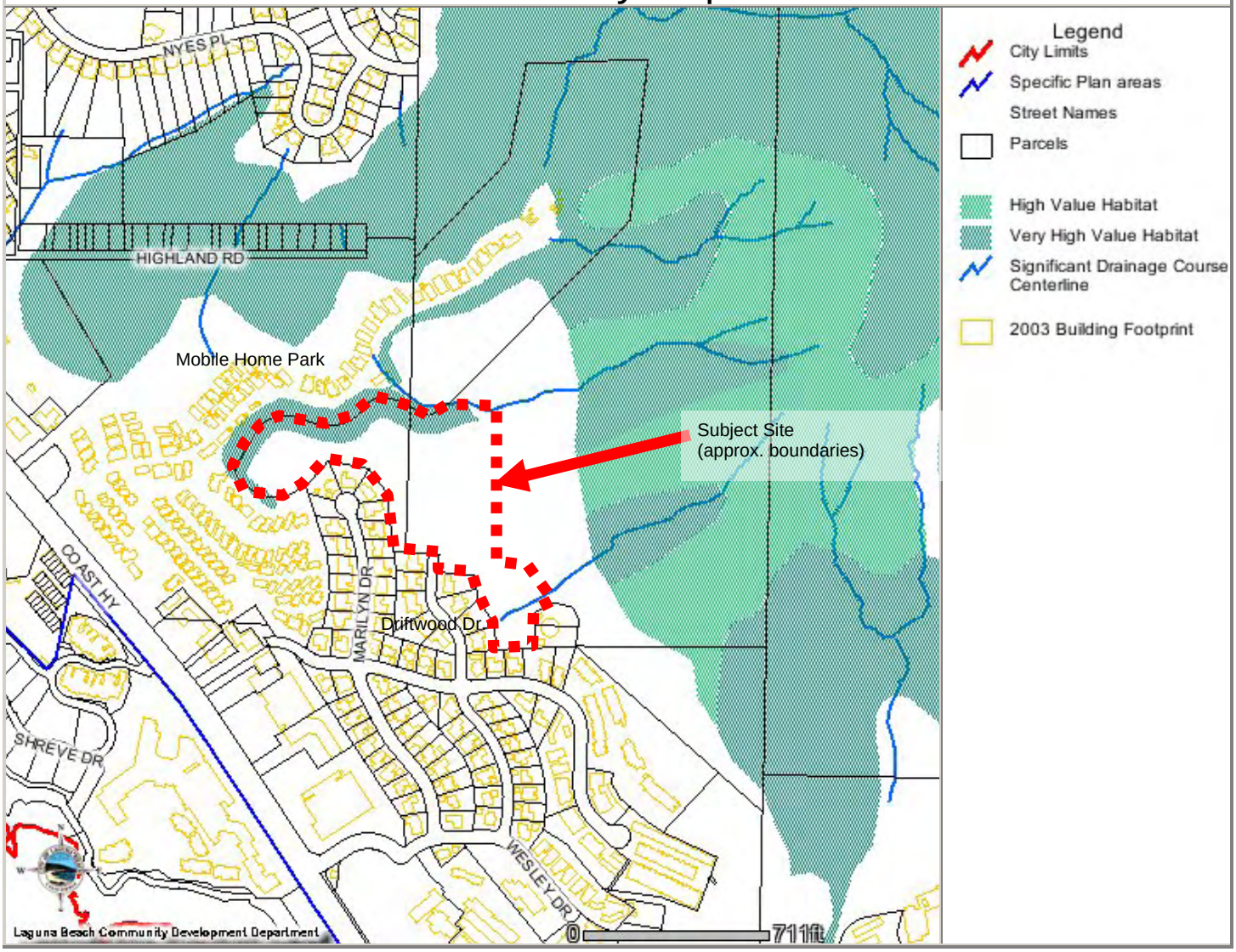
List of Exhibits
5-07-412-VRC

NOTE: COLOR VERSIONS OF EXHIBITS NOT PROVIDED IN PRINTED EDITION
FULL COLOR VERSIONS OF EXHIBITS AVAILABLE BY DOWNLOADING REPORT
FROM THE COMMISSION'S WEB SITE: www.coastal.ca.gov/mtgcurr.html

1	Vicinity Map
2	Limits of Vested Rights Claim Area and ESHA Map by Applicant
3	Vested Rights Claim Application and Cover Letter by Latham & Watkins dated 11/20/07
4	Letter dated March 7, 2008 by Latham & Watkins
5	Prior Commission History at Subject Site
6	Ordinance 351 (Adopted by County in 1935)
7a	Ordinance 561 (Adopted by County in 1949) amending ordinance 351
7b	Ordinance 1008 (Adopted by County in 1957) amending ordinance 351
8	Ordinance 1183 (Adopted by County in 1959) Adopting UBC of 1958
9	1959 California Health and Safety Code
10	Memo by John Dixon dated 4-16-2007
11	Memo by John Dixon dated 7-14-2008 with accompanying aerial photographs from 1931, 1964, 1970, 1977, 1986, 1993, and 2007 and ground level photos from various years
12	1959 Aerial Photo Provided by Applicant
13	1960 Aerial Photo from UCSB
14	Pre-May 1962 Aerial Photo Provided by Applicant
15	May 18, 1962 Aerial Photo Provided by Applicant
16	1964 Aerial Photo from CCC Archive
17	1965 Aerial Photo Provided by Applicant
18	1972 Aerial Photo Provided by Applicant
19	1978 Aerial Photo from CCC Archive
20	1979 Aerial Photo from CCC Archive
21	2001 Aerial Photo from CCC Archive
22	E-mail from Penny Elia dated April 17, 2008 regarding Blasting in South Laguna
23	Letter from California Coastal Commission to Applicant dated 3-17-2008

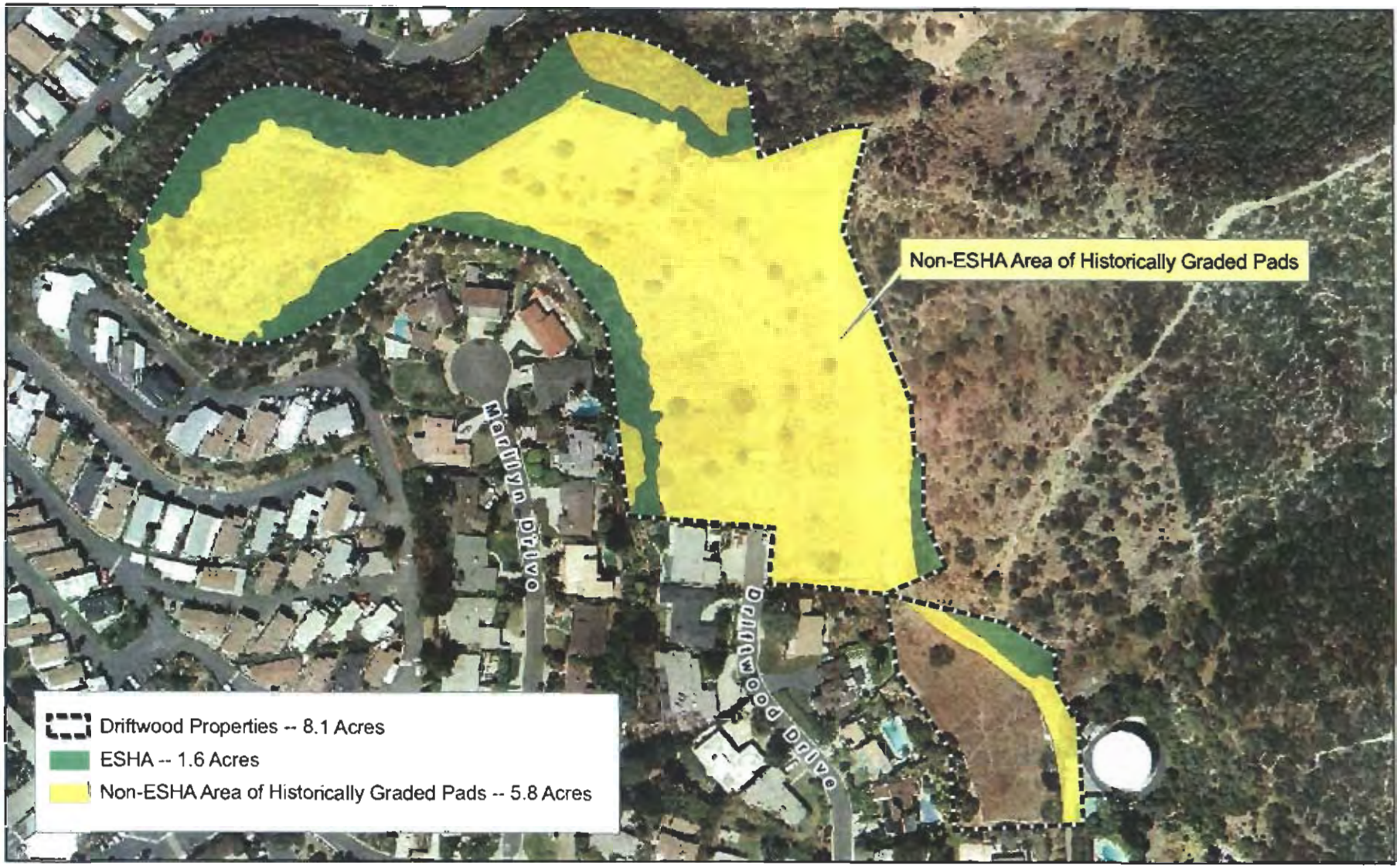
Click on links at left to go to the Exhibits

Vicinity Map



Note: Parcel lines depicted are illustrative only - they may not depict parcel lines approved pursuant to a coastal development permit

Exhibit 1
California Coastal Commission
Vested Rights Claim Application No. 5-07-412-VRC



Claim of Vested Right to 5.8 Acre
Non-ESHA Area of Historically Graded Pads

Driftwood Properties

The Athens Group

0 170 340 Feet

Exhibit 2
1 of 1
Vested Rights Claim Area and ESHA Designation by Applicant Application No. 5-07-412-VRC

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LATHAM & WATKINS LLP

November 20, 2007

File No. 043668-0001

VIA FEDERAL EXPRESS AND HAND DELIVERY

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Driftwood Properties – Claim of Vested Rights Application

Dear Commission Staff:

I write on behalf of Driftwood Properties, LLC ("Driftwood"), owner of the property historically referred to as Driftwood Estates, located at the northern end of Driftwood Drive, in Laguna Beach, Orange County ("Driftwood Estates Property" or the "Property"). Enclosed please find Driftwood's application supporting its Claim of Vested Rights to the 1962 graded development pads and maintenance of those pads, including for necessary fuel modification and erosion control measures.

As you know, Driftwood purchased the Property in September 2004 subject to existing conditions, over 40 years after the site was graded under the jurisdiction of Orange County. Since 2004, Driftwood has worked cooperatively with Coastal Commission staff and the City of Laguna Beach to maintain the competing interests of fuel modification and erosion control, as necessary for safety purposes and as directed by the City of Laguna Beach.

On May 4, 2007, Coastal Commission staff issued notices of violation for the placement of sandbags, 1995 lot line adjustments approved by the City and recorded by the County, and other historic activities at the site that pre-date Driftwood's ownership. On June 15, 2007, Driftwood submitted a detailed response to the Commission disagreeing that Driftwood or the prior owner acted in violation of the Coastal Act. Among other responses, Driftwood takes strong exception to the unsupported view by Coastal Commission staff that the graded site, which had vegetation removed dating back to approximately 1962 and exists in a graded condition, constitutes "degraded ESHA," despite biological reports that contradict this position.

Despite Driftwood's objection to the notices, the June response letter clearly stated Driftwood's commitment to work cooperatively with staff and reach a mutually satisfactory resolution through a voluntary consent decree order, an after-the-fact Coastal Development Permit, or other mechanism. Specifically, Driftwood agreed to refrain from any

further sandbag or fuel modification activity until there is resolution of this issue or directed by the City due to emergency conditions, with prior notice to the Commission. True to its word, the only activities on the graded site since June 15, 2007 has been restoration activities performed pursuant to Consent Restoration Order No. CCC-06-RO-03 and emergency fuel modification activities undertaken by the Fire Department during the October fire storms, under an emergency determination of fire threat nuisance and with prior notice and oversight by Coastal Commission staff. (*See* October 31, 2007 letter to Coastal Commission correcting erroneous statements made during public comment and setting forth the emergency conditions and actions taken).

Driftwood continues to comply with its agreement to refrain from any further activities on the Property. Driftwood continues to desire to work cooperatively with staff. As you are aware, Driftwood proposed a resolution of the immediate need to replace sandbags and other temporary erosion flood control measures and the NOVs through a voluntary consent order. This consent order would allow necessary, targeted placement and replacement of sandbags and fuel modification. Driftwood further proposed that we agree to disagree about staff's position on "degraded ESHA" (with no recent site visit by Commission Biologist Dr. Dixon) which we believe is a major policy issue that requires a full and fair hearing before the Commission. Driftwood proposed that the issue of whether the graded pads constitute ESHA be resolved when the Commission considers Driftwood's proposed project which is in the entitlement process with the City of Laguna Beach and should be before the Commission in one to two years. Because Commission staff has indicted that its initial view is that it would not enter into a consent order to allow replacement of the sandbags without an agreement by Driftwood that the site is "degraded ESHA," which Driftwood is not willing to acknowledge, we submit the attached application to bring this policy issue to the Commission for a full and fair hearing on this important issue which affects Driftwood's ability to maintain and develop the site. We do not believe that such an important issue and policy should be determined as part of the enforcement process, especially if the Property Owner is deprived of a fair process and an opportunity to brief Commissions on the issues.

In the meantime, Driftwood remains committed to discussing a voluntary consent order or some other resolution as set forth in the June 15, 2007 response letter, to which we still eagerly await a response. We are willing to withdraw the Claim of Vested Rights application if the staff would like to discuss an alternative means of resolution so long as the resolution includes the ability to replace sandbags and perform fuel modification as necessary for safety reasons and so long as the resolution does not require an acknowledgement or agreement that the site contains "degraded ESHA" as currently maintained by the Commission staff. We would like to set up a meeting to discuss these issues with you within the next couple weeks.

Sincerely,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Enclosures

cc: Commissioners, CCC
Lisa Haage, Chief of Enforcement, CCC
Christine Chestnut, CCC
Andrew Willis, CCC
Sherilyn Sarb, CCC
Pat Veesart, CCC
Teresa Henry, CCC
Karl Schwing, CCC
Alex Helperin, CCC
John Montgomery, City of Laguna Beach
Alex Hill, Driftwood Properties, LLC
John Mansour, The Athens Group
Martyn Hoffmann, The Athens Group
Loren Montgomery, Esq.

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CLAIM OF VESTED RIGHTS

NOTE: Documentation of the information requested, such as permits, receipts, buildings department inspection reports, and photographs, must be attached.

1. Name of claimant, address, and telephone number:
(Please include zip code & area code):

Driftwood Properties, LLC ("Driftwood" or "Property Owner")
c/o The Athens Group - Martyn Hoffmann
31106 Coast Highway, Laguna Beach, CA 92651, (949) 499-4794

2. Name, address and telephone number of claimant's representative, if any:
(Please include zip code & area code):

Rick Zbur and Loren Montgomery, Latham & Watkins, LLP
633 West Fifth Street, Suite 4000, Los Angeles, CA 90071, (213) 485-1234.

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

Property Owner has a vested right in the graded pads and the maintenance of those graded pads, including fuel modification necessary for safety purposes in compliance with requirements of the City of Laguna Beach. The property is located at the Northern Terminus of Driftwood Drive, Laguna Beach, Orange County, identified in the County records at APN 056-240-65 and APN 656-191-40 ("Driftwood Estates Property" or the "Property"). (*See* Exhibit 1A-1D).

4. California Environmental Quality Act/Project Status.

Check one of the following: Not Applicable. Grading took place circa 1962, well prior to the enactment of CEQA (in 1970), the Coastal Zone Conservation Act (in 1972), and the Subdivision Map Act (in 1974), and the California Coastal Act (in 1976). These laws were not in affect at the time of the grading and development on the Property. Ongoing maintenance activities do not require discretionary approvals.

a. Categorically exempt _____. Class: _____. Item: _____.

Describe exempted status and date granted: _____

b. Date Negative Declaration Status granted: _____

c. Date Environmental Impact Report approved: _____

Attach environmental impact report or negative declaration.

FOR COASTAL COMMISSION USE:
Claim Number: _____ Date Submitted _____
Date Filed _____

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

See Attachment A.

6. List any governmental approvals which have not yet been obtained and anticipated date of approval.

Not Applicable. No new development is currently proposed related to this claim other than exempt ongoing maintenance activities. This Claim of Vested Rights would allow maintenance of the existing grading pads, including necessary fuel modification (fire safety). (*See* Exhibit 2.) Potential additional future development will be sought pursuant to a separate coastal development permit and City of Laguna Beach review and approval.

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

Not Applicable.

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (i.e., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1972 and/or January 1, 1977 (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals).

See Attachment B.

9. Describe those portions of development remaining to be constructed.

Grading completed circa 1962, under the jurisdiction of the County of Orange, prior to incorporation by the City of Laguna Beach. *See* Attachment B.

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

Not Applicable.

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental approval(s).

Not Applicable.

12. Is the development planned as a series of phases or segments? If so, explain.

The Claim of Vested Rights is for ongoing maintenance of existing conditions.

13. When is it anticipated that the total development would be completed?

Grading already complete.

14. Authorization of Agent.

Property owned by Driftwood Properties LLC. (*See* Exhibit 3 [Grant Deed].)

I hereby authorize Rick Zbur and Loren Montgomery to act as my representatives and bind me in all matters concerning this application.

Signature of Claimant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission, of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending, or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Signature of Claimant(s) or Agent

Attachment A

Aerial photographs demonstrate that grading of Driftwood Estates Property took place circa 1962, well prior to the enactment of the Coastal Zone Conservation Act in 1972 and the Coastal Act in 1976. (*See* Exhibits 1A-1D.) Maintenance of the graded pads has been ongoing since 1962 as necessary.

The grading occurred prior to the enactment of the Coastal Act under the jurisdiction of the County of Orange, over 40 years ago. Driftwood has a vested right to the maintenance of the graded condition. This right is presumed legal and cannot be challenged at this late date for the following reasons. First, the grading is presumed legal because there is no evidence to the contrary. "[I]n the absence of evidence to the contrary, the presumption is that the law has been obeyed." (*Ehlers v. Bihn* (1925) 71 Cal. App. 479, 487 [citing Cal. Civil Code § 3548 ("The law has been obeyed."]; *see also City of Poway v. City of San Diego* (1984) 155 Cal. App. 3d 1037, 1042 [finding defendant acted legally when it prepared a draft EIR on a proposed development project where no evidence existed to the contrary].) Second, the City of Laguna Beach annexed the Driftwood Estates Property in December 31, 1987, well after the grading occurred and any grading permitted by the County is presumed legal after annexation. (*See City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal. 3d 1184, 1193 n. 6 [permits acquired before incorporation valid after incorporation] [citing Gov. Code § 65865.3]; *see also* Health & Safety Code § 19829.) Third, the grading on the Driftwood Estates Property predates the passage of the Coastal Act in 1976 and the California Coastal Zone Conservation Act of 1972; thus, a coastal development permit was not required for the grading. (Pub. Res. Code § 30608.) Additionally, the grading on the property, which was completed over forty years ago and maintained ever since, has never been challenged and the three-year statute of limitations for such a challenge ran years ago. (*See, e.g.,* Pub. Res. Code § 30805.5 [detailing the Coastal Act's three year statute of limitations].)

Attachment B

Driftwood has a vested right to maintain the existing graded pads in their pre-Coastal Act condition, including critical fuel modification. Driftwood estimates that annual maintenance costs in 2008 would be $10,000 to $15,000 and would increase somewhat annually thereafter.

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www.lw.com

LATHAM & WATKINS LLP

File No. 043668-0001

March 7, 2008

VIA FEDERAL EXPRESS

Karl Schwing
Supervisor, Regulation & Planning
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Driftwood Properties – Response To Commission's Notice Of Incomplete Claim of Vested Rights

Dear Mr. Schwing:

I write in response to your November 29, 2007 letter on behalf of Driftwood Properties, LLC ("Driftwood"), owner of the property historically referred to as Driftwood Estates, located at the northern end of Driftwood Drive, in Laguna Beach, Orange County ("Driftwood Property" or the "Property"). Your letter requests various documents that the Commission claims are necessary to deem "filed" (pursuant to Cal. Code of Regulations, tit. 14, Div. 5.5 ("CCR") §§ 13201-06) Driftwood's Claim of Vested Rights Application, received by the Commission on November 20, 2007 ("Application"). For the reasons detailed in this letter, these documents are not necessary for the Commission to make a determination regarding Driftwood's Application. Driftwood, therefore, asks the Commission to deem Driftwood's Application "filed."

I. A VESTED RIGHT EXISTS IN THE GRADED PADS ON THE DRIFTWOOD PROPERTY

A. The Pads Were Graded Lawfully On Or Before 1962

Driftwood purchased the Property in September 2004, subject to existing conditions, over 40 years after the Property was graded under the jurisdiction of the County of Orange ("County"). Maintenance of the graded pads has been ongoing, as necessary. As detailed in Driftwood's Application and this letter, Driftwood has a vested right in the graded pads and the maintenance of those pads. Your November 29, 2007 letter requested permits and other documentation regarding the historic grading of the Driftwood Property. As discussed more fully below, in response to your request, Driftwood extensively researched the history of the grading code requirements for the Driftwood Property and conducted an exhaustive search of available public files for the Driftwood Property.

The legal research regarding the applicable historic building and grading code requirements indicates that until August 24, 1962, the County had no grading permit

requirements. (Compare County Ordinance 1183, effective April 10, 1959 [adopting Uniform Building Code, 1958 Edition, which includes no grading permit requirements] with County Ordinance 1504, effective August 24, 1962 [adopting sections "Regulating the Excavation, Grading An Filling of Land; and Providing Regulatory Standards for Surface and Sub-surface Drainage of Properties," which prohibits grading without a permit in section 71.047].) The Excavation and Grading Code, effective August 24, 1962, provided that "[n]o person shall commence or perform any grading . . . without first having obtained a permit to do so from the Superintendent." (Codified Ordinances of the County of Orange, Div. 1, tit. 7 § 71.047.) To obtain a permit, the Code also required an applicant to submit an application, grading plans and specifications, and reports in addition to permit fees, plan check fees, and a bond. (*Id.* §§ 71.048, 71.049, 71.0410.)

Aerial photographs located during Driftwood's research through photographic archives demonstrate that grading of Driftwood Property took place before May 18, 1962. (See Exhibits 1A-1G.) Thus, the prior owner graded the Property over ten years *before* the enactment of the Coastal Zone Conservation Act in 1972 and the Coastal Act in 1976 and months before the County had a grading permit requirement. Thus, the prior owner's grading of the Driftwood Property was conducted legally.[1]

The Coastal Act states "[n]o person who has obtained a vested right in a development prior to the effective date of [the Coastal Act] . . . shall be required to secure approval for the development pursuant to [the Coastal Act]." (Pub. Res. Code § 30608.) The Coastal Act defines "development" broadly to include "grading, removing, dredging, mining, or extraction of any materials . . . ." (Pub. Res. Code § 30106.)

Although the Coastal Act does not define a "vested right in a development," in California, a vested right in development arises after the property owner has performed substantial work and incurred substantial liability in good faith reliance upon a lawful right to develop. (See *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal. 3d 785, 793 [finding no vested right in illegal construction because to vest, development must "comply with the laws applicable at the time . . . ."]; *Pardee Construction* Co. *v. California Coastal Commission* (1979) 95 Cal.App.3d 471, 479-80 [finding vested right in legal development where performed substantial work and incurred substantial liabilities in good faith reliance on the fact that it was legal]; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729, 735-36 [finding no vested right in illegal development]; *Aries Development Co.*

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[1] When conducting its historical research, Driftwood searched historic archives in addition to all files related to the Property at the City of Laguna Beach, the County, the Regional Water Quality Control Board, and the Commission. Driftwood also searched archived historic files relating to the annexation of the Property at the City and the County. Not surprisingly (in light of the lack of grading requirements at the time), Driftwood located no historical records related to the grading of the Property. Importantly, Driftwood also did not locate any documentation indicating the grading was conducted in violation of any law applicable at the time. Thus, the evidence demonstrates that the grading on the Driftwood Property was legal and no evidence exists to the contrary.

v. Coastal Zone Conservation Commission (1975) 48 Cal.App.3d 524, 544-45 [finding vested right in legal grading, but no vested right in illegal tentative tract map or site plan approval]; *Environmental Coalition of Orange County, Inc. v. Avco Community Developers, Inc.* (1974) 40 Cal.App.3d 513, 523 [finding vested right in legal grading]; *Spindler Realty Corp. v. Monning* (1966) 243 Cal. App.2d 255, 264 [finding vested right in legal grading, but no vested right in further development].)

