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January 24, 2024

California Coastal Commission
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Re: Opposition to Re-Application for CDP for Proposed Residence at 217 Vista Marina within Designated Coastal Canyon/ESHA in the City of San Clemente; Coastal Development Permit Application 5-18-0930 (Graham Property Management LLC); Coastal Commission February 8, 2023 agenda- **Th15a**

Honorable Commissioners,

The Friends of Trafalgar Canyon object to the potential approval of the proposed Coastal Development Permit (CDP) for a proposed residential development at 217 Vista Marina in the City of San Clemente (City). When virtually the same project came before you in 2019, we objected and you unanimously denied it. At that time, you correctly declined the staff's recommendation – based on staff's unsubstantiated “takings” concerns – to approve. Nothing material has changed since then.

We sent you letters prior to your previously scheduled, and then continued, hearings of this matter. Our most recent letter was dated December 8, 2023.¹ We incorporate all our prior letters by reference herein.

¹ Our December letter contained the following headings:

- A. The Proposal is a Rehash of a Prior Project That The Commission Unanimously Rejected in 2019.
- B. The City of San Clemente Has Not Approved a Variance for the Project As is Required Prior to Commission Action on it.

We have reviewed relevant portions of correspondence with your staff from the project applicant's representative, Mr. Mark Maguire. We find some of the claims made in this correspondence, and some statements made in the prior staff report, to be erroneous. For example, the December staff report claimed "The Commission has previously approved residential development descending down beyond the edge of the coastal canyon." Mr. Maguire's email of December 28, 2023 to staff member Liliana Roman provides examples of projects that allegedly "involve development that goes into a canyon." These claims are clearly false. None of these properties have anything in common with the current proposal in that none encroach on the protected and LCP-designated canyon at issue in this application as the present proposed project does. They in no way create a precedent for a house that violates the Coastal Act in numerous different ways detailed in your December staff report, and likely in your most recent staff report.

A portion of Mr. Maguire's correspondence focuses on ESHA issues. Mr. Maguire's December 20, 2023 email notes the applicant's disagreement with staff's views on what the annual nuisance abatement orders cover, what vegetation is ESHA, and what constitutes adequate buffers. As we stated in our December 8, 2023 letter, biologist Robert Hamilton reviewed Dr. Jonna Engel's memo of 11-30-23 with her updated ESHA determination. She wrote the following on page 3 of her memo: "it is clear that the entire development remains within the buffer area that I find to be mandated by Section 30240(b), as discussed below. As such, regardless of the extent of the giant wild rye, ***the entire proposal is inconsistent with Section 30240.***" (Emphasis added.) While the "precise extent of the giant wild rye" may not "affect the consistency of the proposed project with Coastal Act section

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- C. To Approve the Project Would Violate the California Environmental Quality Act's Substantive Mandate in Addition to Violating the Coastal Act Because Less Environmentally Damaging Alternative Designs are Feasible and The Project's Benefits Do Not Override Its Impacts.
 - D. Denial of the Project Would Not Constitute a Taking.
 - E. The Lawsuit by Graham Property Challenging the Commission's Previous Denial of the Project Resulted in a Ruling Addressing Only Procedural, Not Substantive, Grounds.
 - F. ESHA Destruction By the Applicant Should be Remedied *Before* Any CDP Approval is Considered.

30240”, Dr. Engel acknowledged: "Removal of major vegetation generally constitutes development under the Coastal Act and therefore requires a permit. This annual clearance was never permitted, and the Enforcement unit did not believe that the nuisance abatement order required removal of giant wild rye grass." Therefore, impacts to the giant wild rye required a Coastal Development Permit that the owner never obtained. As noted on the agenda for this item, “Note: The Commission’s enforcement division has opened an investigation into potential Coastal Act violations associated with this item and site, as is explained further in the staff report.”

Behavior in violation of the Coastal Act should not be rewarded by a CDP approval because the major vegetation the applicant cut down every year should be mapped as ESHA. Though it may be true that “precise extent of the giant wild rye” may not “affect the consistency of the proposed project with Coastal Act section 30240,” nevertheless Dr. Engel’s ESHA map fails to include the patches of giant wild rye that were illegally removed (i.e., the areas of resprouting wild rye that have recently been mapped and photographed on site). Thus, the project is being depicted as avoiding all ESHA, and the issue is being shifted to a determination of whether a very narrow ESHA buffer can be considered adequate in this case.

The issue of the proposed actions removing ESHA — major vegetation that has been repeatedly cut back without the required CDP – should result in enforcement and the requirement for remedying *prior to* processing any approvals for a CDP application.

Mr. Maguire’s effort to redefine previously mapped ESHA in his December 20, 2023 email are unavailing and a waste of the Commission’s time. He repeats what a person named Tony Bomkamp is allegedly writing to Dr. Engel, without providing a copy of that document with his email. We object to the fallacious hearsay assertions in his email about the presence of various forms of ESHA vegetation around the site.

Conclusion.

The CDP should be denied again, as this Commission unanimously did in 2019. The matter may be remanded to the City of San Clemente for further consideration if the proponent chooses to continue to pursue its application. However, the Commission should not invite wholesale disrespect for the mandates of the Coastal Act by condoning the blatant violations of its substantive provisions that this project proposal exudes.

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There is no valid reason to change the Commission's unanimous vote to deny a CDP for the project as proposed at 217 Vista Marina. As previously found and supported by detailed findings, the project is inconsistent with Coastal Act Policies governing geologic hazards, visual coastal resources, and ESHA. Upon consideration of the *same* evidence, the *same* conclusion should be reached. The prior denial should be re-confirmed and the CDP denied again.

Friends of Trafalgar Canyon reserves all of its legal rights and intends to sue if the Project is approved.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Douglas P. Carstens". The signature is fluid and cursive, with a long horizontal stroke at the end.

Douglas P. Carstens