



# City of Santa Barbara California

## PLANNING COMMISSION STAFF REPORT

**REPORT DATE:** November 10, 2016  
**AGENDA DATE:** November 17, 2016  
**PROJECT ADDRESS:** 1837½ El Camino de la Luz (MST 2002-00214)

**TO:** Planning Commission  
**FROM:** Planning Division, (805) 564-5470, extension 4560  
 Beatriz Gularte, Senior Planner *BEG*  
 Kathleen Kennedy, Associate Planner *KK*

### I. SUBJECT

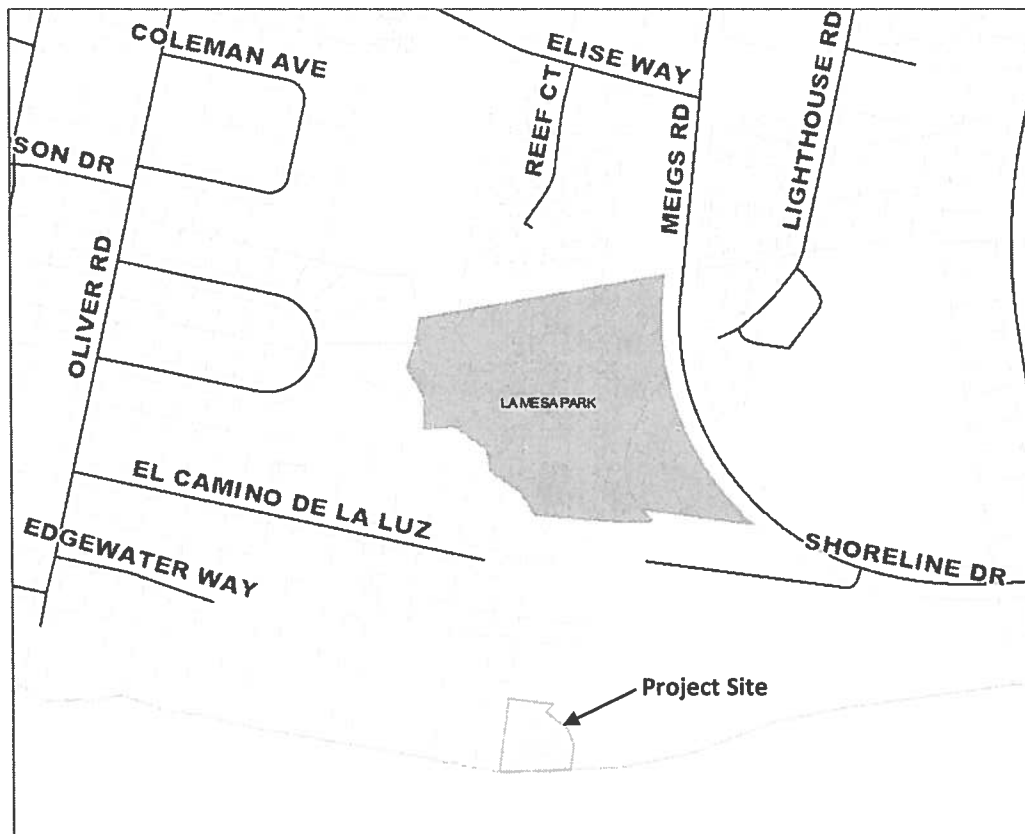
The purpose of the environmental hearing is to receive comments from the public, interested agencies, and Planning Commission on the adequacy and completeness of the Second Revised Draft Environmental Impact Report (EIR) that evaluates environmental effects of the proposed project to construct a new residence at 1837 ½ El Camino de la Luz.

The Second Revised Draft EIR concludes that potentially significant project impacts in the areas of visual aesthetics and geology would be reduced to less than significant levels with identified mitigation measures.