Such vested rights in lawful development (even lawful development conducted where there is no permit requirement) have a long history in California law. Since the 1970s, these vested rights have been codified in statutes such as the Coastal Zone Conservation Act, the Coastal Act, the California Environmental Quality Act ("CEQA"), and the Subdivision Map Act ("Map Act"). (See Pub. Res. Code § 27404 [Coastal Zone Conservation Act]; Pub. Res. Code § 30608 [Coastal Act]; Pub. Res. Code §§ 21169, 21170 [CEQA]; Pub. Res. Code § 66412.6 [Map Act].) The court in *Cooper v. County of Los Angeles* acknowledged as much when it concluded that "Public Resources Code sections 21169 and 21170 [referring to CEQA] in part constitute a codification of the doctrine of 'vested rights' . . . ." (*Cooper v. County of Los Angeles* (1975) 49 Cal.App.3d 34, 42.) These sections codify in part the Constitutional right of a property owner to maintain a vested right to lawfully commenced development. (See *Aries Development Co. v. Coastal Zone Conservation Commission* (1975) 48 Cal.App.3d 524, 543 [vested rights exemption in the Coastal Zone Conservation Act section 27404 "is grounded upon the constitutional principle that property may not be taken without due process of law."].) The doctrine of vested rights "has been recognized as permitting a landowner to complete a project in the face of a new law purporting to prohibit the development of the project where the landowner, in reliance upon governmental action, has in good faith suffered substantial detriment thereby acquiring a 'vested right' to proceed to develop the property." (*Cooper, supra*, 49 Cal.App.3d at p. 42.)

For these reasons, Driftwood has a vested right in the graded pads on the Driftwood Property because the prior owner lawfully completed the grading of the Property before May 18, 1962 in good faith reliance on the fact that such activity was lawful.

B. Even If There Had Been A Grading Code Requirement, The Grading Is Presumed Legal

Even if the County had a grading permit requirement in place at the time of the grading of the Property, the grading is presumed legal and there is no evidence to the contrary. As detailed above, Driftwood has not located any proof of permits or the associated application materials in its search of the historic files. To the contrary, Driftwood has located photos in a historic archives demonstrating that the grading occurred before May 18, 1962. Additionally, Driftwood has not located any evidence suggesting any violation of the grading code on the Driftwood Property.[2]

"In the absence of evidence to the contrary, the presumption is that the law has been obeyed" by Driftwood and by the County. (See *Ehlers v. Bihn* (1925) 71 Cal.App.479, 487

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[2] See footnote 1 above.

[citing Cal. Civil Code § 3548 ("The law has been obeyed."].) Additionally, the County is presumed to have regularly performed its official duty (1) to issue a grading permit (if required) where grading occurred on the Driftwood Property circa 1962 and (2) to oversee the Property to ensure any grading was conducted according to law. (See Cal. Evid. Code § 664 ["It is presumed that official duty has been regularly performed"].)

In *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, the Court rejected appellant's petition to set aside the city's approval of a construction project for failure to exercise independent judgment when approving the environmental impact report. (*Id.* at p. 1042.) The Court found that the city acted legally when it prepared a draft environmental impact report on a proposed development project where no evidence existed to the contrary. (*Id.*) Similarly, in this case, no evidence exists to suggest that the prior owner of the Driftwood Property acted illegally when grading the Property circa 1962. No timely notice of violation was ever issued by the County, the City of Laguna Beach, or the California Coastal Commission to indicate that the grading was improper. No other documentation suggests that the grading was improper. In the absence of such evidence, the presumptions operate to establish the legality of the grading.

These presumptions are discussed extensively through a long line of cases, involving a broad range of circumstances. (See *People v. Goldberg* (1957) 152 Cal.App.2d 562, 572 [presuming probation report conformed with the law where no evidence to the contrary and where report absent from the record before the court]; *Harlow v. United Title Guaranty Company* (1956) 145 Cal.App.2d 672, 674-75 [presuming that deceased income taxpayer made cash payments to plaintiff at time indicated on his tax return due to presumption that the law has been obeyed]; *Peabody v. Barham* (1942) 52 Cal.App.2d 581, 584 [refusing to find potentially ambiguous statement libelous because "[o]ne of the strongest of disputable presumptions is that a person is innocent of crime and that the law has been obeyed."]; *Patterson v. Southern Trust Co.* (1926) 80 Cal.App.411, 414 [in action to quiet title, presuming bank complied with the law because "in the absence of evidence to the contrary, we must presume that the law has been observed and that the regular course of business has been followed."] [overruled on other grounds in *MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536, 551].) Similarly, in the absence of evidence to the contrary, the prior owner's circa 1962 grading is presumed legal.

Since the prior owner is presumed to have conducted itself legally when grading before May 18, 1962, it is also presumed that the prior owner acted in good faith reliance on a properly issued permit or the lack of a permit requirement. (See *Spindler v. Monning* (1966) 243 Cal. App. 2d 255, 261, 264 [finding vested right in grading permit where owner acted in good faith reliance on lawful right to grade and a substantial portion of the grading had been performed].)

C. The Prior Owner Performed Substantial Work And Incurred Substantial Liability Sufficient To Trigger A Vested Right

The prior owner completed *all* the grading work before May 18, 1962, vesting the grading. In *Spindler Realty Corp. v. Monning* (1966) 243 Cal.App.2d 255, Spindler acquired a grading permit in September 1961 for approximately 21 acres in the Santa Monica Mountains.

(*Id.* at pp. 259-60.) The Court of Appeal affirmed the trial court's finding that by October 26, 1961, Spindler vested his grading permit because "'a substantial portion of the grading under the grading permit had been performed' on the subject property." (*Id.* at pp. 261, 264.) In an almost identical situation, the prior owner completed the grading of the approximately 8.1 acre Driftwood Property before May 18, 1962. (See Exhibits 1C-E.) Thus, the right to have graded pads on the Property was vested back in 1962.

Because the grading occurred over 40 years ago by the prior owner of the Property, Driftwood has no records documenting the costs incurred by the prior owner for grading which was completed over 40 years ago. In *Spindler*, even though the Court of Appeal mentions the fact that "Spindler, in good faith, entered into a contract . . . for the grading of the subject property," agreeing to pay at least $562,796 based on the actual amount of work done. Neither the trial court or the Court of Appeal rely on this expenditure to establish the vested right in the grading permit. (*Id.* at p. 261.) Instead, the courts rely solely on the finding that a substantial portion of the grading under the grading permit had been performed. (*Id.*) Thus, to establish a vested right in the grading, Driftwood need not document exactly what the prior owner spent 40 years ago. (See also *Cooper, supra,* 49 Cal.App.3d at p. 42 [finding either percentage of development or percentage of costs expended to be appropriate measures under the vesting test].) In this case, the fact that the grading has been completed, *in full*, for over 40 years, satisfies any concern over the extent of the progress made under the permit. No information regarding the costs of the development is necessary. The work is done. The development is vested.

II. DRIFTWOOD'S VESTED RIGHTS IN THE GRADED PADS CANNOT BE CHALLENGED AT THIS LATE DATE

A. The Statute Of Limitations For The Grading Has Expired

The pre-May 18, 1962 grading on the Driftwood Property predates the passage of the Coastal Act in 1976 and the California Coastal Zone Conservation Act of 1972; thus, a coastal development permit was not required. (Pub. Res. Code § 30608.) Additionally, the grading on the Property, which was completed over forty years ago and maintained ever since, has never been challenged and the three-year statute of limitations for such a challenge ran years ago. (See, e.g., Pub. Res. Code § 30805.5 [detailing the Coastal Act's three year statute of limitations].)

The grading occurred before May 18, 1962. The County's Excavation and Grading Code did not become effective until August 24, 1962. Before that time, the County did not have a permit requirement for grading activities. The statute of limitations to challenge any grading in 1962 ran long ago. Thus, any claim against the vested right in the grading is 40 years late.

B. Upon Annexation, The Grading Was Presumed Legal And Any Challenge Too Late, Thus The Grading Vested And Continues To Be Vested

The City of Laguna Beach annexed the Driftwood Property in December 31, 1987, well after the grading occurred and any time period to challenge the permit or the grading had lapsed. Thus, the grading under the County's jurisdiction is presumed permitted by the County, and thus is presumed legal after annexation. (See *City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1193 n. 6 [governmental approvals acquired before incorporation valid after incorporation] [citing Gov. Code § 65865.3 (development agreements entered into prior to annexation "shall remain valid for the duration of the agreement")]; see also Health & Safety Code § 19829 ["[a] building permit issued by a county for construction on real property subsequently annexed to a city shall remain valid for the life of the building permit, as issued."].)

III. APPLICATION SHOULD BE DEEMED FILED

The Commission's November 29, 2007 letter states that "[i]n order to compete your claim form please submit the following" and lists six groups of items, detailed in Attachment A to this letter. Driftwood has provided all information available and responsive to the six groups of items in Attachment A, and thus, Driftwood has responded in full to the Commission's requests to the extent the information is available. As a result, Driftwood has complied with the CCR section 13202 because it has provided all information available to it and its Application should be deemed "filed."

To the extent information requested is not provided, as detailed in this letter and the Application, the information requested relates to whether or not Driftwood has a vested right in the circa 1962 grading of the Property and the maintenance of that grading. Thus, the omission does not bar the Application, but goes to the legality of the grading. As detailed above, the grading of the Driftwood Property is legal and is presumed legal.

As such, please deem Driftwood's Application "filed" at this time, then we would like to set up a meeting to discuss these issues. If you have any questions, please do not hesitate to contact me at (213) 891-8722.

Sincerely,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Enclosures

cc: Commissioners, CCC
Lisa Haage, Chief of Enforcement, CCC

Christine Chestnut, CCC
Andrew Willis, CCC
Sherilyn Sarb, CCC
Pat Veesart, CCC
Teresa Henry, CCC
Alex Helperin, CCC
John Montgomery, City of Laguna Beach
Alex Hill, Driftwood Properties, LLC
John Mansour, The Athens Group
Greg Vail, The Athens Group
Beth Collins-Burgard, Esq.

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Attachment A

The Commission's November 29, 2007 letter lists six groups of items that the Commission claims Driftwood must submit to the Commission "[i]n order to complete [Driftwood's] claim form." This attachment lists each of the six groups of items in bold and details Driftwood's response to the request.

1) **Evidence showing that 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.**

The Commission's Claim of Vested Rights form ("Form") asks applicants to "[l]ist all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval" and to "[a]ttach copies of all approvals." The Form does not require evidence showing that the prior owner obtained (over 40 years ago) all the approvals necessary to grade and maintain the pads.

As detailed in Driftwood's November 20, 2007 Application, the grading occurred over 40 years ago with a prior owner, prior to the enactment of the Coastal Act. Driftwood reviewed the County's historic building and grading code, historic photographic archives, and all the historic files which it could access regarding the Driftwood Property. Driftwood's research indicates that the grading occurred before May 18, 1962, before the County enacted the Excavation and Grading Code, effective August 24, 1962. Thus, no grading permit was necessary at the time the prior owner graded the Driftwood Property. Additionally, Driftwood's review of historic files, not surprisingly, revealed no documentation of the grading or any evidence of any violation of any grading code on the Property. Thus, not only does the evidence establish that the prior owner graded the Property legally, as a matter of law, the prior owner is presumed to have graded the Property legally.

Driftwood has provided the Commission with all the information to which it has access. As discussed in Driftwood's November 20, 2007 Application and this letter, no additional evidence is necessary to establish a vested right in the grading and maintenance of the pads on the Driftwood Property in light of the presumption of legality, the fact that the grading was legal, the passage of time, and the fact that the because the grading was legal at annexation, it continues to be legal.

2) **Evidence 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.**

The Form does not require evidence that "all conditions of all government approvals that were necessary to grade and maintain the subject pads." For the reasons discussed in this letter,

the grading which was legal and in the absence of evidence to the contrary, Driftwood, the County, and the City are presumed to have complied with the law.

3) **Copies of grading plans approved by the County of Orange.**

The Form does not require copies of grading plans. As described above, the fact that Driftwood cannot submit this form with the Application should not preclude the Commission from deeming Driftwood's Application "filed," as this is not a Coastal Act or Coastal Act regulation requirement.

4) **All 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.**

Records of expenses in 1962 are not available to Driftwood since the grading was conducted by a prior owner and successor in the property interest. Additionally, as detailed in the attached letter, evidence of expenses are not necessary to establish a vested right here where grading conducted and completed in 1962. (See Exhibits 1C-E.) Nonetheless, Driftwood has attached receipts and invoices evidencing some of the expenses it has itself incurred for maintenance of the graded pads. (Exhibit 2.)

5) **Copies of any permits or other 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.**

Driftwood has provided evidence that no grading permit was necessary when the prior owner graded the pads on the Property. Additionally, grading conducted in or before May 1962 by a prior owner is presumed legal. Regarding maintenance of the graded pads, Driftwood has only owned the Property since 2004, however, attached are two authorizations for maintenance of the graded pads. (See Exhibit 3 [October 23, 2007 letter from City of Laguna Beach regarding Property and fuel modification and fire emergency] and Exhibit 4 [December 13, 2007 Emergency Coastal Development Permit for Driftwood regarding placement of sandbags on the Property and flooding].) Additional information regarding Driftwood's understanding of historical maintenance of the graded pads can be located in the June 15, 2007 letter sent on behalf of Driftwood to the Commission.

6) **Contact info for the entity that first graded the pads and evidence demonstrating the relationship between Driftwood Estates and that entity.**

Photographic evidence demonstrates that the prior owner Esslinger Trusts (Kenneth J. Cummins, as Trustee of the Esslinger Family, Trust Fiduciary Administrative Service, 4041 MacArthur Blvd., Suite 360, Newport Beach, CA 92660, Tel: 949-833-8565, Fax: 949-833-1292) first graded the pads on the Property in or before May 1962. The Esslinger Trust is a previous record owner of the Property. (Exhibit 5.)

Previous Commission Action

a. Prior Permit History

Several prior permits (with amendments thereto) have been granted by the Commission to the predecessor in interest to Driftwood Properties LLC, the Esslinger Family Trust, for storm drain improvements within their property that included a mobile home park and the subject property now owned by Driftwood Properties LLC: coastal development permits G5-95-286, 5-95-286, 5-95-286 A, 5-96-048[1], and 5-98-151. Some of these permits authorized development within the area that is the subject of this vested rights claim; however, most of the authorized development was to occur within the mobile home park.

On December 21, 1995 the Executive Director issued Emergency Permit G5-95-286 to the Laguna Terrace Mobile Home Park for drainage improvements consisting of removal of existing speed bumps, construction of wooden barriers, asphalt curbs and catch basins. None of the development authorized in the emergency action was to occur within the area subject to the vested rights claim. On August 16, 1996 the Commission approved coastal development permit 5-95-286, in-part being the follow-up to the emergency permit for construction of interim flood protection facilities, plus additional development including street modifications within the mobile home park, installation of catch basins, modifications to the storm drain system, construction of four debris control structures on the main canyon and side canyons, and a 45' by 50' by 6' deep detention/desilting basin with pipe connection to existing downdrain. Only the detention/desilting basin and pipe connection were to be within the area of the vested rights claim. An amendment to CDP 5-95-286 was approved by the Commission in May 1998 and consists of the installation of a 2,534 linear foot storm drain pipe in the right-of-way of a mobile home park road, lateral drains and an outlet structure. None of this additional development was proposed within the area of the vested rights claim.

Next, Coastal Development Permit 5-98-151 was approved by the Commission on August 13, 1998. The permit approved construction of a 140 foot long, 3 foot wide ditch and placement of an 18 inch diameter storm drain pipe. Grading of 50 cubic yards of cut and 15 cubic yards of fill was also approved. The storm drain would lead from a 50 by 50 foot retention basin and connect to a 48 inch storm drain pipe. The 18 inch diameter pipe approved under this permit was to replace an existing 18 inch pipe. The proposed ditch with pipe would extend from the detention/desilting basin approved within the vested rights claim area down a slope to the mobile home park located outside the vested rights claim area.

The permit was approved with three special conditions. Special condition 1 required a landscaping and erosion control plan for the area of slope disturbed by the project. Special Condition 2 required the applicant to inform the Executive Director of the location of the disposal site for the excess cut material. Special condition 3 required that coastal

[1] Coastal Development Permit application 5-96-048 was approved on the Administrative Calendar on May 8, 1996. The permit authorized removal of 2,000 to 2,500 cubic yards of sediment from the mouths of four canyons. None of this development was authorized in the area of the vested rights claim.

sage scrub in the project vicinity be flagged and all contractors made aware of its presence and the requirement to avoid impacts.

The special conditions of the permit were not met and the permit was not issued, however on September 16, 1999, the Commission approved an amendment to CDP 5-98-151 (5-98-151-A1) to construct 700 feet of 18-inch reinforced concrete pipe storm drain and six sediment basins on 7.78 acres of land. All of the development approved in this application would be within or partly within the area of the vested rights claim. The approval was subject to three conditions addressing required best management practices and approval from the Regional Water Quality Control Board. Although drainage devices were ultimately constructed on the property, that development was not consistent with the development approved by the Commission.

On December 13, 2007, the Executive Director issued Emergency Coastal Development Permit 5-07-440-G for the placement of up to 300 sandbags to add to an existing sandbag berm to raise the berm elevation such that water would be directed away from homes and toward the street and storm drain system. Existing sandbags stockpiled on a paved driveway were to be used - no additional sandbags were to be imported to the site to carry out the work proposed. No change to the footprint of existing sandbags located on the site was proposed. No vegetation clearance was proposed. As required by the permit, the sandbags were removed in March 2008.

b. Enforcement Actions

On October 24, 2005, staff received a report that an area around a watercourse on the Driftwood property had been cleared of vegetation. Staff confirmed during a meeting with a representative of Athens, in his capacity as an agent of Driftwood, on November 1, 2005, that a violation had occurred. According to Athens, in October of 2005, Athens, acting as an agent of Driftwood, cleared vegetation in three areas on the property for fuel modification purposes. Prior to the fuel modification activities, Athens hired biologists to flag sensitive species in the areas, so that those conducting the activities would not disturb or remove them. The biologists evaluated and flagged sensitive species in only two of the areas. The third area was overlooked, and Crownbeard was removed from that area.

Staff sent a violation letter to Athens on December 29, 2005, which confirmed receipt of a draft restoration plan that Athens had submitted and expressed staff's willingness to work cooperatively with Athens to resolve the violation amicably through a consent order. Between November 2005 and June 2006, Staff worked closely with Athens to reach an effective, amicable resolution to the violation. On June 23, 2006, authorized signatories for both Driftwood and Athens signed Consent Restoration Order No. CCC-06-RO-03. The Commission issued the order July 13, 2006.

c. Notice of Violation for Placement of Sandbags and Vegetation Clearance

In December 2005, Driftwood notified Commission staff that it planned to replace 500 of approximately 5,500 sandbags it stated were present on the property, which 500

sandbags are located along the terminus of the watercourse on the property. In January 2006, Driftwood submitted a CDP application, No. 5-06-014, for these replacement activities. That application was ultimately withdrawn in July 2006. A second application, No. 5-06-382, was submitted in October of 2006 that included a request for after-the-fact approval for the placement of approximately 5,500 sandbags and other pre-existing drainage control devices installed by a previous landowner, replacement of approximately 500 sandbags, and a 2-year maintenance provision allowing for future replacement of sandbags and drainage control devices. Permit application No. 5-06-382 was scheduled to be considered by the Commission on May 10, 2007, but was withdrawn by the applicant upon learning of staff's intent to recommend denial of the request. No subsequent application was filed, and, consequently, no CDP has been obtained for sandbags presently located on the property.

Commission staff also reviewed historical aerial and ground-level photographs, city records, and biological surveys, which showed that vegetation was removed from the areas in and adjacent to the pads located on the property on three occasions following the grading in the early 1960's: 1) at some time between 1979 and 1986, 2) at some time between 1993 and 1997 or 1998, 3) and again in 1999. None of these actions was authorized in a CDP. After the last of these instances, the disturbed areas were rapidly colonized by coastal sage scrub, southern maritime chaparral, including bigleaf crownbeard, and transitional or successional species. Had this site been left undisturbed following the grading in the early 1960's, it most likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral.[2] No CDPs were issued for the removal of major vegetation; placement of approximately 5,500 sandbags presently on the property, [3] sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads.

Commission staff sent a Notice of Violation letter to Driftwood on May 4, 2007.

[2] J. Dixon memo to R. Todaro re habitat characteristics on Athens Group property dated 04-16-07.
[3] Emergency Permit No. 5-07-440-G authorized the temporary placement of up to 300 sandbags on an existing unpermitted sandbag berm at the mouth of a watercourse on the property.

~~ORDINANCE NO. 350~~

~~AN ORDINANCE REGULATING THE ESTABLISHING, CONDUCTING AND CARRYING ON OF GUN CLUBS OR SHOOTING CLUBS IN THE COUNTY OF ORANGE, PROVIDING FOR THE GRANTING OF LICENSES THEREFOR, THE PRESCRIBING THE PENALTIES FOR THE VIOLATION OF ANY OF THE PROVISIONS OF SAID ORDINANCE.~~

Repealed by Ordinance No. 386.

ORDINANCE 351

AN ORDINANCE ESTABLISHING LAND CLASSIFICATIONS AND DISTRICTS WITHIN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY AND REGULATING THE USES OF PROPERTY THEREIN, ADOPTING SECTIONAL MAPS OF SAID DISTRICTS, DEFINING THE TERMS USED IN SAID ORDINANCE, PROVIDING FOR THE ADJUSTMENT, ENFORCEMENT AND AMENDMENT THEREOF AND PRESCRIBING PENALTIES FOR ITS VIOLATION.

The Board of Supervisors of the County of Orange do ordain as follows:

Section 1: GENERAL PURPOSE AND ADOPTION OF OFFICIAL USE PLAN.

For the public health, safety and general welfare and in order (1) to secure for the citizens of Orange County the social and economic advantages resulting from an orderly, planned use of its land resources, (2) to provide a definite, official land use plan for Orange County and (3) to guide, control and regulate the future growth and development of said county in accordance with said plan, there is hereby adopted and established an official Districting Plan for Orange County. Said plan is adopted pursuant to the authority of Chapter 833, Statutes of 1929, State of California.

Section 2: DEFINITIONS.

This ordinance, embodying and making effective the Land Use Plan of Orange County, shall be known as "The Districting Ordinance" and for the purpose of this ordinance certain words and terms are defined as follows:

Words used in present tense include the future, words in the singular number include the plural and words in the plural number include the singular; the word "building" includes the word "structure" and the word "shall" is mandatory and not directory. The term "Board of Supervisors" when used shall mean the Board of Supervisors of Orange County and "Planning Commission" shall mean the County Planning Commission of Orange County.

"Accessory Building": A subordinate building or portion of the main building, the use of which is incidental to that of the main building, on the same lot.

Where an accessory building is attached to and made a part of the main building, at least fifty per cent (50%) in length of one of the walls of such accessory building shall be an integral part of the main building and such accessory building shall comply in all respects with the requirements of this ordinance applicable to a main building. An accessory building, unless attached to and made a part of the main building as above provided for, shall be not closer than five (5) feet to the main building.

"Accessory Use": A use customarily incidental and accessory to the principal use of a lot or a building or other structure located upon the same lot as the accessory use.

"Alley": A public way which affords a secondary means of access to abutting property.

"Apartment House": Any building or portion thereof more than one (1) story in height, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three (3) or more families living independently of each other and doing their cooking in the said building.

"Automobile Court" or "Camp":

1. A group of two or more detached or semi-detached buildings, containing guest rooms and/or apartments with automobile storage space provided in connection therewith, used and/or designed for use primarily by automobile transients.

2. Land used or intended to be used for camping purposes by automobile transients.

"Basement": A story partly underground and having at least one-half (½) of its height, measured from its floor to its finished ceiling, above the average adjoining grade. A basement shall be counted as a story if the vertical distance from the average adjoining grade to its ceiling is over five (5) feet.

"Building": A structure having a roof supported by columns or walls.

"Building Height": The vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building to the ceiling of the uppermost story.

"Building Site": The ground area of a building or buildings together with all open spaces as required by this ordinance.

"Bungalow Court": Three or more detached one-story single or two-family dwellings located upon a single lot under one ownership together with all open spaces as required by this ordinance.

"Club": An association of persons for some common purpose but not including groups organized primarily to render a service which is customarily carried on as a business.

"Dwelling, One Family": A building containing but one kitchen, designed and/or used to house not more than one family, including all necessary employees of such family.

"Dwelling, Two-Family": A building containing not more than two kitchens, designed and/or used to house not more than two families, living independent of each other, including all necessary employees of each such family.

"Dwelling, Group": A combination or arrangement of dwellings, whether detached or not, on one (1) building site.

"Dwelling, Multiple Family": A building not more than one (1) story in height designed and/or used to house three or more families living independent of each other, including all necessary employees of each such family.

"Family": One person living alone or two or more persons living together whether related to each other or not.

"Garage, Private": An accessory building or an accessory portion of the main building designed and/or used only for the shelter or storage of vehicles owned or operated by the occupants of the main building.

"Home Occupation": Any vocation, trade or profession carried on within a dwelling by the inhabitants thereof, where only electric power not exceeding one (1) horsepower is used, no merchandise or other articles are displayed for advertising purposes and no assistants are employed except as permitted in certain districts.

"Hotel": Any building or portion thereof, containing six (6) or more guest rooms used or intended or designed to be used, let or hired out to be occupied, or which are occupied by six or more guests, whe-

ther the compensation for hire be paid directly or indirectly in money, goods, wares, merchandise, labor or otherwise and shall include hotels, lodging and rooming houses, dormitories, turkish baths, bachelor hotels, studio hotels, public and private clubs and any such building of any nature whatsoever so occupied, designed or intended to be occupied, except jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes and similar buildings where human beings are housed and detained under legal restraint.

