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**VIA WEBSITE SUBMISSION, EMAIL (Liliana.Roman@coastal.ca.gov)
and U.S. MAIL**

California Coastal Commission
c/o Liliana Roman
Coastal Program Analyst
301 E. Ocean Blvd. Suite #300
Long Beach, CA 90802

**Re: *Opposition to Re-Application for CDP at 217 Vista Marina
App 5-18-0930***

Dear Coastal Commission:

I have owned the home at 207 Calle Conchita directly above the cul-de-sac on Vista Marina for over 25 years. My opposition to any residential development within the Trafalgar Canyon is well known (see **Exhibits 1, 2, 3**, attached hereto and incorporated herein). The proposed development at the base of the relatively pristine coastal canyon violates a number of codes, statutes, rules and ordinances. Neither the law nor the facts have changed since the last hearing. No variances have been debated and granted. The only "new" twist is the latest applicant, Mr. Tom Piana, has threatened to sue the City or the CCC if they individually or collectively deny his permit, by proffering a paper thin "takings" argument.

For a takings argument to succeed, Mr. Piana will, among other elements, need to show that he neither knew nor should've known at the time he purchased the canyon bottom lot that it was non-compliant with the Coastal Act and other statutes, ordinances and regulations. What, then, were his expectations?

Fact History

In 1998, I purchased the property at 207 Calle Conchita. At the time, my realtor advised me that the lot down in the canyon was encumbered with restrictions that precluded any owner's right to develop. This was a factor in my decision to purchase my property, as any development would threaten the integrity of the steep slope and raise the risk of fire devastation. Over the next 25 years, multiple attempts were made by at least three of five successive lot owners or speculators to convince me to sell a fraction of my land at the canyon toeprint so as to allow emergency fire access at the elbow in the road where Vista

Marina empties into the cul-de-sac.

When I purchased my house, it's my recollection that the canyon lot was owned by Mr. John Kain, who approached me several times about selling a piece of my toeprint property. He represented that absent my conveyance he would not be able to develop the canyon lot because, he enlightened, the narrowness of the cul-de-sac precluded emergency fire truck entry and exit. I respectfully declined his offers. It's my understanding that prior to my purchase he or his agent was instrumental in paving the cul-de-sac in a manner that trespassed across my toe print property lines.

A Mr. Brunner (I believe) then purchased the lot for what I understood was a deflated price. Mr. Brunner contacted my mother, Juniel Worthington, who resided at my house, for the purpose of convincing her to spare a fraction of our real estate. We declined his pitch. In 2004, at a city planning commission hearing, Ms. Worthington opposed an effort by Mr. Brunner to advocate variances that would render his canyon lots developable. To underscore our steadfastness, we installed heavy wooden piers in the ground to demarcate our canyon toeprint property line. We did so because optically, when looking at the asphalt contours of the road alone, there was perhaps an "appearance of compliance" with the applicable emergency vehicle access ordinances. The installation of the 6 x 6 bulky wood piers was intended to negate those optics.

It's my understanding that Mr. Brunner later sold his unbuildable canyon lot to the Shimokaha Vista Marina LLC, an entity which in turn offloaded the property to the Cummings group. It's my understanding that the Cummings applied for a building permit, put up poles, but perhaps saw the futility (my speculation), abandoned the application, and then sold the lot to the Martins. See **Exhibit 4** (my best effort to reconstruct the relevant sale and purchase history).

In 2017, Mr. Piana purchased from the Martins the now notoriously hands-off canyon lot. While the sale was in escrow, Mr. Piana contacted my office multiple times. He requested a trade. He asked me (through my paralegal, Julianna Farrell) to donate about 600 to 800 square feet of my lot at the junction of Vista Marina and the cul-de-sac. (See **Exhibit 5**, Declaration of Julianna Farrell).

Why did Mr. Piana want my property? He indicated that by shedding a piece of my toe print he could then comply with applicable ordinances regarding the safe width of streets and cul-de-sacs for emergency ingress and egress. Mr. Piana volunteered that, in his view, at that time, the access road and cul-de-sac were out of compliance. It's worth emphasizing that Mr. Piana acknowledged the lot was not developable while his purchase was *in escrow* – during which time he could have backed away from the purchase or protected his legal rights vis-à-vis the seller, or their respective realtor agents.