This hearing is only for comment on the Second Revised Draft EIR. No action will be taken at this hearing on either the environmental document or the Coastal Development Permit application for the proposed residence. Public comments received at the hearing, along with written comments received through the end of the draft document public review period (November 30, 2016) will be considered in the preparation of a proposed Final EIR. Written responses to comments will be provided as part of the FEIR. The proposed Final EIR along with the requested Coastal Development Permit application will be brought to the Planning Commission for consideration of approval actions at a subsequent noticed public hearing.

### II. PROJECT DESCRIPTION

The proposed project consists of a 1,505 square foot (net), two-story single family residence with an attached 429 square foot garage on a 23,885 square foot vacant bluff-top lot. Grading quantities total approximately 288 cubic yards of cut and 21 cubic yards of fill. Access to the site would be provided by private easements extending south from the terminus of El Camino de la Luz.



Vicinity Map

### **III. REQUIRED APPLICATION**

The discretionary permit application for this project is a Coastal Development Permit (CDP2002-00008) to allow the proposed development in the Appealable Jurisdiction of the City's Coastal Zone (SBMC§28.44.060).

### **IV. BACKGROUND**

The proposed project application was submitted in 2002. It was deemed complete in 2004, and an Initial Study (April 4, 2005) was prepared by staff to analyze the potential environmental impacts of the proposed project pursuant to the California Environmental Quality Act (CEQA). A Draft Mitigated Negative Declaration (MND) was prepared, and two environmental hearings on the Draft MND were held by the Planning Commission in 2005. At that time, it was determined that the preparation of an Environmental Impact Report (EIR) was required to fully evaluate the significance of the project impacts on public views of the ocean from La Mesa Park and surrounding areas. A revised Initial Study (August 31, 2005) was prepared to reflect the need for an EIR, and subsequently the Planning Commission held an environmental scoping hearing for the EIR on September 22, 2005. Based on comments received, another revised Initial Study (October 16, 2006) was prepared that included an updated Biological Assessment Report. A Draft EIR (November 2006) was prepared and an environmental hearing on the Draft EIR was held on January 11, 2007.

Subsequently, a proposed Final EIR (May 2007) was prepared, including responses to comments received, and was reviewed by the Planning Commission on May 22, 2008. At the hearing, the Planning Commission requested that additional geological investigations be conducted consistent with the requirements of a mitigation measure (GEO-3a) that was included in the proposed Final EIR. The Planning Commission did not certify the Final EIR or take action on the Coastal Development Permit.

The geologic investigation mitigation measure (GEO-3a) required additional study of the project site to determine if a previously reported bedding plane fracture actually existed on the site. Additional studies of the project site were recommended by the EIR because a bedding plane fracture, if it existed, could have the potential to result in a slope instability impact.

In response to the request by the Planning Commission that additional study of the geologic conditions of the project site be conducted prior to taking an action on the proposed project, the required geological investigation was completed in 2009, and an additional slope stability analysis was completed in 2011. The 2009 investigation determined that the previously reported bedding plane fracture did not exist on the project site. The 2011 slope stability analysis report concluded that that the proposed project would not result in a significant slope stability impact. As a result of the geological investigation, the First Revised Draft EIR was amended to omit the previously proposed mitigation measure (former measure GEO-3a) because the requirements of that mitigation measure were completed.

The First Revised Draft EIR was circulated for public review in March 2012, and a public hearing to consider the adequacy of the EIR was conducted by the Planning Commission on April 5, 2012. A Final EIR was not prepared pending further analysis of issues raised in public comment.

## **V. SECOND REVISED DRAFT EIR**

### **A. Additional Analysis**

Public comments on the First Revised Draft EIR focused on several issues, including the location of the top of the ocean bluff on the project site, the location of the top of the canyon slope for Lighthouse Creek on the project site, and the stability of the Lighthouse Creek channel slope located on the eastern portion of the project site. In response, two additional geologic evaluations of the project site and the proposed project were conducted in 2013.