"Kitchen": Any room used or intended or designed to be used for cooking and/or preparation of food.

"Lot": Any area of land under one ownership abutting upon at least one public street or a recorded easement.

"Lot, Corner": A lot located at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of the two streets, and having a width not greater than seventy-five (75) feet.

"Lot, Interior": A lot which is not a "corner lot" is an interior lot.

"Lot, Through": An "interior lot" having frontage on two (2) parallel or approximately parallel streets.

"Stand, Temporary": A movable structure used or intended to be used for a period not to exceed one (1) year for the display and/or sale of seasonal products of agricultural districts.

"Story": Any portion of a building included between the finished ceiling next above it, or the finished undersurface of the roof directly over that particular floor.

"Street": A public or private thoroughfare which affords a primary means of access to abutting property is a street to that property for the purpose of this ordinance.

"Structure": Anything constructed or erected and the use of which requires more or less permanent location on the ground or attachment to something having a permanent location on the ground, but not including walls and fences less than eight (8) feet in height and other improvements of a minor character.

"Structural Alterations": Any change in the supporting members of a building or structure such as bearing walls, columns, beams or girders, floor joists or roof joists.

"Yard": An unoccupied space on a lot on which a building is situated and, except where otherwise provided in this ordinance, open and unobstructed from the ground to the sky.

"Yard, Front": A yard extending across the front of the lot between the inner side yard lines and measured between the front line of the lot and either:

(a) The nearest line of the main building, or

(b) The nearest line of any enclosed or covered porch.

"Yard, Rear": A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building nearest said rear line of the lot.

"Yard, Side": A yard on each side of the building between the building and the side line of the lot and extending from the street line of the lot to the rear yard.

Section 3: **ESTABLISHING DISTRICTS AND LIMITING THE USES OF LAND THEREIN.**

In order to classify, regulate, restrict and segregate the uses of land, buildings and structures, and to regulate and restrict the height and bulk of buildings, and to regulate the area of yards, courts and other open spaces about buildings, the unincorporated territory of Orange County is hereby divided into twleve (12) Districts as follows:

RA—"Roadside Agricultural" Districts.
E1—"Estates" Districts.
E2—"Small Farms" Districts.
E3—"Mountain Estates" Districts.
R1—"Single Family Residence" Districts.
R2—"Group Dwelling" Districts.
R3—"Apartment" Districts..
C1—"Local Business" Districts.
C2—"General Business" Districts.
M1—"Light Industrial" Districts.
M2—"Unrestricted" Districts.
M3—"Unclassified" Districts.

The boundaries of said districts shall be determined and defined from time to time by the adoption of sectional district maps covering portions of Orange County, each of which said sectional district maps shall be, upon its final adoption, a part of the official Master Plan of said county.

Each sectional district map showing the classifications and boundaries of districts, after its final adoption in the manner required by law, shall be and become a part of this ordinance and said map and all notations, references and other information shown thereon shall thereafter be as much a part of this ordinance as if all the matters and information set forth by said map were fully described herein.

Where uncertainty exists as to the boundaries of any districts shown on said sectional district maps, the following rules shall apply:

(a) Where such boundaries are indicated as approximately following street and alley lines or lot lines, such lines shall be construed to be such boundaries.

(b) In unsubdivided property and where a district boundary divides a lot, the locations of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scale appearing on such sectional district map.

(c) In case any uncertainty exists, the Planning Commission shall determine the location of boundaries.

(d) Where a public street or alley is officially vacated or abandoned the regulations applicable to abutting property shall apply to such vacated or abandoned street or alley.

The boundaries of such districts as are shown upon any sectional district map adopted by this ordinance or amendment thereto are hereby adopted and approved and the regulations of this ordinance governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures and other matters as hereinafter set forth are hereby established and declared to be in effect upon all land included within the boundaries of each and every district shown upon each said sectional district map.

Except as hereinafter provided:

(1) No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designed

or intended to be used for any purpose or in any manner other than a use listed in this ordinance or amendments thereto as permitted in the district in which such land, building, structure or premises is located.

(2) No building or structure shall be erected nor shall any existing building or structure be moved, reconstructed or structurally altered to exceed in height the limit established by this ordinance or amendments thereto for the district in which such building or structure is located.

(3) No building or structure shall be erected, nor shall any existing building or structure be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area and yard regulations established by this ordinance or amendments thereto for the district in which such building or structure is located.

(4) No yard or other open space provided about any building or structure for the purpose of complying with the regulations of this ordinance or amendments thereto shall be considered as providing a yard or open space for any other building or structure.

Section 4: ESTABLISHING M-3 (UNCLASSIFIED) DISTRICTS.

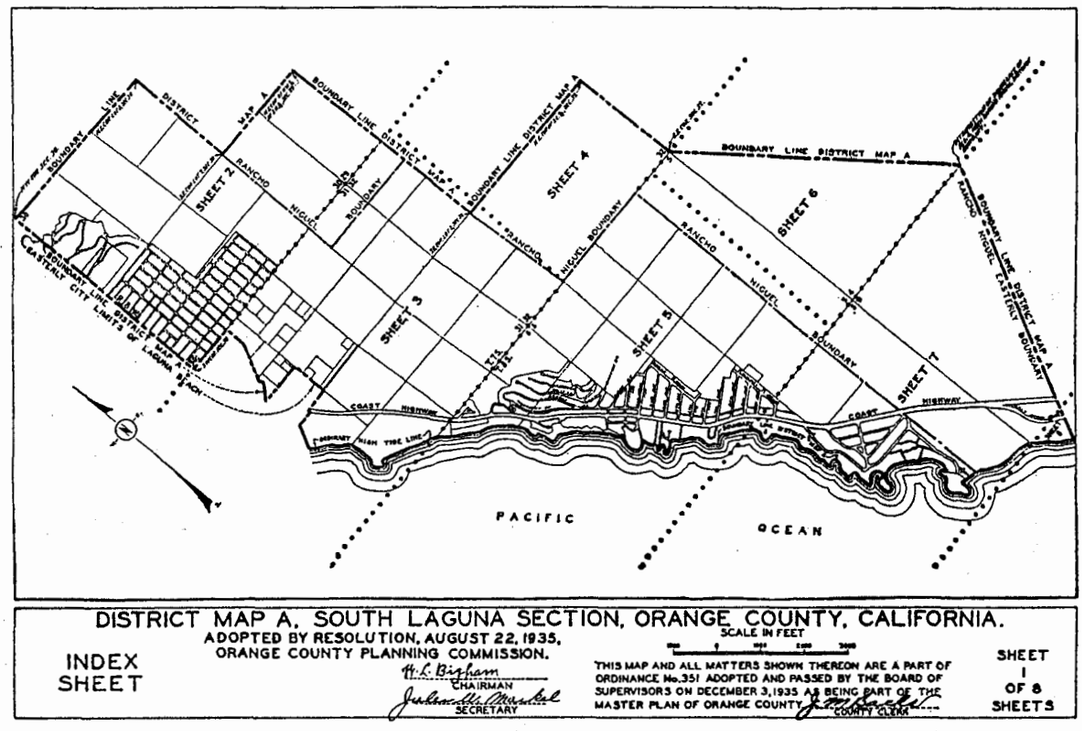
All the unincorporated territory of Orange County, including the National Forest and all privately owned land therein, which is not included in any other district or districts by the adoption of sectional district maps as provided in this ordinance or amendments thereto is hereby designated and established as an M-3 (Unclassified) District.

Except as provided in Section 17 of this ordinance, any land, building, structure or premises in the M-3 (Unclassified) District may be used, occupied or maintained for any purpose, provided, however, that no building, structure or improvement, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be erected, constructed, altered, enlarged or moved into or within said M-3 District until and unless a permit therefor shall first have been obtained as provided in this ordinance.

Section 5: ADOPTING SECTION DISTRICTS MAPS.

Each sectional district map of Orange County, as shown in the schedule below, is hereby adopted and made a part of this ordinance as a subsection of Section 5 hereof. Each sheet of each sectional district map, including each index sheet, shall be a sub-subsection of Section 5 hereof. All regulations governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures and other matters as set forth in this ordinance are hereby declared to be in effect within the several districts shown upon each and every sheet of the following official sectional districts maps of Orange County:

District Map A, South Laguna Section, Eight (8) Sheets
- Sheet 1, Index Map, Adopted Dec. 3, 1935
- Sheet 2, Adopted Dec. 3, 1935
- Sheet 3, Adopted Dec. 3, 1935
- Sheet 4, Adopted Dec. 3, 1935
- Sheet 5, Adopted Dec. 3, 1935
- Sheet 6, Adopted Dec. 3, 1935
- Sheet 7, Adopted Dec. 3, 1935
- Sheet 8, Adopted Dec. 3, 1935



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

H. L. Bigham CHAIRMAN

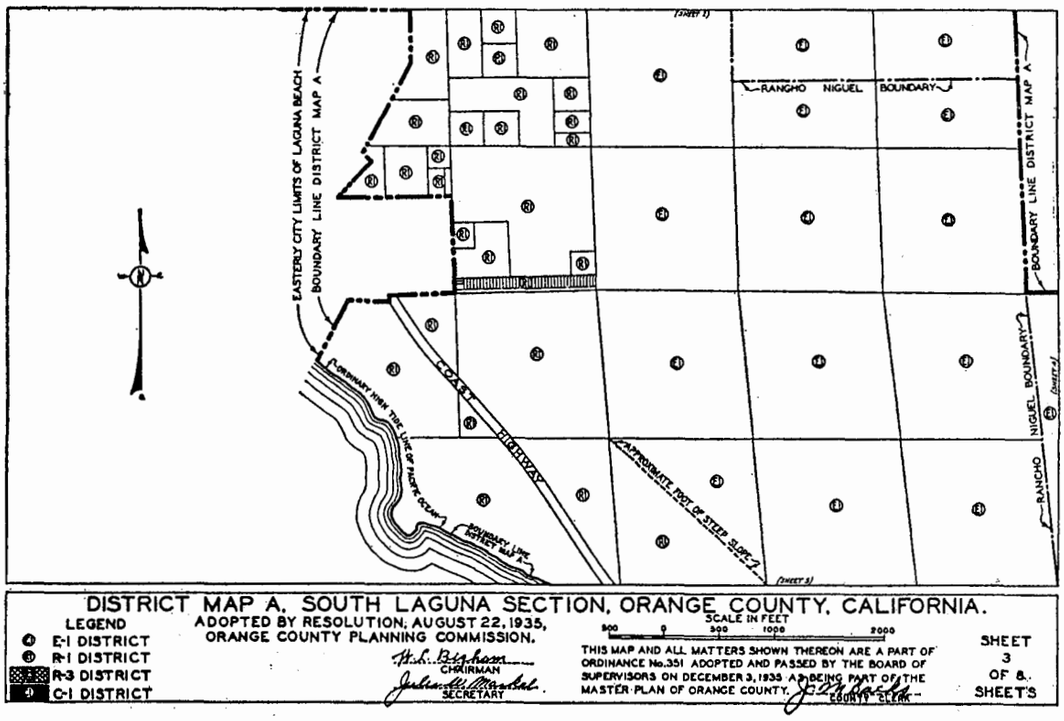
Julia M. Marshall SECRETARY

SCALE IN FEET

THIS MAP AND ALL MATTERS SHOWN THEREON ARE A PART OF ORDINANCE No. 351 ADOPTED AND PASSED BY THE BOARD OF SUPERVISORS ON DECEMBER 3, 1935 AS BEING PART OF THE MASTER PLAN OF ORANGE COUNTY. COUNTY CLERK

INDEX SHEET

SHEET 1 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
- E-1 DISTRICT
- R-1 DISTRICT
- R-3 DISTRICT
- C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.

W. L. Bigham CHAIRMAN

Julian W. Marshall SECRETARY

SCALE IN FEET 500 0 500 1000 2000

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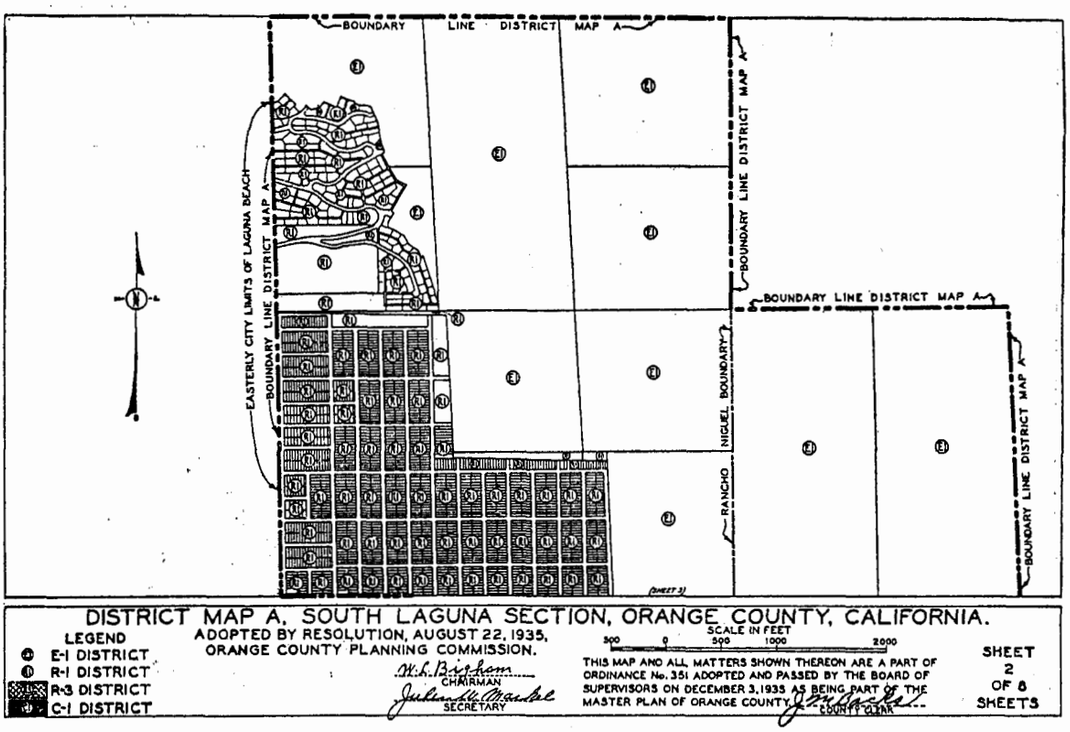
COUNTY CLERK

SHEET 3 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
- E-1 DISTRICT
- R-1 DISTRICT
- R-3 DISTRICT
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Julian W. Marshall SECRETARY

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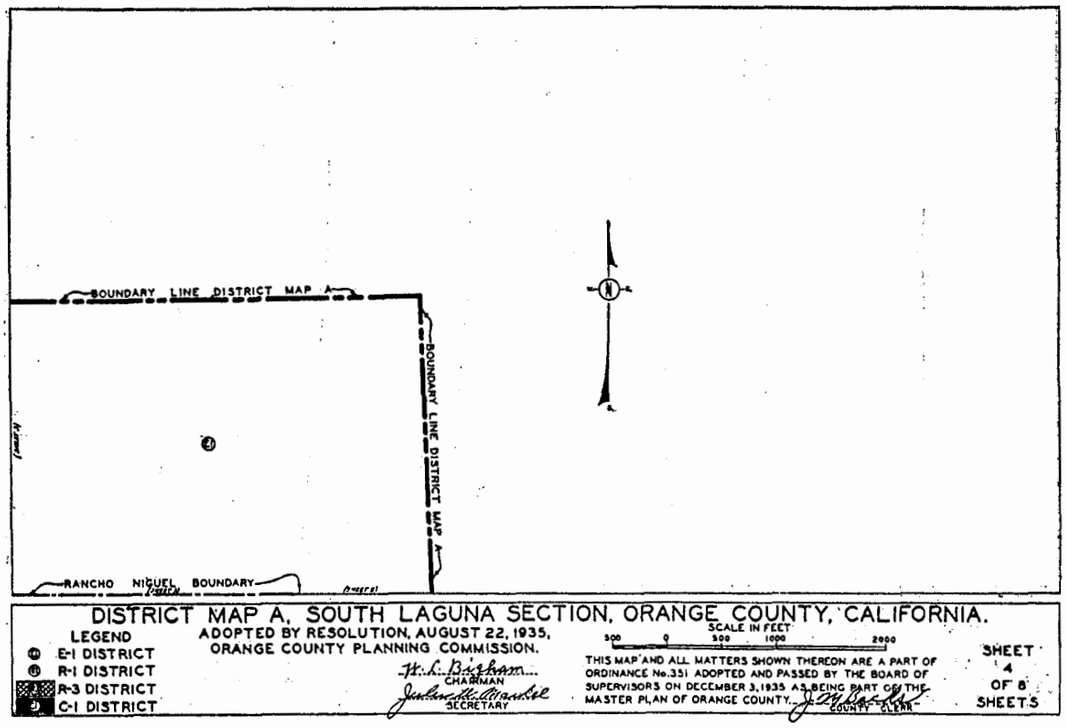
COUNTY CLERK

SHEET 2 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

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W. L. Bigham CHAIRMAN
Julian M. Mandel SECRETARY

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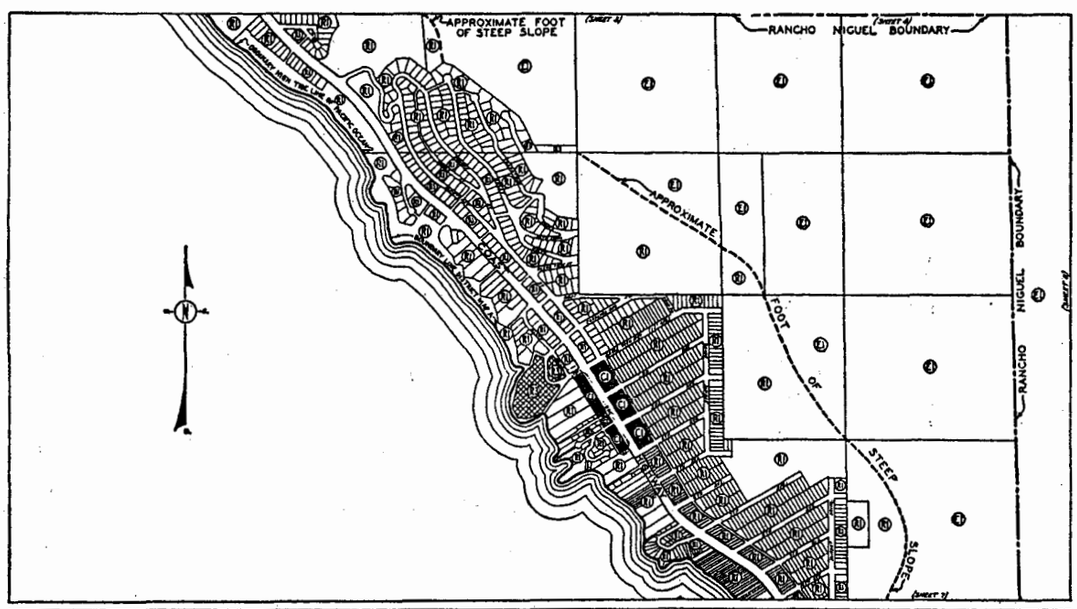
SHEET 4 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

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W. L. Bigham CHAIRMAN
Julian M. Mandel SECRETARY

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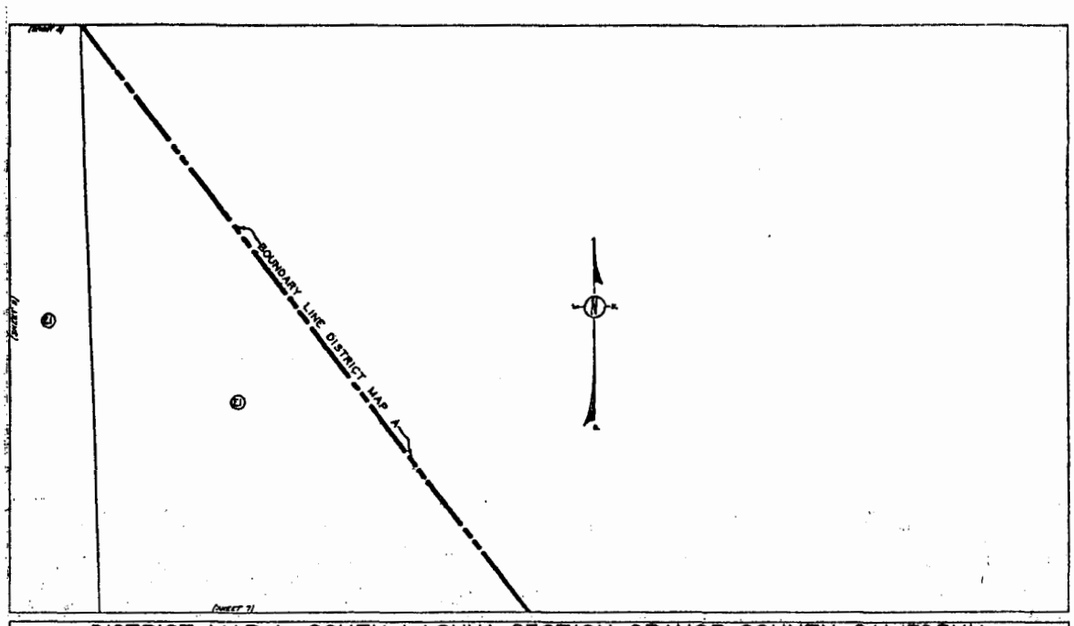
SHEET 5 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
E-1 DISTRICT
R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

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W. L. Bigham CHAIRMAN
Julian W. Mandel SECRETARY

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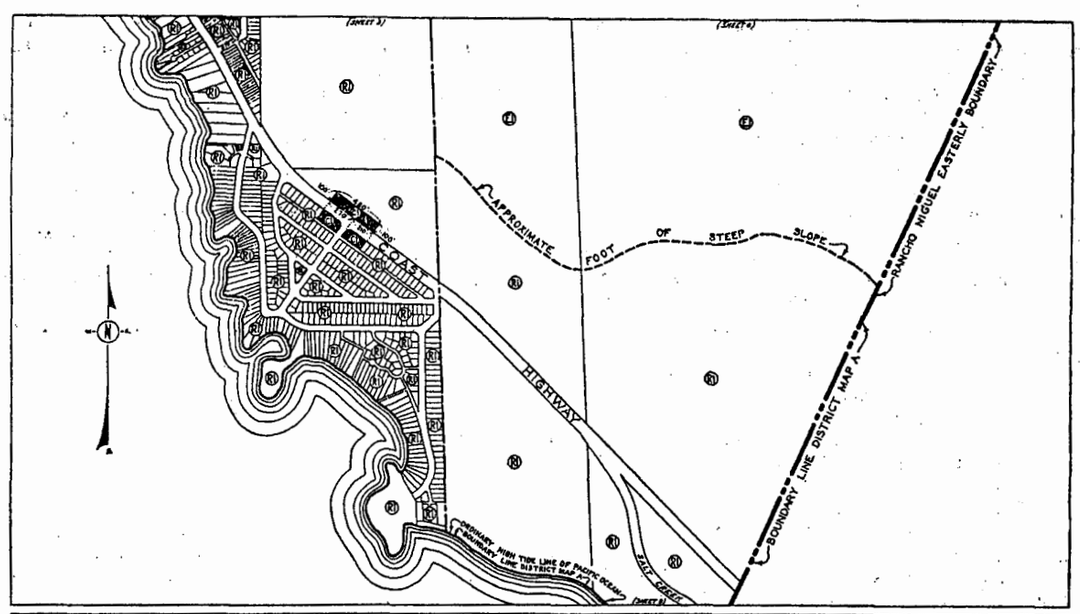
J. M. Backs COUNTY CLERK

SHEET 6 OF 8 SHEETS



DISTRICT MAP A, SOUTH LAGUNA SECTION, ORANGE COUNTY, CALIFORNIA.

LEGEND
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R-1 DISTRICT
R-3 DISTRICT
C-1 DISTRICT

ADOPTED BY RESOLUTION, AUGUST 22, 1935, ORANGE COUNTY PLANNING COMMISSION.
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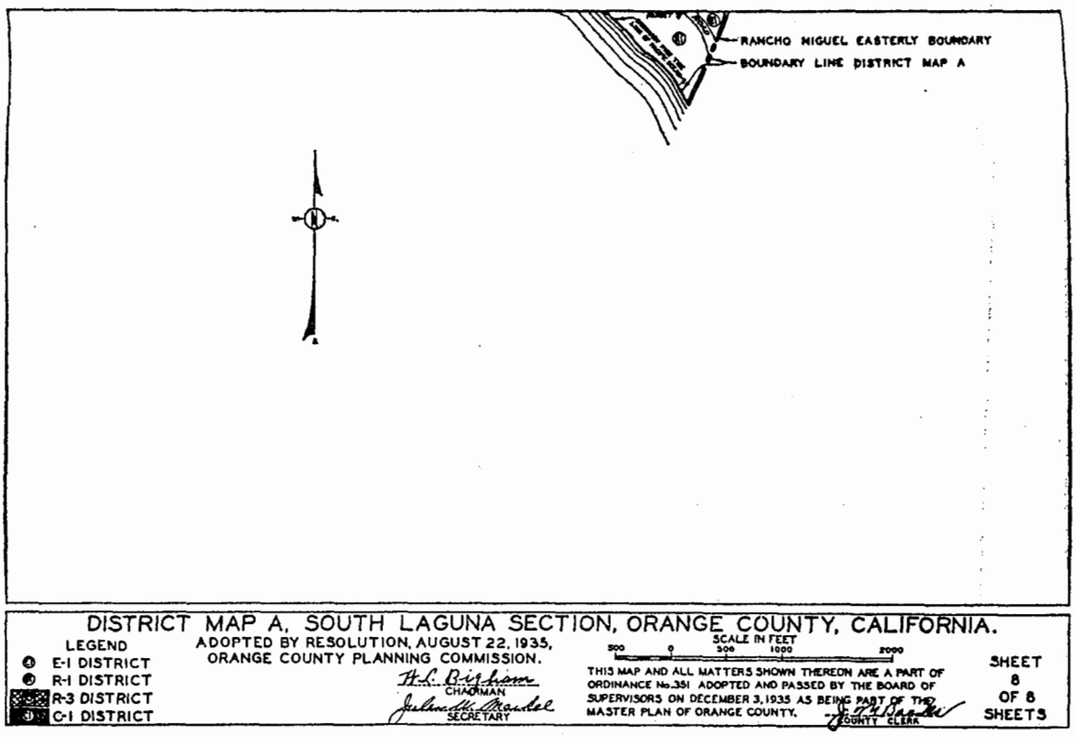
J. M. Backs COUNTY CLERK

SHEET 7 OF 8 SHEETS



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R-3 DISTRICT
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J. M. Backs COUNTY CLERK

SHEET 8 OF 8 SHEETS

Section 6: RA—"ROADSIDE AGRICULTURAL" DISTRICT REGULATIONS.