Mr. Piana further lobbied that if my largesse helped him render the cul-de-sac and access street compliant with the applicable laws, he could then build his house and persuade the city to install vital utilities inside the canyon. He stated that:

"As it is now, there isn't a proper storm drain, fire hydrant, and fire trucks cannot come down the street because they can't turn around at the end, making the area more

susceptible to wild fire. He also stated that your property at the bottom of the hill is lined with Lemonade Berry shrubs, which are desirable for being fire resistant.”

(See **Exhibit 5**, Declaration of Julianna Farrell, dated February 2, 2024)

As consideration, Mr. Piana offered to build on my property a retaining wall, a rainwater runoff collection system and a natural filtration system that would empty into a storm drain he boldly presumed the city would install. At that time, I was in the process of working with the CCC to obtain permission to build my new house at 207 Calle Conchita (which the CCC granted because, among other things, I complied with the black letter canyon and native vegetation edge setback rules.) Mr. Piana suggested that his proposal would save me anywhere from \$70,000 to \$100,000.

Finally, in terms of the proposed home design, Mr. Piana described his dream house as a split-level, artsy house with a living green roof that would not impede anyone’s view. See **Exhibit 5**.

My response was swift, emphatic, and unequivocal:

Tom, I appreciate your interest in my slope. It’s very nice of you to offer a plan that may be of mutual interest. However, I do not wish to mislead you. I have owned this property for over 20 years. Part of its value is its serenity and unobstructed views of the ocean and canyon. I fully support the restriction against developing the canyon, for many reasons. We are designing my house in a way that nullifies the utility of the plan you suggested. We have been approached by many owners or potential owners in the canyon over the years and our response remains the same: as long as we own the property, we are not interested in helping anyone develop the canyon, and we will oppose any such effort legally. I know this is not what you want to hear, but it’s best that you hear from me, the owner.

(January 22, 2018, **Exhibit 6**)

I reiterated my position with his lawyer, Mark McGuire, soon thereafter.

Conclusion

Mr. Piana was well aware of the restrictions on building his dream home at the bottom of Trafalgar Canyon before he assumed ownership of the lot. He could no more build a house in Trafalgar Canyon than he could within Yosemite Valley or the Grand Canyon.

As trustees of Trafalgar Canyon for present and future generations, the Coastal Commission, as well as the City of San Clemente, owes a number of duties to the public, including the duty of protection, the duty against privatizing trust resources, and the duties of loyalty, precaution, care, supervision and accountability. Please exercise these duties on the public’s behalf. Please accept as true all staff reports that state unequivocally that any proposed development would disrupt an environmentally sensitive habitat, trespass on the buffer zone devised to protect same, and violate applicable canyon edge setback rules. Please do not capitulate to the threat of Mr. Piana’s lawyer. The takings argument can be defeated soundly under the caselaw and, if necessary, with minimal discovery.

Mr. Piana understood the risks. In the past 75 years, ownership of the lot deep inside a treasured coastal canyon has changed many, many times. Efforts were made to build, but all of them failed, as the rule of law requires. If the seller or his own real estate agent represented or insinuated that the City and/or CCC would happily bless his building application, Mr. Piana is urged to seek redress from those tortfeasors. As others have argued, should the CCC or City capitulate to the threat, and not defend itself robustly, the floodgates of devious speculation will swing wide open, the grifters will be emboldened, the California Coastal Act will have been gutted, irreparable harm will have been done to a rare ecological treasure already threatened by escalating global warming, and the rule of law will lose all respect.

Respectfully,

Roger Worthington

Roger Worthington, Owner
207 Calle Conchita
San Clemente, CA

RGW/ca
Enclosures

cc: The Friends of Trafalgar Canyon

Exhibits:

1. Letter to CCC of May 31, 2019
2. Letter to CCC of June 24, 2019
3. Letter to CCC of October 6, 2023
4. Timeline of Sales and Purchases of 217 Vista Marina
5. Declaration of Julianna Farrell dated February 2, 2024
6. Letter to Tom Piana from Roger Worthington dated January 22, 2018