In summary, the Second Revised Draft EIR provides the following new or revised information:

#### 2013 Geologic Evaluation:

- A revised “top of bluff” location further landward that generally follows the existing curb and is consistent with the top of bluff location expressed in public comments and supported by City and Coastal Commission staff.
- Updated information regarding the rate of bluff retreat using an updated, more accurate methodology resulting in 1.02 inches per year rather than four inches per year discussed in the 2012 EIR.
- A “top of canyon slope” that is located east of and adjacent to the existing curb rather than the top of bank of Lighthouse Creek previously identified approximately 50 feet east of the proposed building site.
- A slope stability analysis for the western slope of Lighthouse Creek that concludes that the bedrock and soil comprising the slope are stable under both static and earthquake conditions.

Revised Project Description:

- Updates to the project description to reflect changes made to the design of the proposed residence. The current proposed building heights are approximately six to ten feet lower, respectively, than the maximum heights of the previously proposed residence design. The western elevation of the currently proposed residence would have a maximum height of 15 feet above grade and the eastern elevation would have a maximum height of 25 feet above grade.

Environmental Impact Analysis:

- Updated aesthetics analysis of the project based on the changes to the design of the residence.
- Updated analysis of the project's consistency with applicable plans and policies.
- Updated alternatives to the proposed project to reflect new information regarding the revised project design and new information regarding the geologic conditions of the project site.
- Updated biological resources analysis and mitigations.
- A new section that describes the environmental impacts of the proposed project that have been determined to be less than significant. The Impacts Found Not to be Significant section summarizes analysis provided by the Revised Initial Study prepared for the project, and where necessary, updates that information to reflect changes made to the design of the project and changes to environmental conditions at the project site.

**B. Summary of Impacts**

The Second Revised Draft EIR concludes that there are no significant, unavoidable impacts, and that all potentially significant impacts would be reduced to less than significant levels with the implementation of identified mitigation measures.

***Significant, Unavoidable Impacts*** (Class I impacts are unavoidable significant effects for which no feasible mitigation is identified)

The Second Revised Draft EIR does not identify any significant, unavoidable impacts.

***Significant, But Mitigable Impacts*** (Class II impacts are potentially significant impacts that can be avoided or reduced to less than significant levels with identified mitigation measures)

Class II impacts were identified in the Second Revised DEIR in the areas of Visual Aesthetics and Geologic Hazards. Additional impacts identified as Class II in the Initial Study are Biological Resources, Hazards (fire), Transportation (access), and Water Resources (drainage, water quality).

Visual Aesthetics: The Draft EIR (2007) and the First Revised Draft EIR (2012) prepared for the project evaluated the potential for the original project design to result in significant visual aesthetic impacts and concluded that the project's original design would result in significant impacts to important public scenic ocean views from areas in and around La Mesa Park. The previous Draft EIRs also concluded that the impacts could be reduced to a less than significant level with the implementation of mitigation measures that identified changes to the design of the project. Design changes similar to those recommended by the previous Draft EIRs have been incorporated into the design of the currently proposed project. The design of the proposed residence has been revised so that it has a maximum height of 25 feet above existing grade, which is approximately ten feet lower than the maximum height of the previously

proposed residence design. The potential for the project's current design to result in significant visual aesthetic impacts is evaluated in the Second Revised Draft EIR.

The Second Revised Draft EIR concludes that potentially significant impacts to important public scenic ocean views from areas in and around La Mesa Park would be reduced to a less than significant level with the implementation of identified mitigation measures AES- 1 (require neutral colors) and AES-2 (install landscaping that will not exceed the height of the residence).

Geologic Hazards: The Second Revised Draft EIR concludes that potentially significant geologic impacts (slope stability, subsidence, and expansive soils) would be reduced to a less than significant level with the implementation of proposed mitigation measures GEO-1 (project to implement a storm water drainage system that will not result in a significant slope stability impact) and GEO-2 (foundation system shall be approved by a licensed Engineering Geologist or Geotechnical Engineer).