(a) Uses permitted

1—Agriculture, horticulture and general farming, including dairying, livestock and poultry raising, kennels, nurseries and greenhouses and other similar enterprises or uses, except ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Oil drilling and such storage facilities as are necessary to handle the production from each well, mining or quarrying and other earth-extraction industries, provided that no such use shall be permitted within five hundred (500) feet of any public park, school, or State Highway, or Class A county road as shown upon the official Highway Plan of Orange County, or any E1, E2, E3, R1, R2, or R3 District as established by official District Maps adopted under Section 5 hereof.

3—Airports and landing fields.

4—Golf, swimming, tennis, polo, yacht and country clubs, athletic fields, parks, playgrounds and recreation buildings of a public or quasi-public character, but not including race tracks, boxing or athletic arenas or any recreation or amusement enterprises operated on a commercial basis.

5—Churches, schools, colleges, hospitals, sanitariums and clinics.

6—One and two family dwellings, bungalow courts, dwelling groups, multiple family dwellings and apartment houses, including home occupations, offices and studios, provided not more than one (1) assistant is employed in connection therewith.

7—Accessory buildings, structures, and uses, and also special uses as provided in Section 18, including unlighted bulletin boards and signs, not exceeding an aggregate area of twenty (20) square feet, bearing official notices only or pertaining only to the sale of products grown or produced or services rendered upon the premises, or advertising only the lease, hire or sale of only the particular property upon which displayed. No billboard or other advertising sign, structure or device of any character shall be permitted in any RA (Roadside Agricultural) District.

8—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels.
b—Public utility buildings and structures.
c—Commercial stables.
d—Cemeteries, mausoleums and crematories.

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be six thousand (6000) square feet, and no two-family dwelling, bungalow court, dwelling group, multiple family dwelling or apartment house shall be permitted which provides less than one thousand (1000) square feet of land area per family or housekeeping unit.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, the main and accessory buildings shall be not less than one hundred (100) feet and all temporary buildings and structures not less than fifty (50) feet from the center line of the highway or road.

(e) Side Yard Required.

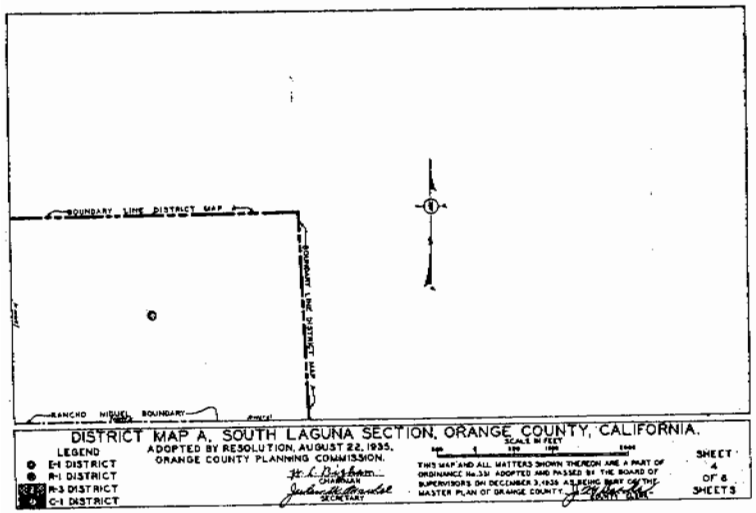
Minimum five (5) feet, except as provided in Sections 18 and 19.

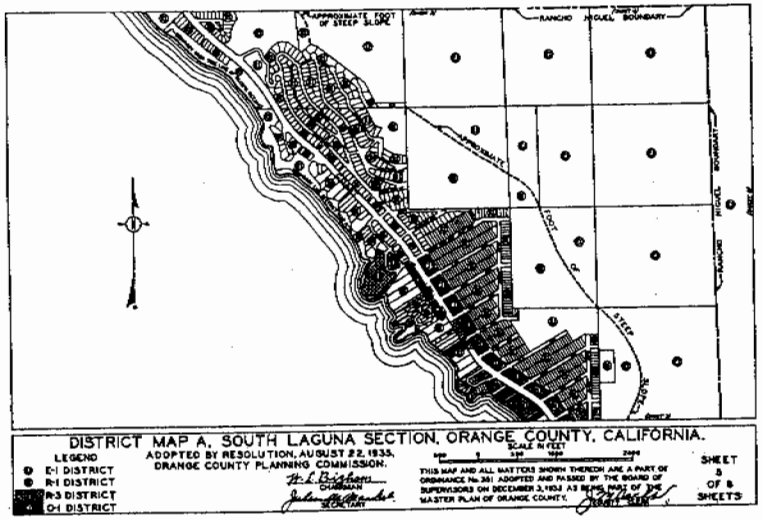
(f) Rear Yard Required.

Minimum twenty-five (25) feet, except as provided in Sections 18 and 19.

(g) Distance Between Dwellings on Same Lot.

No dwelling or other main building one (1) story in height shall be closer than ten (10) feet to any other dwelling or main building of equal height and no dwelling or other main building two (2) stories





in height shall be closer than fifteen (15) feet to any other dwelling or main building.

Section 7: E-1 "ESTATES" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming including all types of agriculture and horticulture except (a) commercial dairies (b) commercial kennels, rabbit, fox, goat and other animal raising farms (c) egg-producing ranches and farms devoted primarily to the hatching, raising, fattening and/or butchering of chickens, pigeons, turkeys and other poultry on a commercial scale (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Flower and vegetable gardening.

3—Nurseries and greenhouses used only for the purposes of propagation and culture and not for retail sales.

4—Public parks and golf, swimming, tennis, polo, yacht and country clubs and similar uses, but not including any sport, athletic recreation or amusement enterprise operated as a business or for commercial purposes.

5—One family dwellings of a permanent character placed in permanent locations, including permanent guest cottages and employees' quarters under conditions prescribed in Section 18.

6—Home occupations, offices and studios, provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

7—Accessory buildings, structures and uses, and also such special uses as provided in Section 18, including buildings and structures commonly required for the operation of an ordinary farm or ranch, provided each such building or structure is built in compliance with the yard regulations of the E1 (Estates) District.

8—One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising sign, structure or device of any character shall be permitted in any E1 (Estates) District.

9—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels
b Public utility buildings and structures
c—Commercial stables
d—Cemeteries, mausoleums and crematories
e—Churches, museums and libraries
f—Schools, colleges, public playgrounds and athletic fields
g—Airplane landing fields for private use.
h—High voltage power transmission lines

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site for each one family dwelling shall be one (1) acre.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no buildings shall be erected closer than seventy-five (75) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than twenty (20) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than fifty (50) feet.

Section 8: E-2 "SMALL FARMS" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming, including all types of argiculture and horticulture, kennels and small animal farms, poultry and squab farms and similar types of farming except commercial dairies having herds of five (5) or more cows, goat, hog and commercial livestock feeding ranches and farms operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Golf, polo, swimming, tennis, yacht and country clubs, but not including any sport, recreation or amusement enterprises operated as a business, or for commercial purposes.

3—Public parks, playgrounds and athletic fields.

4—One and two family dwellings.

5—Accessory buildings, structures and uses, and also such special uses as provided in Section 18.

6—Home occupations, provided not more than one (1) unlighted sign not exceeding two (2) square feet in area is displayed in connection therewith.

7—One (1) unlighted sign not exceeding six (6) square feet in area pertainingg only to the sale, lease or hirc of only the particular building, property or premises upon which displayed. Except as otherwise provided no other advertising sign, structure device of any character shall be permitted in any E2 (Small Farms) District.

8—Churches, museums, libraries.

9—Schools, colleges.

10—The following additional uses, subject to the issuance of conditional permits therefor, as prescribed in Section 19:

a—Residential hotels
b—Public utility buildings and structures
c—Commercial stables
d—Cemeteries, mausoleums and crematories
e—Airplane landing fields for private use
f—High voltage power transmission lines
g—Commercial dairies having herds of less than five (5) cows

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be twenty-thousand (20,000) square feet.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no buildings shall be erected closer than seventy-five (75) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than ten (10) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than forty (40) feet.

Section 9: E-3 "MOUNTAIN ESTATES" DISTRICT REGULATIONS.

(a) Uses permitted.

All uses permitted in the E-2 District. (See Section 8).

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be ten thousand (10,000) square feet.

(d) Front Yard Required.

Same as E-2 District. (See Section 8).

(e) Side Yard Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than thirty (30) feet wide.

(f) Rear Yard Required.

Same as E-2 District. (See Section 8).

Section 10: R-1 "SINGLE FAMILY RESIDENCE" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—Farming, including all types of agriculture and horticulture except (a) commercial dairies, (b) commercial kennels, rabbit, fox, goat and other animal-raising farms (c) egg producing ranches and farms devoted to the hatching, raising, fattening and/or butchering of chickens, turkeys and other poultry on a commercial scale, (d) hog and other livestock feeding ranches and (e) ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2—Flower and vegetable gardening.

3—Nurseries and greenhouses used only for purposes of propagation and culture and not for retail sales.

4—Public parks, golf, swimming, tennis, polo, yacht and country clubs and similar recreational uses, but not including any sport, athletic, recreation or amusement enterprise operated as a business or for commercial purposes.

5—One-family dwellings of a permanent character placed in permanent locations.

6—Home occupations, offices and studios provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.

7—Accessory buildings, structures and uses, and also such special uses as provided in Section 18, including buildings and structures commonly required for the operation of an ordinary farm or ranch of ten (10) or more acres, provided each such farm or ranch accessory building is built not closer than 100 feet to any public street or highway or exterior property boundary.

8—One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising signs, structures or devices of any character shall be permitted in any any R1 (Single Family Residence) District.

9—*The following additional uses, subject to the issuance of conditional permits therefor, as* prescribed in Section 19:

a—Residential hotels
b—Public utility buildings and structures
c—Churches, museums and libraries
d—Schools, colleges, public playgrounds and athletic fields

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area for each one-family dwelling shall be six thousand (6000) square feet.

(d) Front Yard Required.

Except as provided in Sections 18 and 19, no building shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(e) Side Yards Required.

Except as provided in Sections 18 and 19, each side yard shall be not less than five (5) feet wide.

(f) Rear Yard Required.

Except as provided in Sections 18 and 19, the depth of the rear yard shall be not less than twenty-five (25) feet.

Section 11: R-2 "GROUP DWELLINGS" DISTRICT REGULATIONS.

(a) Uses Permitted.

1—All uses permitted in the R-1 District (See Section 10).
2—Two family dwellings.
3—Dwelling groups, bungalow courts and multiple family dwellings.
4—Schools, colleges, churches, libraries and museums.

(b) Building Height Limit.

Two (2) stories and not to exceed thirty-five feet, except as provided in Section 18.

(c) Building Site Area Required.

Except as provided in Sections 18 and 19, the minimum building site area shall be six thousand (6000) square feet and no two family dwelling, bungalow court, dwelling group or multiple family dwelling shall be permitted which provides less than one thousand (1000) square feet of land area per family or housekeeping unit.

(d) Front Yard Required.

Same as R-1 District (See Section 10).

(e) Side Yards Required.

Except as provided in Sections 18 and 19, each side yard shall have a minimum width of five (5) feet and such side yard shall be increased by two and one-half (2½) feet for each dwelling or family unit in excess of two (2) served by such side yard, but in no case to exceed ten (10) feet.

(f) Rear Yard Required.

Same as R-1 District (See Section 10).

(g) Distance Between Dwellings on Same Lot.

Except as provided in Sections 18 and 19, the minimum building site for each dwelling shall be six thousand (6000) square feet.

(d) Front Yard Required.

Same as the C1 District (See Section 13).

(e) Side Yards Required.

Same as the C1 District. (See Section 13).

(f) Rear Yard Required.

Same as the C1 District (See Section 13.)

Section 16: M-2 "UNRESTRICTED" DISTRICT REGULATIONS.

(a) Uses permitted

Any use except for residential purposes and those uses prohibited by law.

(b) Building Height Limit.

None.

(c) Front Yard Required.

Same as the C-1 District (See Section 13).

(d) Side Yard Required.

None.

(e) Rear Yard Required.

Same as C-1 District (See Section 13).

Section 17: M-3 "UNCLASSIFIED" DISTRICT REGULATIONS.

(a) Uses Permitted.

Any uses not otherwise prohibited by law, except the following types of industries and land uses when located within five hundred (500) feet of any occupied dwelling except such as may exist upon the property, any public park or school, State Highway, Class A county road as shown upon the official Highway Plan of Orange County, subdivided lands restricted to residential use by recorded deed restrictions, any E1, E2, E3, R1, R2 or R3 Districts as established by this ordinance or amendments thereto.

Acid manufacture
Asphalt mixing plant
Cement, lime and gypsum manufacture
Distillation of bones
Dog and cat food factory
Fish cannery
Manufacture or storage of explosives
Fertilizer works
Garbage, offal or dead animal reduction or disposal
Gasoline or oil storage above ground, except petroleum products stored for private use
Glue manufacture
Oil refining
Quarries
Ranches for the feeding of garbage to hogs or other animals
Rock crushing
Rubbish dumps
Slaughter house

(b) Building Site Required.

Except as provided in Sections 18 and 19, the minimum building site for each dwelling shall be six thousand (6000) square feet.

Section 18: GENERAL PROVISIONS AND EXCEPTIONS.

The foregoing regulations shall be subject to the following exceptions:

(a) Uses.

1—In the RA (Roadside Agricultural) E2 (Small Farms) and E3 (Mountain Estates) Districts, temporary stands for the sale of products grown or produced on the premises shall be permitted as accessory uses provided the applicant for permit to erect such stand agrees to remove same during seasons when not in use.

2—In the E1 (Estates) District, accessory buildings shall be held to include guests' cottages, provided not more than one (1) guest cottage is built for each acre of land comprising the building site and each said guest cottage is built in conformity with the yard regulations of said E-1 District.

3—The following accessory uses, in addition to those hereinbefore mentioned, shall be permitted in any district, provided that such accessory uses do not alter the character of the premises in respect to their use for the purpose permitted in such respective districts.

(a) The renting of rooms and/or the providing of table board for not to exceed five (5) paying guests in a dwelling as an accessory use to that of its occupancy as a dwelling of the character permitted in the respective districts.

(b) The operation of necessary facilities and equipment in connection with schools, colleges, universities, hospitals and other institutions permitted in the respective districts.

(c) News and refreshment stands in connection with passenger stations.

(d) Recreation, refreshment and service buildings in public parks, playgrounds and golf courses.

(e) Real estate offices of a temporary character when built according to plans and in locations approved by the Planning Commission.

(b) Height)

1—Towers, gables, spires, penthouses, scenery lofts, cupolas, water tanks, silos, artificial windbreaks, wind mills and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the district in which such structures are located, provided, however, that no structure in excess of the allowable building height shall be used for sleeping or eating quarters or for any commercial purpose other than such as may be incidental to the permitted uses of the main building.

2—Where the average slope of a lot is greater than one (1) foot rise or fall in seven (7) feet of distance from the established street elevation of the property line an additional story will be permitted on the downhill side of any building.

(c) Area Exceptions.

1—Any lot shown upon an official subdivision map duly approved and recorded or any lot for which a deed is of record in the office of the County Recorder of Orange County or any lot for which a contract of sale is in full force and effect at the time this ordinance becomes effective may be used as a building site.

2—Front yard regulations in each district shall be subject to modification where official highway maps have been adopted establishing definite future widths for highways as shown upon the official Highway Plan of Orange County. The front yards required in the several districts shall be measured from the proposed street and highway lines as shown upon the official highway maps and shall be as follows:

Where the Official Highway Width is	80 Ft.	100 Ft.	120 Ft.
In the RA District the Front Yard shall be	25 Ft.	25 Ft.	25 Ft.
" " E1 " " " " " "	35 "	25 "	15 "
" " E2 " " " " " "	25 "	25 "	15 "
" " E3 " " " " " "	25 "	25 "	15 "
" " R1 " " " " " "	25 "	25 "	15 "
" " R2 " " " " " "	25 "	15 "	15 "
" " R3 " " " " " "	15 "	15 "	10 "
" " C1 " " " " " "	15 "	15 "	.. "

3—On streets eighty (80) feet or more in width when not shown upon the official Highway Plan of Orange County the front yard shall be equal to one-fifth (1/5) of the width of the street.

4—In computing the depth of a rear yard from any building where such yard opens on a street, alley, public park or beach, one-half (½) of the width of such street, alley, park or beach may be deemed to be a portion of the rear yard.

5—A detached accessory building not exceeding one (1) story in height may occupy not more than fifty (50) percent of the area of a rear yard.

6—Detached accessory buildings in Districts RA, E1, E2, E3, R1, R2 and R3, shall conform to the following regulations as to their location upon the lot, provided, however, that where the slope of the front half of the lot is greater than one (1) foot rise or fall in a seven (7) foot run from the established street elevation at the property line, or where the elevation of the front half of the lot is more than four (4) feet above or below the established street elevation at the property line, a private garage may be built to the street and side lines.

a—In the case of an interior lot abutting upon one street no detached accessory building shall be erected, altered or moved so as to encroach upon the front half of the lot.

b—In the case of an interior lot abutting upon two or more streets, no accessory building shall be erected, altered or moved so as to encroach upon the one-quarter (¼) of the lot nearest either street.

c—In the case of a corner lot abutting upon two (2) streets, no accessory building shall be erected, altered or moved so as to encroach upon the area between such respective streets and lines drawn parallel to such streets respectively in a manner to divide the lot into two (2) equal areas.

d—In case of a corner lot abutting on more than two (2) streets no detached accessory building shall be erected, altered or moved so as to be nearer any street line than one-fifth (1/5) of the width or length of the lot.

e—No detached accessory building shall be erected, altered or moved so as to be within five (5) feet of the side line of the front half of an adjacent lot.

f—Notwithstanding any requirements in this section, the foregoing rules shall not require any detached accessory building to be more than seventy-five (75) feet from any street bounding the lot.

7—Porches, terraces and outside stairways, unroofed, unenclosed, above and below floor, or steps, shall not project more than three (3) feet into any rear or side yard.

Section 19: VARIANCES AND CONDITIONAL PERMITS.

The Board of Supervisors, after receipt of a report and the recommendation of the Planning Commission in each case, as hereinafter provided, shall have the power to grant adjustment and variances in the application of provisions of this ordinance, and to authorize the issuance of conditional permits for the following purposes:

1—To authorize under such conditions as the Planning Commission may prescribe the issuance of permits for the use of lots in any subdivision pending the amendment of district boundaries within said subdivision in accordance with recommendation of the Planning Commission, provided the map of such subdivision has been approved by the Planning Commission and the Board of Supervisors subsequent to the passage of this ordinance and is duly recorded in the office of the County Recorder of Orange County.

2—To authorize the issuance of permits for the use of lots for dwelling purposes only for seasonal and recreational use having areas less than six thousand (6000) square feet when located in a subdivision of beach sand property adjacent to and within one thousand (1000) feet of tide water of the Pacific Ocean, provided the map of such subdivision has been approved by the Planning Commission and the Board of Supervisors subsequent to the passage of this ordinance and is duly recorded in the office of the County Recorder of Orange County, such authority to be granted only upon the following conditions:

a—Application for variance to be made by the subdivider at the time of filing of subdivision map for the approval of the Planning Commission.

b—Minimum lot area to be four thousand (4000) square feet.

c—Minimum lot width to be forty (40) feet.

d—Minimum front and rear yards to be ten (10) feet each.

e—Minimum side yards to be four (4) feet each.

f—Maximum height of dwellings two (2) stories and not to exceed thirty-five (35) feet.

g—All other regulations of the District not in conflict with the above requirements to be complied with.

3—To allow the use, for any purpose permitted in a C-1 (Local Business) District, of land in any district abutting such C-1 District when such land is contiguous to or within one hundred feet of any land or building used for commercial purposes within any C-1 District or any land or building used for commercial purposes under any conditional permit issued pursuant to this authority.

4—To allow a reduction of lot area requirements and front, side and rear yard regulations where in the judgment of the Planning Commission the shape of the building site, topography, the location of existing buildings or other conditions make a strict compliance with said regulations impossible without practical difficulty or hardship, but in no case except as hereinafter provided shall these regulations be reduced more than fifty (50) percent, or in such a manner as to violate the intent and purpose of this ordinance.

5—To adjust front yard requirements on existing streets or ways less than forty (40) feet in width where, in the judgment of the Planning Commission, such streets or ways are of minor importance for traffic purposes.

6—To allow the extension of a district where the boundary line thereof divides a lot in one ownership at the time of the passage of this ordinance.

7—To allow the construction of commercial buildings with sidewalks, arcades, or similar architectural features where such construction requires a variance of front yard regulations and is in conformity with a general architectural plan applicable to the entire frontage of a block.

8—To allow specified types of uses and buildings in the RA, E1, E2, E3, R1, R2 and R3 Districts, as provided in the use regulations of such districts, under conditions which will preserve the integrity and character of the district, the utility and value of adjacent property and the general welfare of the neighborhood, such conditions being specifically as follows:

a—Temporary stands, upon condition that (1) design of the stand be approved by the Building Inspector, (2) the stand be removed when not in use.

b—Residential hotels, upon condition (1) the building site contain not less than ten (10) acres, (2) building coverage not to exceed thirty-five (35) percent of the area of the site, (3) fifty (50) percent or more of the guest rooms be provided in detached buildings and (4) all building and plot plans be approved by the Planning Commission.

c—Public utility buildings and structures, upon condition that all plans be approved by the Planning Commission.

d—Commercial Stables, upon condition that the location and building plans all have approval of the Planning Commission.

e—Cemeteries, mausoleums and crematories, upon condition that (1) the area of any cemetery be not less than forty (40) acres and (2) that all landscape and architectural plans be approved by the Planning Commission.

f—Churches, museums and libraries, upon condition that (1) the location and building and plot plans be submitted and approved by the Planning Commission.

g—Schools, colleges, public playgrounds and athletic fields, upon condition that (1) an area adequate, in the judgment of the Planning Commission, be provided to reduce possibility of injury to adjoining residential properties and (2) building and plot plans to be approved by the Planning Commission.

h—Airplane landing fields for private use, upon condition that (1) the location and all plans be approved by the Planning Commission.

i—High voltage power transmission lines, upon condition that the location plans be approved by the Planning Commission before purchase of rights-of-way.

j—Commercial dairies, having herds of less than five (5) cows, provided that no feeding pens, milking sheds and other buildings or structures designed or used for confinement of the herd be located closer than five hundred (500) feet to any occupied dwelling except such as may be located upon the premises.

k—Apartment hotels, upon condition that (1) the area covered by buildings shall not exceed forty (40) percent of the area of the building site, (2) necessory commercial uses shall have no direct entrances from any street and shall maintain no signs or advertising displays of any kind visible from the exterior and (3) all building and plot plans shall be approved by the Planning Commission.

l—Storage garages, upon condition that the location and building plans be approved by the Planning Commission.

9—To permit the reconstruction and/or remodeling of a non-conforming building in accordance with plans and specifications approved by the Planning Commission where in the judgment of said Commission such reconstruction and/or remodeling will, in the matter of front, side and rear yards, structural character and exterior appearance of said building, make said non-conforming building safer and more healthful and bring it and its subsequent uses into fairer conformity with its surroundings.

Application for any permissible variance of regulations or for any special use as provided herein shall be made to the Planning Commission in the form of a written application for a permit. Said application shall be accompanied by:

a—Complete plans and description of the property involved and the proposed use with ground plans and elevations of all proposed buildings and structures.

b—Evidence, satisfactory to the Planning Commission of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six (6) months after issuance of permit.

Upon receipt in proper form of any such application, the Planning Commission shall post said application and all maps, plans and other accompanying material in its offices for public inspection for a period of not less than one (1) week and shall hold a public hearing thereon, notice of which shall be given by one (1) publication in a legal newspaper circulating in the particular section of the county affected by said application: At said hearing the applicant shall present a statement and adequate evidence, in such form as the Planning Commission may require, showing:

1—That there are special circumstances or conditions applicable to the property referred to in the application.

2—That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.

3—That the granting of such application will not materially affect the health or safety of persons residing or working in the neighborhood and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

If the Planning Commission finds that detriment or injury to the neighborhood will not result from issuance of a permit as applied for it may approve said permit and transmit the same together with the complete report of its findings and recommendations to the Board of Supervisors for approval and endorsement. In the event the Planning Commission disapproves any such application, no permit shall be issued therefor except upon order of the Board of Supervisors passed by a full affirmative vote of all members thereof.

In approving any variance or recommending the issuance of any conditional permit under the provisions of this section, the Planning Commission shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulation or provision to which such variance is granted or provide adequately for the maintenance of the integrity and character of the district in which such conditional permit is granted. Where necessary, the Board of Supervisors may require guarantees, in such form as it may deem proper under the circumstances, to insure that the conditions designated in connection therewith are being or will be complied with.

Section 20: NON-CONFORMING USES.

The lawful use of land existing at the time of the passage of this ordinance, although such use does not conform to the provisions hereof, may be continued, but if such non-conforming use is discontinued any future use of said land shall be in conformity with the provisions of this ordinance.

The lawful use of a building existing at the time of the passage of this ordinance may be continued,

although such use does not conform with the provisions hereof, and such use may be extended throughout the building provided no structural alterations, except those required by law or ordinance or permitted under Section 19 of this Ordinance, are made therein. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification.

No existing building designed, arranged or intended for or devoted to a use not permitted under the regulations of this ordinance for the district in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a use permitted under the regulations specified by this ordinance for such district in which said building is located; provided, however, that work done in any period of twelve (12) months on ordinary structural alterations or replacements of walls, fixtures or plumbing not exceeding twenty-five (25) percent of the assessed value of the building according to the assessment thereof by the Assessor of the County for the fiscal year in which such work is done shall be permitted, provided that the cubical contents of the building as it existed at the time of the passage of this ordinance be not increased.

If at any time any building in existence or maintained at the time of the adoption of this ordinance which does not conform to the regulations for the district in which it is located, shall be destroyed by fire, explosion, Act of God or act of the public enemy to the extent of more than seventy-five (75) percent of the assessed value thereof, according to the assessment thereof by the said Assessor for the fiscal year during which such destruction occurs, then and without further action by Board of Supervisors the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by this ordinance for the district in which such land and building are located.

The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed.

In every case in which, under the provisions of any ordinance of Orange County, or any statute in effect at the time this ordinance takes effect, a license or permit is required for the maintenance of any structure or the establishing, maintaining and/or conducting of any business use, and any structure or business use exists as a non-conforming use under the provisions of this ordinance, then no such license or permit shall be authorized, issued, renewed, reissued or extended for said business use unless and until a use and occupancy permit shall first have been secured for the continued maintenance of said structure or use.

Section 21: INTERPRETATION, PURPOSE AND CONFLICT.

In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity or general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings, or requires larger space than is imposed or required by other ordinances, rules or regulations, or by easements, covenants or agreements, the provisions of this ordinance shall govern.

Section 22: BUILDING PERMITS.

Before commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure within any district shown upon any sectional district map of Orange County duly adopted and made a part of this ordinance or any M-3 (Unclassified) District established hereunder, a permit for each separate building and/or structure, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be secured from the Building Inspector of said county by the owner or his agent for said work and it shall be unlawful to commence said work until and unless said permit shall have been obtained.

The issuance of a building permit under the authority of this section shall not be deemed or construed to permit or authorize any violation of any of the provisions of this ordinance or amendments thereto or of any other ordinance or law.

Section 23: CERTIFICATES OF USE AND OCCUPANCY.

No vacant land in any district established under the provisions of this ordinance except in an M-2 (Unrestricted) and an M-3 (Unclassified) District, shall hereafter be occupied or used, except for agricultural uses other than livestock farming or dairying, and no building hereafter erected, structurally altered or moved in any such district shall be occupied or used until a certificate of use and occupancy shall have been issued therefor by the aforesaid Building Inspector.

Application for a certificate of use and occupancy for a new building, or for an existing building which has been altered or moved shall be made at the same time as the application for a building permit. Said certificate shall be issued within three (3) days after a written request for the same shall have been made to the said Building Inspector after the erection, alteration or moving of such building or part thereof shall have been completed in conformity with the provisions of this ordinance. Pending the issuance of such a certificate, a temporary certificate of use and occupancy may be issued by the said Building Inspector for a period of not exceeding six (6) months during the completon of alterations or during partial occupancy or use of a building pending its completion. Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the County relating to the use or occupancy of the premises or any other matter covered by this ordinance, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

Written application for a certificate of use and occupancy for the use of vacant land or for a change in the character of the use of land, as herein provided, shall be made before any such land shall be so occupied or used, except for agricultural purposes other than livestock farming or dairying. Such a certificate of use and occupancy shall be issued within three (3) days after the application therefor has been made, provided such use is in conformity with the provisions of this ordinance.

Every certificate of use and occupancy shall state that the building or proposed use of building or land complies with all provisions of law and of this ordinance. A record of all certificates of use and occupancy shall be kept on file in the office of the said Building Inspector and copies shall be furnished on request, to any person having a proprietary or tenancy interest in the building or land affected. No fee shall be charged for a certificate of use and occupancy.

No permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy.

Section 24: PLANS.

All applications for building permits shall be accompanied by a drawing or a plot plan made to scale, showing the lot and the building site or sites, the proposed location of the building or buildings on the lot, accurate dimensions of building and lot and such other information as may be necessary to provide for the enforcemsnt of this ordinance.

Section 25: APPROVAL OF PLANS.

Before any building or structure which is designed or intended to be used for commercial purposes is erected, constructed, altered or moved within a C1 or C2 District, upon property abutting any Primary or Secondary State Highway, or Class A county road, as shown upon any official Highway Plan of Orange County, drawings or sketches showing the exterior elevations of the proposed building or structure, the types of materials and colors to be used, and signs to be displayed shall be filed with the Planning Commission and shall be approved by said Planning Commission or its designated agent before any permit for the construction of said building or structure shall be issued.

The Planning Commission may designate the Building Inspector of Orange County as its agent to receive and approve said plans in behalf of said Commission when in his judgment the plans conform to the general architectural requirements established for the district in which the building is to be located. The Building Inspector shall act upon all such plans within thirty (30) days after their receipt, and failure to notify the applicant of disapproval of said plans within such period, unless the applicant consents to an extention of time, shall constitute approval of the plans insofar as this section of this ordinance is concerned.

For the guidance of the Building Inspector in passing upon all plans submitted in compliance with this section, the Planning Commission shall by resolution duly recorded in its minutes adopt certain general rules and specifications and such illustrative architectural drawings showing desirable standards and types of design, materials, colors and styles of signs and lettering as will provided a basis and guide for the approval of plans for proposed buildings in each C1 and C2 District. The Planning Commission shall appoint and designate one of its members as chairman of an unofficial Architectural Advisory Committee of three (3), two of whom shall be registered architects, to cooperate with the Building Inspector and to serve with him in behalf of the Planning Commission in passing upon architectural plans filed as required herein.

In reviewing and judging such plans, the Building Inspector shall give primary consideration to the general rules, specifications and official illustrative material designated by the Planning Commission as controlling with respect to the particular district in which the proposed building is to be erected, constructed, altered or moved. If the Building Inspector acting as agent of the Planning Commission and after consultation with the Architectural Advisory Committee disapproves any plan, he shall immediately file said plans and a statement of his reasons for disapproval with the secretary of the Planning Commission. The Planning Commission, not later than its first regular meeting thereafter, shall either approve said plans or any revision thereof and direct the Building Inspector to issue a permit for the building in question or disapprove the plans.

In case of final disapproval by the Planning Commission of any plans submitted in compliance with this section, copies of the plans with the findings of the Planning Commission and reasons for their disapproval attached shall be filed immediately with the Clerk of the Board of Supervisors and said Board at its next regular meeting shall either approve said plans and order the issuance of a permit for the building in question or return the plans to the applicant with a statement indicating the reasons for disapproval.

Section 26: COMPLETION OF BUILDING.

Nothing hersin contained shall require any change in the plans, construction or designated use of a building for which a building permit has heretofore been issued and upon which actual construction has begun.

Actual construction is hereby defined to be the actual placing of construction materials in their permanent position fastened in a permanent manner, except that where a basement is being excavated such excavating shall be deemed to be actual construction or where demolishing or removal of an existing building or structure has been begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, providing in all cases that actual construction work be diligently carriend on until the completion of the building or structure involved.

Section 27: AMENDMENTS AND CHANGES OF DISTRICT BOUNDARIES.

The Board of Supervisors of the County of Orange may from time to time, after report thereupon by the Planning Commission and after public hearings as required by law, amend, supplement or change the regulations and districts herein or subsequently established. An amendment, supplement or change may be initiated by the Board of Supervisors, by the Planning Commission, or by petition of property owners.

Whenever the owner of any land or building desires a re-classification of his property he shall present to the Board of Supervisors a petition duly signed and acknowledged by him requesting an amendment, supplement or change of the regulations prescribed for such property. The Board of Supervisors shall refer the petition to the Planning Commission for such hearings as may be required by law for amendments, extensions or additions to the districting plan, for recommendations upon the boundaries of the district to be changed and such other matters as may be related to said petition, and shall take final action upon said petition within ninety (90) days after the filing thereof.

The Board of Supervisors after receipt of report and recommendation from the Planning Commission, shall hold a final hearing thereupon, duly advertised as required by law. If at the time of the final hearing before the Board of Supervisors a protest against such amendment, supplement or change is presented duly signed and acknowledged by the owners of twenty (20) percent or more of the area for which a change of classification is requested or proposed, or by the owners of twenty (20) percent of all dwellings within three hundred (300) feet thereof, or by the owners of twenty (20) percent of all land adjacent thereto and within three hundred (300) feet thereof, no such amendment, change or supplement shall be adopted except by a four-fifths (4/5) vote of the full membership of the Board of Supervisors.

The Planning Commission is authorized to make a uniform charge not to exceed ten dollars ($10.00) payable to the County Treasurer, to partially cover the cost of making maps, sending out notices and other incidental administrative expenses involved in any petition for a change in these regulations, said charge being due and payable at the time of filing any petition or request for change.

Section 28: ENFORCEMENT, LEGAL PROCEEDURE, PENALTIES.

It shall be the duty of the Building Inspector of Orange County to enforce the provisions of this ordinance pertaining to the erection, construction, alteration, or addition to any building or structure.

It shall be the duty of the Health Department of Orange County to enforce the provisions of this ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure.

It shall be the duty of the Sheriff of Orange County and of all officers of said county otherwise charged with the enforcement of the law to enforce this ordinance and all the provisions of the same.

Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating any provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be

ORDINANCE NO. 561

AN ORDINANCE AMENDING SECTIONS 1, 3, 5, 6.1, 14, 15, 17, 18, 19, 20, 22, 23, 27 AND 28 OF ORDINANCE NO. 351 OF THE COUNTY OF ORANGE ENTITLED "AN ORDINANCE ESTABLISHING LAND CLASSIFICATIONS AND DISTRICTS WITHIN THE UNINCORPORATED TERRITORY OF ORANGE COUNTY AND REGULATING THE USES OF PROPERTY THEREIN, ADOPTING SECTIONAL MAPS OF SAID DISTRICTS, DEFINING THE TERMS USED IN SAID ORDINANCE, PROVIDING FOR THE ADJUSTMENT, ENFORCEMENT AND AMENDMENT THEREOF AND PRESCRIBING PENALTIES FOR ITS VIOLATION," AND ADDING A NEW SECTION TO SAID ORDINANCE TO BE NUMBERED SECTION 12.1 AND REPEALING SECTION 4 THEREOF.

The Board of Supervisors of the County of Orange do ordain as follows:

SECTION 1. Sections 1, 3, and 6.1 of Ordinance No. 351 of the County of Orange entitled "An Ordinance Establishing Land Classifications and Districts within the Unincorporated Territory of Orange County and Regulating the Uses of Property Therein, Adopting Sectional Maps of said Districts, Defining the Terms used in said Ordinance, Providing for the Adjustment, Enforcement and Amendment Thereof and Prescribing Penalties for its Violation"are hereby amended to read as follows: Section 1. GENERAL PURPOSE AND ADOPTION OF OFFICIAL LAND USE PLAN.

For the public health, safety and general welfare and in order

(1) to secure for the citizens of Orange County the social and economic advantages resulting from an orderly, planned use of its land resources,

(2) to provide a definite, official land use plan for Orange County and

(3) to guide, control and regulate the future growth and development of said county in accordance with said plan, there is hereby adopted and established an official Land Use Plan for Orange County. Said plan is adopted pursuant to the authority of Chapter 807, Statutes of 1947, State of California, as amended.

Section 3. ESTABLISHING DISTRICTS AND LIMITING THE USES OF LAND THEREIN.

(A) In order to classify, regulate, restrict and segregate the uses of land, buildings and structures, and to regulate and restrict the height and bulk of buildings, and to regulate the area of yards, courts and other open spaces about buildings, the unincorporated territory of Orange County is hereby divided into thirteen (13) Districts as follows:

RA—"Roadside Agricultural" Districts.
A-1—"General Agricultural" Districts.
E-1—"Estates" Districts.
E-2—"Small Farms" Districts.
E-3—"Mountain Estates" Districts.
R-1—"Single Family Residence" Districts.
R-2—"Group Dwelling" Districts.
R-3—"Apartment" Districts.
R-4—"Suburban Residential" Districts.
C-1—"Local Business" Districts.
C-2—"General Business" Districts.
M-1—"Light Industrial" Districts.
M-2—"Unrestricted" Districts.

(B) The boundaries of said districts shall be determined and defined from time to time by the adoption of sectional district maps covering portions of Orange County, each of which said sectional district maps shall be, upon its final adoption, a part of the official Land Use Plan of said county.

(C) Each sectional district map showing the classifications and boundaries of districts, after its final adoption in the manner required by law, shall be and become a part of this ordinance and said map and all notations, references and other information shown thereon shall thereafter be as much a part of this ordinance as if all the matters and information set forth by said map were fully described herein.

(D) Where uncertainty exists as to the boundaries of any districts shown on said sectional district maps, the following rules shall apply:

1. Where such boundaries are indicated as approximately following street and alley lines or lot lines, such lines shall be construed to be such boundaries.

2. In unsubdivided property and where a district boundary divides a lot, the locations of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scale appearing on such sectional district map.

3. In case any further uncertainty exists, the Planning Commission shall determine the location of boundaries.

4. Where a public street or alley is officially vacated or abandoned the regulations applicable to the property to which it is reverted shall apply to such vacated or abandoned street or alley.

(E) The boundaries of such districts as are shown upon any sectional district map adopted by this ordinance or amendment thereto are hereby adopted and approved and the regulations of this ordinance governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures and other matters as hereinafter set forth are hereby established and declared to be in effect upon all land included within the boundaries of each and every district shown upon each said sectional district map.

(F) Except as hereinafter provided:

1. No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designed or intended to be used for any purpose or in any manner other than a use listed in this ordinance or amendments thereto as permitted in the district in which such land, building, structure or premises is located.

2. No building or structure shall be erected nor shall any existing building or structure be moved, reconstructed or structurally altered to exceed in height the limit established by this ordinance or amendments thereto for the district in which such building or structure is located.

3. No building or structure shall be erected, nor shall any existing building or structure be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area and yard regulations established by this ordinance or amendments thereto for the district in which such building or structure is located.

4. No yard or other open space provided about any building or structure for the purpose of complying with the regulations of this ordinance or amendments thereto shall be considered as providing a yard or open space for any other building or structure.

Section 6.1 A-1 "GENERAL AGRICULTURAL" DISTRICT REGULATIONS.

(A) Uses permitted, unless otherwise provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits).

1. Farming, including all types of agriculture and horticulture, grazing, kennels and small animal farms, poultry and squab farms and similar types of farming, except commercial dairies having herds of

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ATTEST:(DATE) 8/2/08
DARLENE J. BLOOM
CLERK OF THE BOARD
BY _____ DEPUTY

more than five (5) head, hog and commercial livestock feeding ranches and farms operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.

2. Golf, polo, swimming, tennis, yacht and country clubs, but not including any other sport, recreation or amusement enterprises operated as a business, or for commercial purposes.

3. Public parks, playgrounds and athletic fields.

4. One and two family dwellings, detached guest cottages and employees quarters, all of a permanent character.

5. Accessory buildings, structures and uses, and also such special uses as provided in Section 18 (General Provisions and Exceptions).

6. Home occupations, offices and studios when conducted within the dwelling by occupants thereof, provided not more than one (1) sign unlighted and not exceeding two (2) square feet in area is displayed in connection therewith.

7. One (1) sign unlighted and not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. Except as otherwise provided no other advertising sign, structure or device of any character shall be permitted in any A-1 (General Agricultural) District.

8. Temporary stands for the sale of agricultural or farming products grown or produced on the premises shall be permitted as accessory uses, upon the following conditions:

(a) When stand is to be in place for a period of more than ninety (90) days, plans thereof shall be submitted to and approved by the Planning Commission.

(b) The floor area of stand does not exceed one hundred (100) square feet.

(c) The stand is exclusively of wood frame type construction.

(d) The owner remove such stand at his expense when not in use.

(e) The stand not to be located closer than twenty (20) feet to any public highway right of way.

9. Apiaries, upon the following conditions:

(a) No occupied hives be closer than one hundred fifty (150) feet to any street or highway.

(b) No occupied hives be closer than four hundred (400) feet to any existing dwelling not on the premises or the premises of another apiary, unless the written consent of the owner of such dwelling is secured.

(c) No occupied hives be closer than fifty (50) feet to any property line common to other property lines other than property lines of another apiary.

10. The following additional uses, subject to the issuance of conditional permits therefor, as provided in Section 19 (Conditional Permits and Variance Permits).

(a) Public utility buildings and structures.

(b) High voltage power transmission lines.

(c) Cemeteries, mausoleums and crematories.

(d) Churches, schools, colleges, museums, libraries, veterinary hospitals, clinics, hospitals and sanitariums, commercial stables, packing plants for whole agricultural products.

(e) Mining or quarrying and other earth-extraction industries.

(f) Commercial or public airports and landing fields.

(g) Airplane landing fields for private use.

(h) Commercial dairies having herds of more than five (5) head.

(i) Livestock feeding ranches not feeding garbage, refuse or offal.

(j) Any other use which is determined by resolution of the Board of Supervisors after recommendation by the Planning Commission to be similar in character and not more detrimental to the welfare of the neighborhood in which located than any use listed above.

(B) BUILDING HEIGHT LIMIT:

Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits).

(C) BUILDING SITE AREA REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the minimum building site area shall be seventy-two hundred (7200) square feet.

(D) FRONT YARD REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), no buildings shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(E) SIDE YARDS REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), each side yard shall be not less than five (5) feet wide.

(F) REAR YARD REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the depth of the rear yard shall be not less than twenty-five (25) feet.

SECTION 2. Section 5 of said ordinance is amended by adding a sub-section thereto to read as follows:

Official Land Use Plan, District Map C, consisting of sixteen (16) sheets, which sheets are hereunto annexed, made a part hereof, and designated:

Sheet 1, Suburban Section, Adopted November 9, 1949
Sheet 2, Atwood Section, Adopted November 9, 1949
Sheet 3, Buena Park Section, Adopted November 9, 1949
Sheet 4, Capistrano Beach Section, Adopted November 9, 1949
Sheet 5, Costa Mesa Section, Adopted November 9, 1949
Sheet 6, Cypress Section, Adopted November 9, 1949
Sheet 7, Dana Point Section, Adopted November 9, 1949
Sheet 8, El Modena Section, Adopted November 9, 1949
Sheet 9, Garden Grove Section, Adopted November 9, 1949
Sheet 10, Los Alamitos Section, Adopted November 9, 1949
Sheet 11, Olive Section, Adopted November 9, 1949
Sheet 12, San Juan Capistrano Section, Adopted November 9, 1949
Sheet 13, Stanton Section, Adopted November 9, 1949
Sheet 14, Sunset Beach Section, Adopted November 9, 1949
Sheet 15, Westminster Section, Adopted November 9, 1949
Sheet 16, Yorba Linda Section, Adopted November 9, 1949

SECTION 3. Section 12.1 is hereby added to said ordinance, said section to read as follows: Section 12.1. R-4 "SUBURBAN RESIDENTIAL" DISTRICT REGULATIONS.

(A) Uses permitted, unless otherwise provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits):

1. Farming, including all types of agriculture and horticulture except:

(a) Commercial dairies.

(b) Commercial kennels, rabbit, fox, goat and other animal raising farms.

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(c) Egg producing ranches and farms devoted to the hatching, raising, fattening and/or butchering of chickens, turkeys and other poultry on a commercial scale.
(d) Hog and other livestock feeding ranches.
(e) Ranches operated publicly or privately for the disposal of garbage, sewage, rubbish or offal.
2. Flower and vegetable gardening.
3. Nurseries and greenhouses used only for purposes of propagation and culture and not for retail sales.
4. Public parks, golf, swimming, tennis, polo, yacht and country clubs, but not including any other sport, athletic, recreation or amusement enterprise operated as a business or for commercial purposes.
5. One family dwellings, two family dwellings, dwelling groups, bungalow courts, multiple family dwellings, apartment houses, boarding, lodging, fraternity or sorority houses, all of a permanent character placed in permanent locations.
6. Home occupations, offices and studios when conducted within the dwelling by occupants thereof, provided no advertising sign, merchandise, products or other material or equipment is displayed for advertising purposes.
7. Accessory buildings, structures and uses, and also such special uses as provided in Section 18 (General Provisions and Exceptions), including buildings and structures commonly required for the operation of an ordinary farm or ranch of ten (10) or more acres, provided each such farm or ranch accessory building is built not closer than fifty (50) feet to any public street or highway or exterior property boundary.
8. One (1) sign unlighted and not exceeding six (6) square feet in area pertaining only to the sale, lease or hire of only the particular building, property or premises upon which displayed. No other advertising signs, structures or devices of any character shall be permitted in this district.
9. Temporary stands for the sale of agricultural or farming products grown or produced on the premises shall be permitted as accessory uses, upon the following conditions:
(a) When stand is to be in place for a period of more than ninety (90) days, plans thereof shall be submitted to and approved by the Planning Commission.
(b) The floor area of stand does not exceed one hundred (100) square feet.
(c) The stand is exclusively of wood frame type construction.
(d) The owner remove such stand at his expense when not in use.
(e) The stand not to be located closer than twenty (20) feet to any public highway right of way.
10. The following additional uses, subject to the issuance of conditional permits therefor, as provided in Section 19 (Conditional Permits and Variance Permits):
(a) Residential hotels.
(b) Apartment hotels.
(c) Public utility buildings and structures.
(d) Churches, museums and libraries.
(e) Schools, colleges, public playgrounds and athletic fields.
(f) Commercial poultry and rabbit ranches.
(g) Commercial kennels.
(h) Apiaries.

(B) BUILDING HEIGHT LIMIT:
Two (2) stories and not to exceed thirty-five (35) feet, except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits).

(C) BUILDING SITE AREA REQUIRED:
Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the minimum building site area shall be seventy-two hundred (7200) square feet and no two family dwelling, bungalow court, dwelling group, multiple family dwelling or apartment house shall be permitted which provides less than three thousand (3000) square feet of land area per family or housekeeping unit.

(D) FRONT YARD REQUIRED:
Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), no buildings shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(E) SIDE YARDS REQUIRED:
Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), each side yard shall have a minimum width of five (5) feet.

(F) REAR YARD REQUIRED:
Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the depth of the rear yard shall be not less than twenty-five (25) feet.

(G) DISTANCE BETWEEN DWELLINGS ON SAME BUILDING SITE:
Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Perimts and Variance Permits), no dwelling or other main building one (1) story in height shall be closer than ten (10) feet to any other dwelling or main building of equal or greater height and no dwelling or other main building two (2) stories in height shall be closer than fifteen (15) feet to any other dwelling or main building.

SECTION 4. Sections 14, 15, 17, 18, 19, 20, 22, 23, 27 and 28 of said Ordinance are hereby amended to read as follows: Section 14. C-2 "GENERAL BUSINESS" DISTRICT REGULATIONS.
(A) Uses permitted, unless otherwise provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits):
1. All uses permitted in the E-1, E-2, R-1, R-2, R-3, R-4 and C-1 Districts and under the least restrictive provisions of such districts, unless in this section otherwise provided.
2. Any business of a retail or wholesale type including the following uses:
Amusement resorts
Auto laundries
Automobile repair garages
Bakeries
Bowling alleys
Cleaning and dyeing plants
Fender and body repair shops
Laundries
Newspaper printing
Storage warehouses
Undertaking or mortuary parlors
Veterinary hospitals

3. Any other business or commercial enterprise which is determined by resolution of the Board of Supervisors after recommendation by the Planning Commission to be similar in character and not more detrimental to the welfare of the neighborhood in which located than any use listed above.

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4. Any light manufacturing, using electric power not in excess of an aggregate of five (5) horsepower.

(B) BUILDING HEIGHT LIMIT:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the maximum building height shall not exceed the width of the street, or the widest street, upon which the building faces, except, however, that towers of any building may exceed the above maximum height limit provided that total cubage of the building and towers does not exceed that of a structure occupying the entire building site and of the maximum allowable height, but in no case under this provision shall the height of such towers exceed twice said maximum building height above such street.

(C) BUILDING SITE REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the minimum building site for dwelling purposes shall be seventy-two hundred (7200) square feet.

(D) FRONT YARD REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), no buildings shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(E) SIDE YARDS REQUIRED:

None except that buildings used solely for dwelling purposes shall not be closer than five (5) feet to the side lines of the lot, and also except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits).

(F) REAR YARD REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the depth of the rear yard shall not be less than twenty-five (25) feet.

Section 15. M-1 "LIGHT INDUSTRIAL" DISTRICT REGULATIONS.

(A) Uses permitted, unless otherwise provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits):

1. All uses permitted in the E-1, E-2, R-1, R-2, R-3, R-4, C-1 and C-2 Districts, and under the least restrictive provisions of such districts, unless in this section otherwise provided.

2. The following listed uses:

Boat building (wood)
Blacksmith shop
Ceramics manufacture
Candy factory
Cabinet shop or carpenter shop
Concrete pipe and brick manufacture
Furniture manufacture (wood)
Lumber yard
Machine shop
Planing mill
Monumental stone works
Storage above ground of Petroleum products not in excess of twenty-five hundred (2500) barrels on any one lot or parcel
Stone cutting
Toy manufacture
Welding shop

3. Any other use which is determined by resolution of the Board of Supervisors after recommendation by the Planning Commission to be similar in character thereto and not more detrimental to the welfare of the neighborhood in which located than any uses listed above, but, except as otherwise provided in Section 19 (Conditional Permits and Variance Permits), not including any of the following listed types of industries and land uses and any other use which is determined by resolution of the Board of Supervisors after recommendation by the Planning Commission to be similar in character thereto and equally or more detrimental to the welfare of the neighborhood in which located:

Abattoir
Blast, cupola or metal furnace
Boiler shops
Coke ovens
Dehydrators
Distillation of bone
Dog and cat food factory
Fat rendering
Fish cannery
Garbage, offal or dead animal disposal or reduction
Gasoline or oil storage above ground in excess of twenty-five hundred (2500) barrels on any one lot or parcel
Incineration, reduction or dumping of offal, garbage or refuse on a commercial basis
Junk yard
Manufacture of —
- Acetylene gas
- Acid
- Ammonia
- Asphalt or products
- Asbestos
- Babbit metal
- Bleaching powder
- Bronze powder
- Carbon, lampblack or graphite
- Celluloid
- Cement, lime, gypsum
- Coal tar or products
- Creosote or products
- Disinfectant
- Emery cloth or sandpaper
- Explosives, or their storage
- Fertilizer
- Gas
- Glucose
- Glue or size

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Lime or products
Linoleum
Matches
Oil Cloth
Paint, oil or shellac
Poison
Potash
Printing ink
Pulp or paper
Rubber
Starch
Sulphuric acid
Tar or asphalt roofing
Turpentine
Vinegar
Yeast

Oil refinery
Oil salvage enterprises
Petroleum refining
Radium extraction
Ranches for the feeding of garbage to hogs or other animals
Rock crushing
Rock, sand and gravel storage
Rolling mill
Salt works
Salvage enterprises or auto wrecking yards
Sand blasting
Soap works
Smelting
Storage or baling of bottles, junk, old iron, rags, rubber, or scrap paper
Sugar refining
Tannery
Wool pulling or scouring
Wood distillation

(B) BUILDING HEIGHT LIMIT:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the maximum building height shall not exceed the width of the street, or the widest street upon which the building faces, except, however, that towers of any building may exceed the above maximum height limit provided the total cubage of the building and towers does not exceed that of a structure occupying the entire building site and of the maximum allowable height, but in no case under this provision shall the height of such towers exceed twice said maximum building height above such street.

(C) BUILDING SITE REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the minimum building site for dwelling purposes shall be seventy-two hundred (7200) square feet.

(D) FRONT YARD REQUIRED:

Except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), no buildings shall be erected closer than fifty (50) feet to the center line of the street or highway upon which the building site fronts.

(E) SIDE YARDS REQUIRED:

None except that buildings used solely for dwelling purposes shall not be closer than five (5) feet to the side lines of the lot, and also except as provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits).

(F) REAR YARD REQUIRED:

Except as otherwise provided in Sections 18 (General Provisions and Exceptions) and 19 (Conditional Permits and Variance Permits), the depth of the rear yard shall not be less than twenty-five (25) feet.

Section 17. AC ARCHITECTURAL SUPERVISION DISTRICT REGULATIONS AND PROCEDURE.

AC Architectural Supervision Regulation Districts may be formed in connection with any of the foregoing Districts, when such a District is formed it shall be known as AC-RA, AC-A-1, AC-E-1, AC-E-2, AC-E-3, AC-R-1, AC-R-2, AC-R-3, AC-R-4, AC-C-1, AC-C-2, AC-M-1, or AC-M-2 as the case may be.

The procedure for the establishment of any AC District with other Districts shall be the same as prescribed in Section 3, provided, however, before any AC District may be established in connection with any other District the application for the formation of such AC District must be accompanied by a favorable petition signed by the owners of record of not less than sixty-six per cent (66%) of the property by area, involved in the District.

When such AC District is formed in connection with any other District, the following regulations, in addition to the regulations hereinbefore specified for such District shall apply.

Before any building or structure which is designed or intended to be used for any purposes is erected, constructed, altered or moved within any such AC District, drawings or sketches showing the exterior elevations of the proposed building or structure, the types of materials and colors to be used, and signs to be displayed shall be filed with the Planning Commission and shall be approved by said Planning Commission before any permit for the construction of said building or structure shall be issued.

For the guidance of the Builders in any AC District, the Planning Commission shall by resolution duly recorded in its minutes adopt certain general rules and specifications, and such illustrative architectural drawings showing desirable standards and types of design, materials, colors and styles of signs and lettering as will provide a basis and guide for the approval of plans for proposed buildings in each AC District. The Planning Commission shall appoint and designate one of its members as chairman of an unofficial Architectural Advisory Committee of three (3) or more for each AC District formed, two or more of whom shall be property owners in each AC District, to cooperate with the Planning Commission in passing upon architectural plans filed as required herein.

In reviewing and judging such plans, the Architectural Advisory Committee shall give primary consideration to the general rules, specifications and official illustrative material designated by the Planning Commission as controlling with respect to the particular district in which the proposed building is to be erected, constructed, altered or moved. After the Architectural Advisory Committee has reviewed any plans, they shall immediately file said plans with their approval or with a statement of their reasons for disapproval with the secretary of the Planning Commission. The Planning Commission,

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not later than its second regular meeting thereafter shall either approve said plans or any revision thereof and direct the Building Inspector to issue a permit for the building in question or dissaprove the plans.

In case of final disapproval by the Planning Commission of any plans submitted in compliance with this section, copies of the plans with the findings of the Planning Commisson and reasons for their disapproval attached shall be filed immediately with the Clerk of the Board of Supervisors and said Board at its next regular meeting shall either approve said plans and order the issuance of a permit for the building in question or return the plans to the applicant with a statement indicating the reasons for disapproval.

Section 18. GENERAL PROVISIONS AND EXCEPTIONS.

THE FOREGOING REGULATIONS SHALL BE SUBJECT TO THE FOLLOWING EXCEPTIONS:

(A) USES:

1. In the RA (Roadside Agricultural), E-2 (Small Farms) and E-3 (Mountain Estates) Districts, temporary stands for the sale of agricultural or farming products grown or produced on the premises shall be permitted as accessory uses, upon the following conditions:

(a) When the stand is to be in place for a period of more than ninety (90) days, plans thereof shall be submitted to and approved by the Planning Commission.
(b) The floor area of stand does not exceed one hundred (100) square feet.
(c) The stand is exclusively of wood frame type construction.
(d) The owner remove such stand at his expense when not in use or when space occupied thereby is required for parking or highway widening.
(e) The stand not to be located closer than twenty (20) feet to any public highway right of way.

2. In the E-1 (Estates) District, accessory buildings shall be held to include guests' cottages, provided not more than one (1) guest cottage is built for each acre of land comprising the building site and each said guest cottage is built in conformity with the yard regulations of said E-1 District.

3. The following accessory uses, in addition to those hereinbefore mentioned, shall be permitted in any district, provided that such accessory uses do not alter the character of the premises in respect to their use for the purpose permitted in such respective districts.

(a) The renting of rooms and/or the providing of table board for not to exceed five (5) paying guests in a dwelling as an accessory use to that of its occupancy as a dwelling of the character permitted in the respective districts.
(b) The operation of necessary facilities and equipment in connection with schools, colleges, universities, hospitals and other institutions permitted in the respective districts.
(c) News and refreshment stands in connection with passenger stations.
(d) Recreation, refreshment and service buildings in public parks, playgrounds and golf courses.
(e) Real estate offices of a temporary character for a period of time not exceeding one (1) year when built according to plans and in locations approved by the Planning Commission.

4. Temporary advertising signs shall be permitted as accessory structures to any permitted temporary real estate office or temporary stand upon the following conditions:

(a) The signs pertain only to the business of such temporary real estate office or stand.
(b) The number of signs displayed including those attached to such temporary stand or real estate office shall not exceed four (4) in number.
(c) The total aggregate area of such signs does not exceed fifty (50) square feet.
(d) The owner remove such temporary signs at his expense at the time of removal of the temporary stand or real estate office to which such signs are an accessory structure.
(e) The signs not to be located closer than twenty (20) feet to any public highway right of way.

5. In the RA (Roadside Agricultural), A-1 (General Agricultural), E-2 (Small Farms), E-3 (Mountain Estates), and R-4 (Suburban Residential) Districts, one (1) sign unlighted not exceeding twenty-five (25) square feet in area and advertising only the sale of agricultural or farming products grown or produced on the premises shall be permitted, provided that such sign shall not be located closer than twenty (20) feet to any public highway right of way.

(B) HEIGHT:

1. Towers, gables, spires, scenery lofts, cupolas, water tanks, silos, artficial windbreaks, wind mills and similar structures and necessary mechanical appurtenances may be built not higher above the street than twice the building height limit established for the district in which such structures are located, provided, however, that no such structure in excess of the district building height limit shall be used for sleeping or eating quarters or for any commercial purpose other than such as may be incidental to the permitted uses of the main building.

2. Where the average slope of a lot on the downhill side of a street is greater than one (1) foot fall in four (4) feet of horizontal distance from the established street elevation at the front property line an additional story will be permitted on the downhill side of any permitted main building which is on the downhill side of the street upon which the building site fronts.

(C) AREA EXCEPTIONS:

1. Any lot shown upon an official subdivision map duly approved and recorded or any lot for which a deed is of record in the office of the County Recorder of Orange County or any lot for which a contract of sale is in full force and effect at the time the building site area requirements of this ordinance became effective may be used as a building site.

2. In any district where a front yard line is shown upon an official sectional district map, no building or structure, except permitted temporary real estate offices and stands together with permitted accessory signs, shall be placed closer to the right of way line of the street or highway than the distance indicated by or upon said front yard line.

3. On county highways and private streets eighty (80) feet or more in width when no front yard line has been established as provided in paragraph 2, subsection (C) of this Section, the front yard shall be not less than one-fifth (1/5) of the width of such County Highway or private street, provided, however, that the maximum front yard required under this provision shall not exceed thirty (30) feet.

4. Front yard required on County Highways which are included in the Federal Aid Secondary Highway System. Except as provided in paragraphs 2, 6 and 7, all of this subsection (C) entitled "AREA EXCEPTIONS", no building or structure shall be erected closer than sixty (60) feet to the center line of any such County Highways, which are specifically set forth as follows:

Algonquin Street from Los Patos Avenue to Wintersburg Avenue
Ball Road from Stanton Avenue to Manchester Avenue
Bushard Street from U. S. 101 (Alternate) to Wintersburg Avenue
Carolina Avenue from Palm Drive to Imperial Highway
Central Avenue from La Mirada Avenue to La Habra City Limit
Central Avenue from La Habra City Limit to Brea Canyon Road
Chapman Avenue from Stanton Avenue to U. S. 101
Edinger Street from Fairview Road to Santa Ana City Limit
Euclid Avenue from Garden Grove Boulevard to Orangethorpe Avenue

Fairview Road from Talbert Avenue to Edinger Street
Harbor Boulevard from Newport Avenue to Manchester Avenue
Katella Avenue from Los Alamitos Boulevard to Stanton Avenue
Los Alamitos Boulevard from Westminster Avenue to Garden Grove Boulevard
Los Patos Avenue from Pacific Avenue to Algonquin Street
Orangthorpe Avenue from Los Angeles County Line to Manchester Avenue
Palm Drive from Placentia Avenue to Carolina Avenue
Placentia Avenue from Orangethorpe Avenue to Palm Drive
Seventeenth Street from Santa Ana City Limit to Newport Avenue
Talbert Avenue from Huntington Beach Boulevard to Fairview Road
Verano Street from Talbert Avenue to Garden Grove Boulevard
Westminster Avenue from Seal Beach City Limit to Santa Ana City Limit
Wintersburg Avenue from Algonquin Street to Verano Street

5. Front Yard required on state highways. Except as provided in paragraphs 2, 6 and 7, all of this subsection (C) entitled "AREA EXCEPTIONS", no building or structure shall be erected closer than seventy (70) feet to the center line of any State Highway upon which the building site fronts; provided further, that on State Highways more than 100 feet in width the front yard shall not be less than one-fifth (1/5) of the width of such State Highway but not exceeding thirty (30) feet.

6. Attached private garages in Districts RA, A-1, E-1, E-2, E-3, R-1, R-2, R-3 and R-4, where the average slope of the front half of the lot is greater than one (1) foot rise or fall in four (4) feet of horizontal distance from the established street elevation at the property line, or where the average elevation of the front half of the lot is more than six (6) feet above or below the established street elevation at the front property line, may be built to within five (5) feet of the street line and to the side line of the lot, provided, however, that when the entrance and exit of such garage are not from the street it may be built to the street line; but in no event under this provision shall such garage be built nearer than fifty (50) feet to the center line of any State Highway or nearer than forty (40) feet to the center line of any County Highway included in the Federal Aid Secondary Highway System as set forth in paragraph 4 of this subsection (C) entitled "AREA EXCEPTIONS".

7. Detached accessory buildings in Districts RA, A-1, E-1, E-2, E-3, R-1, R-2, R-3 and R-4, shall conform to the following regulations as to their location upon the lot, provided, however, that where the average slope of the front half of the lot is greaterthan one (1) foot rise or fall in four (4) feet of horizontal distance from the established street elevation at the front property line, or where the average elevation of the front half of the lot is more than six (6) feet above or below the established street elevation at the property line, a detached private garage may be built to within five (5) feet of the street line and to the side line of the lot, provided, however, that when the entrance and exit of such garage are not from the street it may be built to the street line; but in no event under this provision shall such garage be built nearer than fifty (50) feet to the center line of any State Highway or nearer than forty (40) feet to the center line of any County Highway included in the Federal Aid Secondary Highway System as set forth in paragraph 4 of this subsection (C) entitled "AREA EXCEPTIONS."

(a) In the case of an interior lot abutting upon one street no detached accessory building shall be erected, altered or moved so as to encroach upon the front half of the lot.

(b) In the case of an interior lot abutting upon two or more streets, no detached accessory building shall be erected, altered or moved so as to encroach upon the one-quarter (¼) of the lot nearest either street.

(c) In the case of a corner lot abutting upon two (2) streets, no detached accessory building shall be erected, altered or moved so as to encroach upon the area between such respective streets and lines drawn parallel to such streets respectively in such a manner that each of such lines divides the lot into two (2) equal areas.

(d) In case of a corner lot abutting on more than two (2) streets no detached accessory building shall be erected, altered or moved so as to be nearer any street line than one-fifth (1/5) of the width or length of the lot, whichever is the greater.

(e) No detached accessory building shall be erected, altered or moved so as to be within five (5) feet of the side line of the front half of an adjacent lot.

(f) Notwithstanding any requirements in this section, the foregoing rules shall not require any detached accessory building to be more than seventy-five (75) feet from any street bounding the lot.

8. In computing the depth of a rear yard from any building where such yard opens on a street, alley, public park or beach, one-half (½) of the width of such street, alley, park or beach may be deemed to be a portion of the rear yard, except that under this provision no rear yard shall be less than fifteen (15) feet.

9. A detached accessory building may occupy not more than fifty (50) per cent of the area of a rear yard.

10. Porches, terraces and outside stairways, unroofed, unenclosed, above and below floor, or steps, shall not project more than three (3) feet into any rear or side yard.

11. Eaves may project not more than two (2) feet into any front, rear or side yard.

12. Masonry chimneys and fireplaces may project not more than eighteen (18) inches into any front, rear or side yard.

13. Off-street parking or garages. Off-street parking or garages shall be provided on the premises in the following manner:

(a) In every district where a building is erected for living purposes, there shall be provided and maintained on the premises, one usable automobile parking space not smaller than ten (10) feet by twenty (20) feet for each family unit or apartment, provided, however, that such automobile parking space capacity for hotels need not exceed one-half (½) the number of guest rooms.

(b) Each commercial use unless otherwise provided, shall provide and maintain one usable automobile parking space on the premises or at locations approved by the Planning Commission, for each three hundred fifty (350) square feet of floor space used for commercial purposes.

(c) Each church, restaurant, auditorium, theater, sporting or athletic arena, and other similar uses where people congregate shall provide and maintain on the premises or at locations approved by the Planning Commission, automobile parking space at the ratio of one usable automobile parking space for each three (3) persons such enterprise or use can accommodate.

(d) Each industrial enterprise shall provide and maintain on the premises or at locations approved by the Planning Commission, one usable automobile parking space for each three (3) persons employed. If retail sales are made on the premises, an additional amount of parking space shall be provided and maintained on the premises or at locations approved by the Planning Commission, equal to one usable automobile parking space for each three hundred fifty (350) square feet of floor space used for such retail sales.

Section 19. CONDITIONAL PERMITS AND VARIANCE PERMITS.

(A) CONDITIONAL PERMITS.

The Board of Supervisors, after receipt of the report and the recommendation of the Planning Commission as hereinafter in this section provided, shall have the power to authorize the issuance of condi-

tional permits by the Building Inspector for specified types of uses and buildings in the foregoing Districts, as provided in the use regulations of such districts, under conditions which will preserve the integrity and character of the district, the utility and value of adjacent property and the general welfare of the neighborhood. Minimum conditions therefor are specifically as follows, except as otherwise provided in Subdivision B (Variance Permits) of this section:

1. Airplane landing fields for private use, upon condition that the location and all plans be approved by the Planning Commission.

2. Residential hotels, upon the following conditions:
(a) The building site contain not less than five (5) acres.
(b) Building coverage not to exceed thirty-five (35) percent of the area of the site.
(c) Fifty (50) per cent or more of the guest rooms be provided in detached buildings.
(d) All building and plot plans be approved by the Planning Commission.

3. Apartment hotels, upon the following conditions:
(a) The area covered by buildings shall not exceed forty (40) per cent of the area of the building site.
(b) Accessory commercial uses shall have no direct entrances from any street and shall maintain no signs or advertising displays of any kind visible from the exterior.
(c) All building and plot plans shall be approved by the Planning Commission.

4. Public utility buildings and structures, upon condition that all plans be approved by the Planning Commission.

5. Commercial stables, upon condition that the location and all building plans be approved by the Planning Commission.

6. Cemeteries, mausoleums and crematories, upon condition the area of any cemetery be not less than forty (40) acres.

7. Churches, museums and libraries, upon condition that the location and building and plot plans be approved by the Planning Commission.

8. Schools, colleges, public playgrounds and athletic fields upon the following conditions:
(a). An area adequate in the judgment of the Planning Commission, be provided to reduce possibility of injury to adjoining residential properties.
(b) Building and plot plans be approved by the Planning Commission.
(c) The location of the school site be approved by the Planning Commission.

9. Commercial or public airports and landing fields, upon condition that the location and development plans be approved by the Planning Commission.

10. High voltage power transmission lines, upon condition that the location plans be approved by the Planning Commission before purchase of rights of way.

11. Commercial dairies having herds of less than five (5) cows, provided that no feeding pens, milking sheds and other buildings or structures designed or used for confinement of the herd be located closer than three hundred (300) feet to any occupied dwelling except such as may be located upon the premises or the premises of another dairy or premises devoted to livestock or poultry uses.

12. Commercial dairies having herds of more than five (5) head, upon the following conditions:
(a) The premises shall contain at least one (1) acre for each ten (10) head in the herd.
(b) No feeding corrals, buildings or structures, other than fences enclosing pasturage, used for milking, feeding or shelter of the herd be closer than three hundred (300) feet to any existing dwelling not on the premises or the premises of another dairy or of a livestock feeding use.
(c) Such corrals, buildings and structures comply with the front yard requirements of the district in which located.
(d) Such corrals, buildings or structures to be not closer than one hundred (100) feet to any property line common to other property not devoted to dairying or livestock feeding purposes.

13. Livestock raising or feeding ranches not feeding garbage, refuse or offal, upon the following conditions:
(a) The premises shall contain at least one (1) acre for each ten (10) head to be fed.
(b) No feeding corrals or buildings or structures for the feeding or shelter of the livestock other than fences enclosing pasturage, be closer than three hundred (300) feet to any existing dwelling not on the premises or the premises of another livestock raising or feeding ranch or a dairy.
(c) Such corrals, buildings and structures comply with the front yard requirements of the district in which located.
(d) Such corrals, buildings and structures to be not closer than one hundred (100) feet to any property line common to other property not devoted to livestock raising or feeding or dairying.

14. Commercial poultry and rabbit ranches, upon the following conditions:
(a) No buildings or structures for the feeding or shelter of the poultry or rabbits be closer than fifty (50) feet to any existing dwelling not on the premises or the premises of another commercial poultry or rabbit ranch or premises devoted to dairying, livestock raising or feeding or small animal raising.
(b) Such buildings and structures be not closer than ten (10) feet to any property line common to other property not devoted to another commercial poultry or rabbit ranch or to dairying, livestock raising or feeding or small animal raising.
(c) Such buildings and structures be not closer than seventy-five (75) feet to any street or highway.

15. Commercial kennels, upon the following conditions:
(a) No pens, runs, buildings or structures used for the confinement or shelter of dogs be closer than one hundred (100) feet to any existing dwelling not on the premises or the premises of another commercial kennel or premises devoted to dairying, livestock raising or feeding, poultry or rabbit ranches, veterinary hospitals, or small animal raising.
(b) Such pens, runs, buildings and structures be not closer than fifty (50) feet to any property line common to other property not devoted to another commercial kennel or to dairying, livestock raising or feeding, poultry or rabbit ranches, veterinary hospitals or small animal raising.
(c) Such pens, runs, buildings and structures be not closer than one hundred (100) feet to any street or highway.

16. Apiaries, upon the following conditions:
(a) No occupied hives be closer than one hundred fifty (150) feet to any street or highway.
(b) No occupied hives be closer than four hundred (400) feet to any existing dwelling not on the premises or the premises of another apiary, unless the written consent of the owner of such dwelling is secured.
(c) No occupied hives be closer than fifty (50) feet to any property line common to other property lines other than property lines of another apiary.

17. Packing plants for whole agricultural products, upon condition no such plant is closer than fifty (50) feet to any property line common to other property not devoted to another such packing plant or to that of a veterinary hospital, commercial kennel, commercial poultry or rabbit ranch, dairy, livestock raising or feeding ranch or small animal raising ranch.

18. Veterinary hospitals, upon the following conditions:

(a) No pens, runs, buildings or structures used for the confinement, treatment or shelter of patients or boarders be closer than one hundred (100) feet to any existing dwelling not on the premises or the premises of another veterinary hospital or premises devoted to a commercial kennel, commercial poultry or rabbit ranch, dairying, livestock raising or feeding or small animal raising.

(b) Such pens, runs, buildings or structures be not closer than fifty (50) feet to any property line common to other property not devoted to another veterinary hospital or commercial kennel or to dairying, livestock raising or feeding, poultry or rabbit ranch or small animal raising.

(c) Such pens, runs, buildings or structures be not closer than one hundred (100) feet to any street or highway.

19. Hospitals, clinics and sanitariums, upon the following conditions:

(a) All buildings are located at least fifty (50) feet from any property line common to other property not devoted to similar purposes.

(b) Building coverage not to exceed forty (40) per cent of the area of the building site.

(c) Location of the site and building plans be approved by the Planning Commission.

20. Storage garages, upon condition that the location and building plans be approved by the Planning Commission.

21. Mining or quarrying and other earth-extraction industries, upon condition that the location of all appurtenant structures and the areas of operation be approved by the Planning Commission.

(B) VARIANCE PERMITS.

The Board of Supervisors, after receipt of the report and the recommendation of the Planning Commission as hereinafter in this section provided, shall have the power to grant variances to the height, yard, area and use regulations of this ordinance and authorize the issuance of Variance Permits therefor by the Building Inspector, in cases where practical difficulty, unnecessary hardship or results inconsistent with the general purpose and intent of this ordinance occur through strict application of such regulations and under such conditions as said Board may deem necessary to assure that the general purpose and intent of this ordinance will be observed, public safety and welfare secured, and substantial justice done.

(C) PROCEDURE — CONDITIONAL PERMITS AND VARIANCE PERMITS.

Application for a Conditional Permit or a Variance Permit as provided herein shall be made to the Planning Commission in triplicate on forms furnished by said Commission. Such application shall be accompanied by:

1. Complete plans and description of the property involved and the proposed use with ground plans and elevations of all proposed main buildings and structures.
2. Evidence, satisfactory to the Planning Commission of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within one (1) year from the date of authorization of such permit.

Upon receipt in proper form of any such application, the Planning Commission may, if it deems necessary, hold a public hearing thereon. In the event the Commission deems a public hearing necessary, notice of the time and place of the hearing shall be published once in a newspaper of general circulation in the county at least seven (7) days before the day of such hearing.

Applications for Variance Permits shall be accompanied by the written statement of the applicant giving adequate evidence, in such form as the Planning Commission may require, showing:

1. That there are special circumstances or conditions applicable to the property referred to in the application.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.
3. That the granting of such application will not materially affect the health or safety of persons residing or working in the neighborhood and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

If the Planning Commission finds that the above three conditions exist and that material detriment or injury to the neighborhood will not result from issuance of any Conditional Permit or Variance Permit it may recommend the application for approval and transmit the same together with the complete report of its findings and recommendations to the Board of Supervisors for final action. If at any time prior to final action on any such application by the Board of Supervisors a protest against such application is presented duly signed and acknowledged by the owners of forty (40) per cent of all dwellings within three hundred (300) feet thereof, or by the owners of forty (40) per cent of all land adjacent thereto and within three hundred (300) feet thereof, no such permit shall be issued therefor except upon authorization by the Board of Supervisors passed by a four-fifths (4/5) vote of the full membership of said board. In the event the Planning Commission fails to recommend for approval any such application, no such permit shall be issued therefor except upon authorization by the Board of Supervisors passed by a full affirmative vote of all members thereof.

In approving and recommending any such application under the provisions of this section, the Planning Commission may recommend such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulation or provision to which variance or adjustment is requested and will provide adequately for the maintenance of the integrity and character of the district in which located. When deemed necessary, the Board of Supervisors may require guarantees, in such form as it may deem proper under the circumstances, to insure that the conditions designated in connection therewith are being or will be complied with.

The Planning Commission shall charge and collect a fee of Twenty-five (25) Dollars for the filing of each Variance Permit Application for a variance in use regulations; and a fee of Ten (10) Dollars for the filing of all other applications provided for by this section.

Each Conditional Permit or Variance Permit authorized under the provisions of this section which is not actually established or the actual construction commenced on the building or buildings involved within one (1) year from the date of its authorization by the Board of Supervisors shall become null and void. Provided further, when any use of land, building or premises established under the provisions of this section has been discontinued for a period of one (1) year it shall be unlawful to again use such land or building or premises for such discontinued use unless a subsequent Conditional Permit or Variance Permit is authorized and issued therefor.

Section 20. NON-CONFORMING USES.

The lawful use of land existing at the time this ordinance or amendments thereto take effect, although such use does not conform to the provisions hereof, may be continued, but if such non-conforming use is discontinued for a period of one (1) year any future use of said land shall be in conformity with the provisions of this ordinance.

The lawful use of a building existing at the time this ordinance or amendments thereto take effect, may be continued, although such use does not conform with the provisions hereof, and such use may be extended throughout the building provided no structural alterations, except those required by law or ordinance or permitted under Section 19 of this Ordinance are made therein. If no structural altera-

tions are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification.

No existing building designed, arranged or intended for or devoted to a use not permitted under the regulations of this ordinance for the district in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a use permitted under the regulations specified by this ordinance for such district in which said building is located; provided, however, that work done in any period of twelve (12) months on ordinary structural alterations or replacements of walls, fixtures or plumbing not exceeding twenty-five (25) per cent of the assessed value of the building according to the assessment thereof by the Assessor of the County for the fiscal year in which such work is done shall be permitted, provided that the cubical contents of the building as it existed at the time this ordinance or amendments thereto take effect be not increased.

If at any time any building in existence or maintained at the time this ordinance or amendments thereto take effect which does not conform to the regulations for the district in which it is located, shall be destroyed by fire, explosion, act of God or act of the public enemy to the extent of more than seventy-five (75) per cent of the assessed value thereof, according to the assessment thereof by the said Assessor for the fiscal year during which such destruction occurs, then and without further action by Board of Supervisors the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by this ordinance for the district in which such land and building are located.

Notwithstanding any of the foregoing provisions of this Section to the contrary, no outdoor advertising sign or outdoor advertising structure which, at the time this ordinance or amendments thereto take effect, exists as a non-conforming use in any district, shall continue as herein provided for non-conforming uses, but every such sign or structure shall be removed or changed to a use permitted in the respective district within a period of two (2) years from and after the time such sign or structure becomes a non-conforming use. For the purpose of this provision outdoor advertising sign and outdoor advertising structure are defined as follows:

Outdoor advertising sign is any card, cloth, paper, metal, painted or wooden sign of any character placed for outdoor advertising purposes, on or to the ground or any tree, wall, bush, rock, fence, building, structure or thing, either privately or publicly owned, other than an outdoor advertising structure; but not including the following:

(a) Official notices issued by any court or public body or officer.

(b) Notices posted by any public officer in performance of a public duty or by any person in giving any legal notice.

(c) Directional, warning or information signs or structures required by or authorized by law or by Federal, State or County authority.

(d) The placing, erecting, constructing or maintaining of advertising displays exclusively pertaining to the business of the person placing the advertising display on his place of business or within 100 feet thereof and on the same side of the street or highway on which such business is located.

Outdoor advertising structure is a structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting or other advertisement of any kind whatsoever may be placed, including statuary, for advertising purposes; but not including the following:

(a) Official notices issued by any court or public body or officer.

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice.

(c) Directional, warning or information structures required by or authorized by law or by Federal State or County authority.

(d) The placing, erecting, constructing or maintaining of advertising displays exclusively pertaining to the business of the person placing the advertising display on his place of business or within 100 feet thereof and on the same side of the street or highway on which such business is located.

The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed.

In every case in which, under the provisions of any ordinance of Orange County, or any statute in effect at the time this ordinance or amendments thereto take effect, a license or permit is required for the maintenance of any structure or the establishing, maintaining and/or conducting of any business use, and any structure or business use exists as a non-conforming use under the privisions of this ordinance, then no such license or permit shall be authorized, issued, renewed, reissued or extended for said business use unless and until a use and occupancy permit shall first have been secured from the County Building Inspector for the continued maintenance of said structure or use.

Section 22. BUILDING PERMITS.

Before commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure within any district shown upon any sectional district map of Orange County duly adopted and made a part of this ordinance, a building permit for each separate building and/or structure, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be secured from the Building Inspector of said county by the owner or his agent for said work and it shall be unlawful to commence said work until and unless said permit shall have been obtained.

The issuance of a building permit under the authority of this section shall not be deemed or construed to permit or authorize any violation of any of the provisions of this ordinance or amendments thereto or of any other ordinance or law.

Section 23. CERTIFICATES OF USE AND OCCUPANCY.

No vacant land in any district established under the provisions of this ordinance shall hereafter be occupied or used, except for agricultural uses other than livestock farming, poultry or small animal raising or dairying, and no building hereafter erected, structurally altered or moved in any such district shall be occupied or used until a certificate of use and occupancy shall have been issued therefor by the aforesaid Building Inspector.

Application for a certificate of use and occupancy for a new building or for an existing building which has been altered or moved shall be made at the same time as the application for a building permit. Said certificate shall be issued within three (3) days after a written request for the same shall have been made to the said Building Inspector after the erection, alteration or moving of such building or part thereof shall have been completed in conformity with the provisions of this ordinance. Pending the issuance of such a certificate, a temporary certificate of use and occupancy may be issued by the said Building Inspector for a period of not exceeding six (6) months during the completion of alterations or during partial occupancy or use of a building pending its completion. Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the County relating to the use or occupancy of the premises or any other matter covered by this ordinance and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

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Written application for a certificate of use and occupancy for the use of vacant land or for a change in the character of the use of land, as herein provided, shall be made before any such land shall be so occupied or used, except for agricultural purposes other than livestock farming, poultry or small animal raising, or dairying. Such a certificate of use and occupancy shall be issued within three (3) days after the application therefor has been made, provided such use is in conformity with the provisions of this ordinance.

Every certificate of use and occupancy shall state that the building or proposed use of building or land complies with all the provisions of law and of this ordinance. A record of all certificates of use and occupancy shall be kept on file in the office of the said Building Inspector and copies shall be furnished on request, to any person having a proprietary or tenancy interest in the building or land affected. No fee shall be charged for a certificate of use and occupancy.

No permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy.

Section 27. AMENDMENTS AND CHANGES OF DISTRICT BOUNDARIES.

The Board of Supervisors of the County of Orange may from time to time after report thereupon by the Planning Commission and after public hearings as required by law, amend, supplement or change the regulations and districts herein or subsequently established. An amendment, supplement or change may be initiated by the Board of Supervisors, by the Planning Commission, or by petition of property owners.

Whenever the owner of any land or building desires a re-classification of his property he shall present to the Board of Supervisors a petition duly signed and acknowledged by him requesting an amendment, supplement or change of the regulations prescribed for such property. The Board of Supervisors shall refer the petition to the Planning Commission for such hearings as may be required by law for amendments, extensions or additions to the Land Use Plan, for recommendations upon the boundaries of the district to be changed and such other matters as may be related to said petition. Failure of the Planning Commission to report its recommendations to the Board of Supervisors on any such petition within ninety (90) days, or such longer period as may be designated by said Board, after receipt thereof by the Planning Commission shall be deemed to be approval of such petition by the Planning Commission.

The Board of Supervisors after receipt of report and recommendation from the Planning Commission, shall hold a final hearing thereupon, duly advertised as required by law. If at the time of the final hearing before the Board of Supervisors a protest against such amendment, supplement or change is presented duly signed and acknowledged by the owners of forty (40) per cent or more of the area for which a change of classification is requested or proposed, or by the owners of forty (40) per cent of all dwellings within three hundred (300)feet thereof, or by the owners of forty (40) per cent of all land adjacent thereto and within three hundred (300) feet thereof, no such amendment, change or supplement shall be adopted except by a four-fifth (4/5) vote of the full membership of the Board of Supervisors.

The Planning Commission is authorized to make a uniform charge not to exceed twenty-five dollars ($25.00) payable to the County Treasurer, to partially cover the cost of making maps, sending out notices and other incidental administrative expenses involved in any petition for a change in these regulations, said charge being due and payable at the time of filing any petition or request for change.

Section 28. ENFORCEMENT, LEGAL PROCEDURE, PENALTIES.

It shall be the duty of the Building Inspector of Orange County to enforce the provisions of this ordinance pertaining to the use of land, the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure.

It shall be the duty of the Health Department of Orange County to enforce the provisions of this ordinance pertaining to the maintenance and use of property, structures and buildings so far as matters of health are concerned.

It shall be the duty of the Sheriff of Orange County and of all officers of said county otherwise charged with the enforcement of the law to enforce this ordinance and all the provisions of the same.

Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating any provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the County Jail of said Orange County for a term not exceeding six (6) months or by both such fine and imprisonment. Such person, firm or corporation shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

Any building or structure set up, erected, built, moved or maintained and/or any use of property contrary to the provisions of this ordinance and/or any conditions attached to the granting of any Conditional Permit or Variance Permit pursuant thereto shall be and the same is hereby declared to be unlawful and a public nuisance and the duly constituted authorities of Orange County shall, upon order of the Board of Supervisors, immediately commence action or actions, proceeding or proceedings for the abatement, removal and enjoyment thereof in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building, structure or use and restrain and enjoin any person, firm or corporation from setting up, erecting, building, moving or maintaining any such building or structure or using any property contrary to the provisions of this ordinance.

Failure to abide by and faithfully comply with any and all conditions that may be attached to the granting of any Conditional Permit or Variance Permit pursuant to the provisions of this ordi-

(Continued on page B-5)

(Continued on page B-3)

Continued from page B-3)

nance shall constitute grounds for the revocation of said Conditional Permit or said Variance Permit by the Board of Supervisors.

All remedies provided for herein shall be cumulative and not exclusive.

SECTION 5.That Section 4 of the said Ordinance No. 351 be and the same is hereby repealed.

SECTION 6. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of Orange, State of California, hereby declares that it would have passed this Ordinance, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. ENACTMENT.

This Ordinance shall take effect thirty (30) days from and after its adoption, and prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least once in the Gar-

den Grove News, a newspaper published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

(SEAL)

WILLIS H. WARNER
Chairman of the Board of Supevisors of
Orange County, California

ATTEST:
B. J. SMITH
County Clerk and ex-officio Clerk
of the Board of Supervisors of
Orange County, California

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I, B. J. SMITH, County Clerk and ex-officio Clerk of the Board of Supervisors, do hereby certify that at a regular meeting of the Board of Supervisors of Orange County, California, held on November 9, 1949, the foregoing Ordinance containing seven (7) sections, was considered section by section, and that the said Ordinance was then passed and adopted as a whole by the following vote:

AYES: SUPERVISORS C. M. FEATHERLY, IRVIN GEO. GORDON, WILLARD SMITH AND WILLIS H. WARNER
NOES: SUPERVISORS RALPH J. McFADDEN
ABSENT: SUPERVISORS NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors of Orange County, California, this 9th day of November, 1949.

B. J. SMITH
County Clerk and ex-officio Clerk
of the Board of Supervisors of
Orange County, California

(SEAL)

Publish Garden Grove News, November 23, 1949.

THIS INSTRUMENT IS A CORRECT COPY OF
THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST:(DATE) 8/19/08
DARLENE J. BLOOM
CLERK OF THE BOARD
BY _____ DEPUTY

ORDINANCE NO. 1008

AN ORDINANCE AMENDING PARAGRAPHS A, B, AND C OF SECTION 19, AND REPEALING PARAGRAPH 3 OF PARAGRAPH D OF SECTION 19 OF ORDINANCE NO. 351, "THE DISTRICTING ORDINANCE," AS AMENDED

The Board of Supervisors of the County of Orange, California, do ordain as follows:

SECTION 1. That first paragraph of Paragraph A of Section 19 of Ordinance No. 351, "The Districting Ordinance," as amended, which reads as follows:

"A. CONDITIONAL PERMITS

The Board of Supervisors, after receipt of the report and the recommendation of the Planning Commission as hereinafter in this section provided, shall have the power to authorize the issuance of conditional permits by the Building Inspector for specified types of uses and building in the foregoing Districts, as provided in the use regulations of such districts, under conditions which will preserve the integrity and character of the district, the utility and value of adjacent property and the general welfare of the neighborhood. Minimum conditions therefor are specifically as follows, except as otherwise provided in Subdivision B (Variance Permits) of this section:"

and Paragraphs 1., 2., 3., 4., 5., 7., 8., 9., 10., 19., 20., 21., 22., and 23., be and the same are hereby amended to read as follows:

A. CONDITIONAL PERMITS

The Board of Supervisors, after transmittal to it of notice of the recommendation and other action of the Planning Commission, shall authorize the Superintendent of Building and Safety to issue a conditional permit for uses as provided in the use regulations of the various districts, provided the Board of Supervisors determines that the integrity and character of the district, the utility and value of adjacent property, and the general welfare of the neighborhood would

be maintained if the conditional permit were granted, and provided the following minimum conditions for the particular use are or will be satisfied:

1. Airplane landing fields for private use, upon condition that the location and all plans be reviewed by the Planning Commission.

2. Residential hotels, upon the following conditions:
   a. The building site contain not less than five (5) acres.
   b. Building coverage not to exceed thirty-five (35) per cent of the area of the site.
   c. Fifty (50) per cent or more of the guest rooms be provided in detached buildings.
   d. All building and plot plans be reviewed by the Planning Commission.

3. Apartment hotels, upon the following conditions:
   a. The area covered by buildings shall not exceed forty (40) per cent of the area of the building site.
   b. Accessory commercial uses shall have no direct entrances from any street and shall maintain no signs or advertising displays of any kind visible from the exterior.
   c. All building and plot plans shall be reviewed by the Planning Commission.

4. Public utility buildings and structures, upon condition that all plans be reviewed by the Planning Commission.

5. Commercial stables, upon condition that the location and all building plans be reviewed by the Planning Commission.

7. Churches, museums and libraries, upon condition that the location and building and plot plans be reviewed by the Planning Commission.

8. Schools, colleges, public playgrounds and athletic fields upon the following conditions:
   a. An adequate area be provided to reduce possibility of injury to adjoining residential properties.
   b. Building and plot plans be reviewed by the Planning Commission.
   c. The location of the school site be reviewed by the Planning Commission.

9. Commercial or public airports and landing fields, upon condition that the location and development plans be reviewed by the Planning Commission.

10. High voltage power transmission lines, upon condition that the location plans be reviewed by the Planning Commission.

19. Hospitals, clinics and sanitariums, upon the following conditions:
   a. All buildings are located at least fifty (50) feet from any property line common to other property not devoted to similar purposes.
   b. Building coverage not to exceed forty (40) per cent of the area of the building site.
   c. Location of the site and building plans be reviewed by the Planning Commission.

20. Storage garages, upon condition that the location and building plans be reviewed by the Planning Commission.

21. Mining or quarrying and other earth-extraction industries, upon condition that the location of all appurtenant structures and the areas of operation be reviewed by the Planning Commission.

22. In the M1, Light Industrial District, any use which is not listed as prohibited in Subsection 2 of Section 15 M1, "Light Industrial" District Regulations of this ordinance may be permitted upon the following conditions:

a. The premises for any such use shall contain not less than thirty thousand (30,000) square feet of usable land area, or usable land area which is adequate in size and shape for compliance with yard regulations and satisfactory provision of egress and ingress, parking of vehicles and appropriate landscaping.

b. The front elevation plan, the location of major buildings or structures and areas of operation be reviewed by the Planning Commission.

c. Such use shall not be of such nature as to be, or become, obnoxious or offensive by reason of emission of odor, dust, smoke, noise, gas, fumes, cinders, vibration, refuse matter or water carried waste as determined by the Building Department, the Air Pollution Control District and the County Health Department.

23. Automobile parking area to provide the required off-street parking space for any use allowed in any Business District may be permitted in any other District on the following conditions:

a. That the premises of the proposed parking area

adjoins such Business District or is only separated from it by a street, an alley, or pedestrian way.

b. That the location, operation, size, parking, capacity, landscaping, paving or other improvement be reviewed by the Planning Commission.

SECTION 2. That Paragraph B of Section 19 of Ordinance No. 351, "The Districting Ordinance," as amended, be and the same is hereby amended to read as follows:

B. VARIANCE PERMITS

1. The Board of Supervisors, after transmittal to it of notice of the recommendation and other action of the Planning Commission, shall have the power to authorize the issuance of a variance permit.

2. The Board of Supervisors shall authorize the Superintendent of Building and Safety to issue a variance permit only upon its determination that the application constitutes a case where all of the following conditions apply:

a. That there are special circumstances applicable to the property to which the application pertains which do not apply generally to other properties in the neighborhood;

b. That the variance is necessary for the preservation and enjoyment of a substantial property right, possessed and enjoyed by other properties in the neighborhood;

c. That the granting of the variance will not contribute to a property development which will be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood;

d. That the granting of the variance will not adversely affect any Master or Precise Plan.

3. The Board of Supervisors, upon authorizing the issuance of a variance or conditional permit, shall authorize the issuance of the same upon such conditions, if any, as it determines proper to provide for the maintenance of the integrity and character of the neighborhood and the general purpose and intent of this ordinance, and shall require such guarantees, if any, as it deems necessary to assure the fulfillment of these conditions.

4. The Board of Supervisors shall have the power to authorize the issuance of any conditional permit which does not comply with the minimum conditions specified in Paragraph A of this Section if, in the opinion of the Board of Supervisors, the integrity and character of the neighborhood will be maintained and the general intent and purpose of this ordinance will be assured.

5. Notwithstanding the foregoing provisions of this ordinance governing the uses of land in various districts, subject to the conditions hereinafter stated, the drilling of oil wells and operations in connection therewith, except the establishment of oil refineries, shall be permitted without the necessity of applying for and receiving a variance permit on any site in the unincorporated territory within the boundary of each oil field as shown on the following map consisting of five (5) sheets, which are hereunto annexed, made a part hereof, and designated:

Oil Field Map A Sheet 1 of 4 Sheets
Oil Field Map A Sheet 2 of 4 Sheets
Oil Field Map A Sheet 3 of 4 Sheets
Oil Field Map A Sheet 4 of 4 Sheets
Oil Field Map B Sheet 1 of 1 Sheet

a. The site shall not be permitted to become dilapidated, unsightly or unsafe during any phase of the drilling or subsequent operations. Whether or not said well is completed as a producing well, all drilling equipment and the derrick shall be

removed from the premises within sixty (60) days following completion or abandonment, unless drilling operations at the drill site have been started on another well. If said well is completed as a producing well, it may be serviced with a portable derrick when required.

b. In the event any well is abandoned, the property constituting its site shall be restored as nearly as possible to its condition prior to drilling.

6. On any site in unincorporated territory not within the boundary of any oil field shown on the aforestated maps the drilling of oil wells and operations in connection therewith or the prospecting for oil, gas or other hydrocarbon substances by means of core drilling, or other drilling operations involving the use of a drill in excess of four and three-fourths inches in diameter and/or a drill hole in excess of 400 feet depth, shall be permitted only by the application for and issuance of a variance permit in accordance with the procedure and provisions of this Section.

SECTION 3. That Paragraph C of Section 19 of Ordinance No. 351, "The Districting Ordinance," as amended, be and the same is hereby amended to read as follows:

C. PROCEDURE - CONDITIONAL PERMITS AND VARIANCE PERMITS

1. Applications for conditional permits and variance permits shall be made to the Planning Commission. The Planning Commission shall prescribe the form, contents, and manner of preparing and submitting all applications.

2. There shall be a public hearing before the Planning Commission on each application. The Secretary shall set the public hearing for a regular meeting of the Commission on a date not more than thirty (30) days subsequent to the filing of the application.

3. Not less than five (5) days prior to the public hearing, the Commission shall cause notices to the public to be displayed upon

the premises to which the application pertains. Each notice shall, in letters of not less than one inch in height, be headed "Public Notice." Each notice shall, in legible characters, state the application number, the applicant's name, the time and place the application will be heard by the Commission, the location of the premises affected, and the use proposed. Each notice shall be conspicuously posted upon the premises to which the application pertains at not more than three hundred (300) feet in distance apart, but there shall not be less than three notices in all. Each notice shall be posted in such proximity to the nearest public way as to be easily read by a person upon the public way. If it is impossible for the notices which are posted upon the premises to be read by a person upon a public way, then three additional notices shall be posted upon the nearest public way furnishing access to the premises. If it is extremely impractical to post notices upon the premises, three notices shall be posted upon the nearest public way furnishing access to the premises.

4. Prior to the filing of the application, the applicant shall present to the County Tax Collector a list of all persons owning property in Orange County within a distance of three hundred (300) feet from the exterior boundaries of the premises to which the application pertains, and their addresses. The Tax Collector shall certify, after such corrections as may be necessary, that the persons on the list are persons whose names and addresses appear on the latest adopted tax roll of the County as persons owning property in Orange County within a distance of three hundred (300) feet from the exterior boundaries of the premises to which the application pertains. The list, as certified, shall be filed with and as a part of the application. The Planning Commission shall, not less than seven (7) days prior to the hearing, mail, postage prepaid, notice of the time and place of the hearing, the application number, the applicant's name, the location of the premises affected, and the use proposed, to all such persons, and to the applicant.

5. Each application for a variance permit shall be accompanied by, as a part thereof, written statements of the applicant or other witnesses giving adequate evidence that the application constitutes a case where all of the following conditions apply:

a. That there are special circumstances applicable to the property to which the application pertains which do not apply generally to other properties in the neighborhood.

b. That the variance is necessary for the preservation and enjoyment of a substantial property right, possessed and enjoyed by other properties in the neighborhood;

c. That the granting of the variance will not contribute to a property development which will be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood;

d. That the granting of the variance will not adversely affect any Master or Precise Plan.

6. If the Planning Commission determines that there is adequate evidence that the application for a variance permit constitutes a case where all of the conditions set forth in the preceding paragraph 5 apply, it shall recommend approval of the application. If the Planning Commission does not determine that there is such evidence, it shall recommend disapproval of the application.

7. The recommendation of the Planning Commission shall be determined by a majority vote of the members present at a regular meeting. In the event there is no majority vote of either a recommendation of approval or disapproval, the recommendation shall be deemed a recommendation of disapproval.

8. The Planning Commission shall promptly transmit a copy of the application, together with its recommendation of such approval or

disapproval, to the Board of Supervisors. The Board of Supervisors shall consider the application, and the recommendation of the Planning Commission, at its next regular session following the transmittal to it, or as soon thereafter as convenient to the Board of Supervisors. The Planning Commission may, on its own motion, take any application under submission for not more than eight (8) weeks (or longer, if so agreeable to the applicant), for such study or further evidence as it deems necessary prior to such recommendation.

9. Each application for a conditional permit shall be recommended for approval by the Planning Commission provided the Planning Commission determines that the integrity and character of the district, the utility and value of adjacent property, and the general welfare of the neighborhood would be maintained if the conditional permit were granted.

10. The Commission may transmit to the Board of Supervisors, together with its recommendation, any observations or evidence or findings, if any, it may desire, whether by resolution of the Commission, or by statement of any member of the Commission, which would aid the Board of Supervisors in its consideration of the application. The Planning Commission may recommend approval of any application for a variance permit or a conditional permit subject to such conditions as it deems proper to provide for the maintenance of the integrity and character of the neighborhood and the general purpose and intent of this ordinance.

11. The Board of Supervisors, in considering the application for a conditional permit or variance permit, shall consider only the particular application, including the terms thereof and the plot plan attached thereto, which was considered by the Planning Commission, and which was recommended for approval or disapproval by the Planning Commission and if, after the recommendation of the Planning Commission has been made, there is any alteration in the particular application, including the terms thereof and the plot plan attached thereto, the

application shall be returned to the Planning Commission and shall be applied for as an original conditional permit or variance permit, except no filing fee shall be charged again.

12. The Superintendent of Building and Safety shall issue the conditional permit or the variance permit only after the conditions upon which such permit was authorized to be issued either have been fulfilled or, if the Superintendent deems reasonable, adequate guarantees that such conditions will be fulfilled are given by the applicant.

13. The Planning Commission shall charge and collect a fee of twenty-five dollars ($25.00) for the filing of each application for a variance permit except an application for a variance solely to the yard, height, width, or area regulations of this ordinance, in which case the fee shall be ten dollars ($10.00), and a fee of twenty-five dollars ($25.00) for the filing of each application for a conditional permit, except, however, that an application for any agricultural or animal husbandry activity or project conducted primarily for educational purposes or school credits shall be subject to the requirements for the issuance of a variance permit and that for each such application the Planning Commission shall charge and collect a fee of one dollar ($1.00) only.

14. Each conditional permit or variance permit authorized under the provisions of this section which is not actually established, or the actual construction commenced within one (1) year from the date of its authorization by the Board of Supervisors shall become null and void. When any use of land, building, or premises established under the provisions of this section has been discontinued for a period of one (1) year, it shall be unlawful to again use such land or building or premises for such discontinued use unless a subsequent conditional permit or variance permit is authorized and issued therefor.

15. An amendment to an authorized variance permit or a conditional permit may be authorized by the Board of Supervisors. The

procedure shall be the same as specified in the foregoing paragraphs 1 through 14, except that there shall be no charge for filing the application. An amendment to a permit under this section is an amendment which (1) is filed within one (1) year from the date the Board of Supervisors authorized the original permit, (2) does not change the use designated in the original permit, (3) does not increase or reduce the size of the building site or the premises to which the original permit pertained, and (4) does not extend the time in which the actual establishment or the actual construction of the conditional permit or variance permit, as specified in paragraph 14, shall take place.

Only one amendment to a conditional permit or variance permit shall be allowed. Any subsequent amendment, or any amendment not conforming to the above requirements, shall be applied for as an original conditional permit or variance permit.

16. If a variance permit or conditional permit application has been denied by the Board of Supervisors, no further application covering the same premises for a variance or conditional permit for the same or similar use may be filed or considered within the period of one (1) year from the date of such denial.

SECTION 4. That Paragraph 3 of Paragraph D of Section 19 of Ordinance No. 351, "The Districting Ordinance," as amended, be and the same is hereby repealed.

SECTION 5. The provisions of this ordinance, in so far as they are substantially the same as the ordinances herein repealed or amended, must be construed as continuations of such ordinances, and not as new enactments.

SECTION 6. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, paragraph, sentence, clause or

phrase thereof, irrespective of the fact that one or more of the sections, subsections, paragraphs, sentences, clauses or phrases thereof be declared unconstitutional or invalid.

SECTION 7. This ordinance shall take effect and be in full force thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after the passage thereof shall be published once in the Daily News, a newspaper published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

(SEAL)

Willis H. Warner
Chairman of the Board of Supervisors of Orange County, California

ATTEST:

L. B. WALLACE
County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California

By Rachel L Beasley, Deputy

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, L. B. WALLACE, County Clerk and ex-officio Clerk of the Board of Supervisors do hereby certify that at a regular meeting of the Board of Supervisors of Orange County, California, held on the 12th day of November, 1957, the foregoing ordinance containing seven (7) sections was considered section by section, and that the said ordinance was then passed and adopted as a whole by the following vote:

AYES: SUPERVISORS WM. H. HIRSTEIN, HEINZ KAISER, C.M. FEATHERLY, WILLIAM J. PHILLIPS AND WILLIS H. WARNER
NOES: SUPERVISORS NONE
ABSENT: SUPERVISORS NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors of the County of Orange, State of California, this 12th day of November, 1957.

L. B. WALLACE
County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California

By _____, Deputy

Publish The Daily News
November 21, 1957

ORDINANCE NO. 1183

AN ORDINANCE OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, REQUIRING PERMITS AND PROVIDING RULES AND REGULATIONS FOR THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, CONVERSION, DEMOLITION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA, OF BUILDINGS, STRUCTURES AND TENTS; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; ADOPTING BY REFERENCE THE UNIFORM BUILDING CODE, 1958 EDITION, VOLUME I INCLUDING SECTIONS 5108 THROUGH 5113 AND TABLE 51-A OF THE APPENDIX THERETO, AND UNIFORM BUILDING CODE, VOLUME III, UNIFORM BUILDING CODE STANDARDS, 1958 EDITION; AND REPEALING ORDINANCES NOS. 922, 955, 1035 AND SECTION 1 OF 1049, AND SECTION 1 OF 1062 OF THE COUNTY OF ORANGE.

The Board of Supervisors of the County of Orange, State of California, do ordain as follows:

SECTION 1. There is hereby adopted by the Board of Supervisors of the County of Orange for the purpose of prescribing regulations for the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, of buildings, structures, and tents, that certain code known as Uniform Building Code, 1958 Edition, Volume I including Sections 5108 through 5113 and Table 51-A, of the Appendix thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition, and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code not less than three (3) copies have been and are now filed in the office of the Clerk of the County of Orange, and the same are hereby adopted and incorporated as fully as if set forth at length herein.

SECTION 2. The provisions of the Building Code of the County of Orange shall apply to and affect all of the unincorporated

territory of Orange County, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this Code, and hydraulic flood control structures.

SECTION 3. Whenever any of the following names or terms are used in said Uniform Building Code, each such name or term shall be deemed and construed to have the meaning ascribed to it in this section as follows: "BUILDING OFFICIAL" shall mean Superintendent of Building and Safety. "CITY" shall mean the County of Orange or the unincorporated territory of the County of Orange as the text may require. "CITY COUNCIL" shall mean the Board of Supervisors of the County of Orange.

SECTION 4. Sub-section (h) of Section 104 of said Uniform Building Code is hereby amended to read as follows:

"(h) Moved Buildings

A. Buildings or structures moved into or within the County shall comply with the provisions of this Code.

B. No building or structure shall be moved or relocated unless and until a permit to relocate the building or structure has been issued by the Superintendent of Building and Safety to the owner of the premises to which the particular building or structure is proposed to be moved. Such permit shall be designated as a 'relocation permit.'

C. Relocation Permit - Issuance - Enforcement.

1. Application - Conditions.

a. Every application to the Superintendent of Building and Safety for a relocation permit shall be in writing upon a form furnished by the County Building Inspection Department,

unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that one or more of the sections, subsections, paragraphs, sentences, clauses or phrases thereof be declared unconstitutional or invalid.

SECTION 42. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published once in the Huntington Beach News, a newspaper of general circulation printed and published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Willie H. Williams
Chairman of the Board of Supervisors
of Orange County, California.

ATTEST:
[illegible] ex-officio Clerk
of the Board of Supervisors of
Orange County, California

By [illegible] Deputy

I, [illegible], County Clerk and ex-officio Clerk of the Board of Supervisors do hereby certify that at a regular meeting of the Board of Supervisors of Orange County, California, held on the 11th day of March, 1959, the foregoing Ordinance containing forty-two sections was considered section by section, and that the said Ordinance was then passed and adopted as a whole by the following vote:

AYES: SUPERVISORS C.M. FRATHERLY, WM. H. HIRSTEIN, WILLIAM J. PHILLIPS, C.M. NELSON AND WILLIS H. WARNER

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors of the County of Orange, State of California, the 11th day of March, 1959.

L. B. WALLACE
County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California

(SEAL)

By _____ Deputy

Publish Huntington Beach News
March 19, 1959

RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

February 10, 1959

On motion of Supervisor Phillips, duly seconded and carried, the following Resolution was adopted:

WHEREAS, this Board proposes to enact an ordinance entitled "An Ordinance of the County of Orange, State of California, Requiring Permits and Providing Rules and Regulations for the Erection, Construction, Enlargement, Alteration, Repair, Moving, Removal, Conversion, Demolition, Occupancy, Equipment, Use, Height, Area, of Buildings, Structures and Tents; Providing Penalties for the Violation Thereof; Adopting by Reference the Uniform Building Code, 1958 Edition, Volume 1 Including Sections 5106 through 5113 and Table 51-A of the Appendix Thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition; and Repealing Ordinances Nos. 1025, 1035 and Section 1 of 1049, and Section 1 of 1062 of the County of Orange", and

WHEREAS, the purpose of the enactment of the proposed ordinance is to adopt by reference, the Uniform Building Code, 1958 Edition, Volume 1, including Sections 5106 through 5113 and Table 51-A of the Appendix thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition, and to provide rules and regulations governing, and require permits for, the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, and area of buildings, structures and tents, and providing penalties for the violation thereof; and

WHEREAS, three (3) copies of said Primary Code are on file for public inspection in the office of the Clerk of this Board, and

WHEREAS, the title of the proposed adopting ordinance and the title of the Primary Code to be adopted thereby have been read in

Resolution No. 59-164

public session of this Board as required by Section 50022.3 of the Government Code,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that Wednesday, the 11th day of March, 1959, at the hour of 9:30 o'clock A .M., in the Chambers of this Board of Supervisors in the County Courthouse, Santa Ana, California, be and is hereby fixed as the time and place for a public hearing in the matter of the adoption of the said proposed ordinance and the adoption by reference of that certain code known and designated as the Uniform Building Code, 1958 Edition, Volume I, including Sections 5108 through 5113 and Table 51-A of the Appendix thereto, and Uniform Building Code, Volume III, Uniform Building Code Standards, 1958 Edition.

BE IT FURTHER RESOLVED AND ORDERED that notice of the hearing herein scheduled shall be given by publication once a week for two successive weeks in the Huntington Beach News, a newspaper of general circulation printed and published in the County of Orange, the first publication thereof to be made at least fifteen (15) days preceding the hearing herein scheduled; that the said notice shall contain those matters as required by Section 50022.3 of the Government Code.

AYES: SUPERVISORS MILTON J. PHILLIPS, WM. H. HIRSTEIN, C.M. FARTHERLY, C.M. NELSON AND WILLIS H. WARNER

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, L. B. WALLACE, County Clerk and ex-officio Clerk of the Board of Supervisors of Orange County, California, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the 10th day of

Volume 2

STATUTES OF CALIFORNIA

1958 AND 1959

CONSTITUTION OF 1879 AS AMENDED
MEASURES SUBMITTED TO VOTE OF ELECTORS,
1958 GENERAL ELECTION

GENERAL LAWS, AMENDMENTS TO CODES,
RESOLUTIONS, AND CONSTITUTIONAL
AMENDMENTS

PASSED AT

THE 1958 REGULAR SESSION OF
THE LEGISLATURE

THE 1958 FIRST AND SECOND EXTRAORDINARY
SESSIONS OF THE LEGISLATURE

AND

THE 1959 REGULAR SESSION OF THE LEGISLATURE

Compiled by
RALPH N. KLEPS
Legislative Counsel

102—L-2627

In the event any person desires to receive explosives for use in an area outside of this State, a permit to receive such explosives, using the form prescribed by the State Fire Marshal, may be issued by any person in the area of use qualifying as a chief as above defined, or if there be no such person, by the chief law enforcement official in the area of use.

SEC. 4. Section 12002 of said code is amended to read:

Exception

12002. This part does not apply to explosives while in the course of transportation via railroad, water, or highway, when the explosives are moving under the jurisdiction of and in conformity with regulations adopted by the Interstate Commerce Commission or the United States Coast Guard.

SEC. 5. Section 12100 of said code is amended to read:

Exceptions

12100. This chapter does not apply to any of the following:

(a) Any person engaged in the transportation of explosives regulated under Division 11D (commencing at Section 729 01) of the Vehicle Code, except that no shipment of explosives originating without the State, when such explosives would otherwise be governed by the provisions of this part, shall be delivered to any person who does not present a permit as specified in Section 12101.

(b) Any sale, gift, delivery, or other disposition of a quantity of explosives in excess of 1,000 pounds.

(c) Any sale, gift, delivery, or other disposition of smokeless powder when such smokeless powder is intended for hand loading of small arms ammunition for private personal use and not for resale, and when the quantity of such smokeless powder does not exceed 20 pounds, and when the keeping on hand of such smokeless powder is acceptable to the authorities having local jurisdiction and is in compliance with local regulations, if any, applicable thereto.

SEC. 6. Section 12101 of said code is amended to read:

Permit to receive explosives

12101. Unless otherwise provided in this chapter, no person shall receive or possess any explosives as defined herein and within the scope of this part, without first securing a permit to receive explosives issued to such person by the chief having the responsibility for the prevention and suppression of fire in the area in which the explosives are to be used, and it is unlawful for any person to sell, give away or deliver explosives to any person who does not present such a permit.

SEC. 7. Section 12101.5 is added to said code, to read:

Minors

12101.5. No explosives shall be sold, given or delivered to any person under 21 years of age, whether such person is acting for himself or for another person, nor shall any such person be eligible to obtain any permit to receive explosives governed by the provisions of this chapter.

SEC. 8. Section 12102 of said code is amended to read:

Application statement: Form

12102. Application for a permit to receive explosives shall be made by filing a statement with the chief having the responsibility for the prevention or suppression of fire in the area in which the explosives are to be used, upon a form prescribed by the State Fire Marshal, showing:

(a) The name and address of the applicant.

(b) The place where and the purpose for which the explosives are intended to be used.

SEC. 9. Section 12103 of said code is amended to read:

12103. The statement shall be signed by the applicant, or by his agent, and shall be notarized or witnessed. If witnessed, it shall be witnessed by two persons known to the chief to be residents of the county where, as shown by the statement, the explosives are intended to be used. The witnesses shall certify that the applicant is personally known to them, and to the best of their knowledge and belief the explosives are required by the applicant for the purposes set forth in the statement. Signature, witnesses, etc.

If more than one employee or agent may be designated by the applicant to receive explosives for the applicant, or if more than one vehicle may be used by the applicant or his agent to transport any explosives received, the physical description and other required information pertaining to the agents and the vehicles, as specified on the application, shall be given on the application for all such persons and vehicles.

SEC. 10. Section 12104 of said code is amended to read:

12104. Before issuing a permit, the chief shall: Issuance

(a) Review the statement.

(b) Ascertain that the applicant or his agent, as appropriate, has sufficient knowledge and ability to safely handle and use explosives.

(c) Inspect the vehicle in which the applicant proposes to transport the explosives and ascertain that it is reasonably safe for that purpose, except that no inspection shall be required of any vehicle for which a permit has been issued for the transportation of explosives governed by the provisions of Division 11D (commencing at Section 729.01) of the Vehicle Code.

SEC. 11. Section 12105.5 is added to said code, to read:

12105.5. In the event that more than one employee or agent may be designated by the permittee to receive explosives, or in the event that more than one vehicle may be used by the permittee or his agent to transport any explosives received, the physical description and other required information for such persons and vehicles shall be shown on the permit. Descriptions on permit

SEC. 12. Section 12107 of said code is amended to read:

12107. Permits shall be of two types. Type A, which shall be issued to persons engaged in an established construction, agricultural, timber, mining, or other commercial operation, to persons desiring to receive more than 20 pounds of smokeless powder for hand loading of small arms ammunition for private personal use and not for resale, and to persons desiring to receive any amount of other types of gunpowder for sporting purposes, shall be valid until suspended or revoked. A Type B permit shall expire 24 hours from the time of issuance. Types of permit

SEC. 13. Section 12107.5 is added to said code, to read:

Nontransferable

12107.5. No permit issued under the provisions of this chapter shall be transferable.

SEC. 14. Section 12108 of said code is amended to read:

Type A

12108. A Type A permit may be suspended and, after reasonable notice and hearing, revoked by any chief having the responsibility for the prevention and suppression of fire in an area through which explosives are transported or in which explosives are used, if the person to whom the permit was issued transports or uses or proposes to transport or use the explosives in a manner which is unlawful or which creates an unreasonable hazard to life and property.

If the suspension or revocation is effected by the chief of a jurisdiction other than that jurisdiction in which the permit was issued, the chief taking action to suspend or revoke a permit shall notify the chief who issued the permit of the action taken.

SEC. 15. Section 12109 of said code is amended to read:

Records of sales, etc.

12109. Except as otherwise provided in Section 12109.5, every persons who sells, gives away, delivers, or otherwise disposes of explosives to any person shall make a quadruplicate record of each such sale or transaction. A copy shall be immediately sent to the chief who issued the permit to receive explosives. Two copies shall be delivered to the person receiving the explosives, one to be retained by him and the other to be sent to the chief who issued the permit to receive explosives upon the disposition of the explosives The original shall be retained by the person disposing of the explosives and shall be kept on file for a period of not less than three years. The form of the record of sale or transaction shall be prescribed by the State Fire Marshal.

SEC. 15.1. Section 12109.5 is added to said code, to read:

Chief of area to receive copy of sale

12109.5. When the permit to receive explosives indicates that the intended area of use of the explosives is other than that area in which the permittee or his agent receives the explosives, the person selling or otherwise disposing of the explosives shall, in addition to complying with the provisions of Section 12109, immediately send a copy of the record of sale to the chief in the area where the explosives are received by the permittee or his agent.

SEC. 15 2. Section 12110 of said code is amended to read:

Journal or record book

12110. Every person who sells, gives away, delivers, or otherwise disposes of explosives shall keep an accurate journal or record book in which shall be noted at the time it is made, each sale, delivery, gift, or other disposition of an explosive made by him, whether in the course of business or otherwise. Such journal or record book shall be kept on file for a period of not less than three years.

If the record of sale required by Section 12109, contains the information specified in Section 12111, such record of sale shall be considered as meeting the requirements of this section for a journal or record book.

STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Ryan Todaro

SUBJECT: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates)

DATE: April 16, 2007

Documents reviewed:

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

J. Gustafson (Investigator, City of Laguna Beach). June 16, 1994. Response to complaint that Esslinger property was bulldozed on June 4 and June 5, 1994. Includes this summary of the site visit: "Site visit revealed recent grading or brush removal."

U.S. Fish and Wildlife Service. October 7, 1996. Determination of Endangered or Threatened Status for Four Southern Maritime Chaparral Plant Taxa from Coastal Southern California and Northwestern Baja California, Mexico. Final rule. Federal Register Volume 61, Number 195, pages 52370-52384. [Listing of Bigleaf Crownbeard, *Verbesina dissita*, as Threatened]

Shelley, D.A. (John M. Tettemer & Associates). June 30, 1999. Letter to M. Vaughn (CCC) concerning proposed development on Esslinger property, now known as Driftwood Estates.

LSA Associates. August 17, 2000. Biological Resources Assessment, Driftwood Estates – Laguna Beach Project. A report prepared for Highpointe Communities, Inc.

Michael Brandman Associates. November 2001. Draft Environmental Impact Report, Laguna Beach Driftwood Estates (Tentative Tract No. 16035). State Clearinghouse No. 2001011112. Prepared for City of Laguna Beach.

Tippets, W.E. (CDFG). December 20, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Driftwood Estates Project (Tentative Tract Number 16035), Laguna Beach, California (SCH 200101112 (sic)).

Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California

Almanza, E. and D. Bramlet. June 2003. Technical Review, Biological Resources Assessment, Driftwood Estates. A critical assessment of proposed alterations to the City of Laguna Beach's habitat ranking system written by E. Almanza based on a Dave Bramlet's site survey and technical information, with a note from Karlin Marsh dated February 21, 2003.

The subject property includes an irregular, more-or-less flat graded area bounded to the south and west by residential development (single-family homes and a trailer park), to the north by native habitat and a trailer park, and to the east by native habitat. This disturbed area was graded out of a natural, generally ocean-facing hillside on the south side of Hobo Canyon in an area known locally as the "Hobo Aliso Ridge." The relatively undisturbed adjacent native habitat is mainly comprised of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between maritime chaparral and coastal sage scrub. These habitats, especially maritime chaparral, support populations of bigleaf crownbeard[1], which is listed as "threatened" under both federal and state law and is endemic to this part of Orange County.

Prior to the grading of this site, its habitat was almost certainly southern maritime chaparral because the landscape position, topography, physical environment, and climatic regime was essentially the same as that of the adjacent maritime chaparral. If left undisturbed, it is reasonable to expect that the site would eventually again support a maritime chaparral community since such a successional sequence has been observed at other disturbed sites. This is also suggested by recent changes in the vegetation. The vegetation was periodically removed by bulldozing prior to 1999.[2] Ground-level photographs taken in 1999 show a barren site, nearly devoid of vegetation, bounded by a line of sandbags. Ground cover was extremely sparse, suggesting that the area had

[1] In the United States, natural populations of bigleaf crownbeard are only found on coastal hillsides and canyons in Laguna Beach. Although generally restricted to southern maritime chaparral, bigleaf crownbeard also occurs to a lesser extent in coastal sage scrub and mixed chaparral. There has been an 82 to 93 percent loss of maritime chaparral habitat in southern California due to urbanization and agriculture. The majority of remaining populations are on private land and threatened with residential development.

[2] The site was scraped at least in 1994 (Gustafson 1994) and in 1997 or 1998 (P. Alia, personal communication to J. Dixon, April 14, 2007). According to local residents, the vegetation was removed on other occasions prior to 1999 (P. Alia, personal communication to J. Dixon, April 14, 2007). A 1979 aerial photograph shows most of the site vegetated. An aerial from the City that is labeled "1997/1978 Aerial Photos" shows discrete, rectilinear unvegetated areas that suggest grading had recently taken place.

recently been scraped, closely mowed,[3] or both. Apparently, the vegetation removal has ceased because by 2001 the graded portion of the site supported developing Venturan-Diegan transitional coastal sage scrub, sage scrub-grassland ecotone/sere[4], coastal sage-chaparral ecotone/sere, and southern maritime chaparral, in addition to weedy vegetation (Michael Brandman Assoc. 2001). Bigleaf crownbeard was documented on the graded portion of the site in both 2000 and 2003 (LSA 2000, Almanza & Bramlet 2003).

When southern maritime chaparral is disturbed, the early colonizers are generally exotic grasses and other weeds followed by coastal sage scrub species. With time, the coastal sage scrub is expected to be replaced by maritime chaparral, which is considered the climax community. Based on observations of recovery on nearby sites, the process could take 30 years or longer (Fred Roberts, personal communication to J. Dixon, April 13, 2007). Therefore, had this site been left undisturbed beginning in 1972 it mostly likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral. However, as pointed out by the Department of Fish and Game (Tippets 2001), "...past and ongoing clearance of vegetation on much of the previously-graded portion of the site has prevented the establishment of mature coastal sage scrub and southern maritime chaparral."

Both the Department and the U.S. Fish and Wildlife Service (Evans 2001) consider the various types of coastal sage scrub and the maritime chaparral that occur on the property to be "sensitive" or "special status" plant communities. Southern maritime chaparral is listed as a rare plant community by the Department of Fish and Game's Natural Diversity Data Base and it performs the important ecosystem function of providing habitat to rare and threatened species such as bigleaf crownbeard. Although there are thousands of acres of coastal sage scrub still in existence in California, over 85 percent of the original acreage has been lost. The loss in the coastal zone is probably much higher and is especially significant because coastal sage scrub provides critical habitat for the coastal California gnatcatcher, a "threatened" species under the Endangered Species Act. In its review of the Driftwood Estates proposal at the subject site, the Department of Fish and Game (Tippets 2001) found that, "The quality of the coastal sage scrub on the site varies, but it is generally not high quality. However, this vegetation community is widely regarded as threatened, and any loss is generally considered directly and cumulatively significant. In addition, rufous-crowned sparrow, a species of special concern strongly associated with coastal sage scrub, was observed on the site." California gnatcatchers have also been observed at the site.[5] In this setting, both the southern maritime chaparral and the coastal sage scrub are rare habitat types, they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities.

[3] Shelley (1999) reports "cut grasses."
[4] An "ecotone" is a transitional zone between two communities that typically contains elements of each. A "sere" is a successional sequence of community types. The meaning here is apparently "seral stage."
[5] California Department of Fish and Game Natural Diversity Database: Laguna Beach Quad (No. 3311757/071D), California gnatcatcher (*Polioptila californica*) observation 836.

Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act.

It is clear that the habitat that was destroyed when the area was graded would have met the definition of ESHA and that the surrounding, ungraded area is currently ESHA. The current status of the graded area is a more difficult determination, because until recently it was repeatedly disturbed by scraping, vegetation clearance, and by the placement of sandbags, which take up space and prevent the establishment of any plant community. However, the fact that the area was rapidly colonized by coastal sage scrub and by maritime chaparral vegetation, including bigleaf crownbeard, in areas where disturbance ceased demonstrates that the necessary physical and environmental characteristics for these rare vegetation types are present. The evidence suggests that it is only because of ground disturbance, repeated cutting of vegetation, and sandbag placement that coastal sage scrub and maritime chaparral are not now well-established. Therefore, I recommend that the entire graded portion of the site be considered degraded ESHA.