Biological Resources: The evaluation of project-related impacts to biological resources provided by the Revised Initial Study was based on information provided by the biological assessment report prepared in 2006 and focused on the potential for the proposed project to adversely affect native plant habitat and wildlife species located on the lower portion of the Lighthouse Creek canyon slope. The Revised Initial Study concludes that potentially significant adverse impacts to biological resources (habitat, water quality) would be reduced to less than significant levels with the implementation of proposed mitigation measure BIO-1 (require habitat restoration plan); BIO-2 (install appropriate landscaping plants); BIO-3 (use appropriate irrigation system); BIO-4.1 through 4.8 (implement appropriate water quality protection measures during construction); and BIO-5 (require Streambed Alteration Agreement from California Department of Fish and Wildlife).

An updated evaluation of existing biological conditions and potential project-related impacts to biological resources was prepared in 2013 (Hunt). The report identifies three additional measures, BIO-4.9, 4.10 and 4.11, (BMPs to prevent soil erosion; grading during dry season and hydromulch disturbed soils; and biologist monitoring of these measures during construction) that would further reduce the potential for project-related water quality impacts to Lighthouse Creek habitat and species. The report also indicates that project-related construction activity would have the potential to result in a significant impact if construction were to occur near an occupied nest. This potentially significant impact can be reduced to a less than significant level by a mitigation measure BIO-6 (protect nesting birds). In addition, the report identifies additional measures to further minimize impacts to native habitat and impacts to wildlife species with mitigation measure BIO-7 (protect wildlife through salvage or relocation) and BIO-8 (protect sensitive habitat with construction fencing).

Hazards (fire): A potential impact pertaining to fire hazard was identified due to the project location adjacent to native vegetation in Lighthouse Creek and the narrow width of the access driveway. This potential impact would be reduced to a less than significant level with the implementation of proposed mitigation measure H-1 (provide automatic fire sprinklers); H-2 (provide monitored fire alarm system); H-3 (comply with high fire hazard area construction requirements); and H-4 (maintain sprinkler and alarm systems).

Transportation (access): The proposed project was identified for a potential to result in a vehicle access-related impact because the legal adequacy of the driveway providing access to the project site has been disputed. This impact would be reduced to a less than significant level with the implementation of proposed mitigation measure T-1 (owner to provide the City with satisfactory evidence that the required

amount of legal access that formed the basis for the original lot split is available to serve the project). (See further discussion in Section D. below.)

Water Resources (drainage, water quality): The proposed construction activities would have the potential to result in short-term water quality impacts to Lighthouse Creek during project construction. This potential impact would be reduced to a less than significant level with the implementation of proposed mitigation measure W-1 (City approval of proposed grading, drainage, storm water and project development plans).

***Less Than Significant Impacts (Class III impacts are impacts that are not substantial or significant)***

Less than significant impacts were identified in the following areas: aesthetics (lighting), air quality, cultural resources, noise, population and housing, public services, recreation, greenhouse gas emissions, and agriculture and forestry resources. These issue areas are evaluated in the Revised Initial Study and the following Recommended Measures have been identified to further reduce less than significant impacts.

Air Quality (construction): RM AQ-1 through AQ-5 (standard dust control measures shall be required) and AQ-6 (monitoring reports shall be submitted to City).

Cultural Resources: RM CR-1 (standard unanticipated discovery measures shall be implemented if previously undetected cultural resources are uncovered during the construction).

Noise (construction): RM N-1 (neighborhood notification), N-2 (limit construction hours), and N-3 (sound control on equipment).

Public Services (recycling): RM PS-1 (construction waste shall be recycled).

Transportation (construction traffic, parking): T-2 (haul routes for construction traffic shall be approved by City, truck trips to be during non-peak hours), T-3 (construction parking and storage shall be approved by City).

Water Resources (drainage): RM W-2 (maintenance of storm water drainage system) (same as mitigation measure GEO-1).

**C. Alternatives Analysis.**

The Second Revised Draft EIR includes an analysis of alternatives to the proposed project and focuses on alternatives capable of eliminating or reducing significant adverse environmental effects of the project while feasibly attaining most of the objectives of the project. The alternatives to the proposed project evaluated in the EIR include:

No Project Alternative. This alternative assumes that the project site would remain in its present condition and the proposed residence would not be developed.

Smaller Project Alternative. This alternative evaluates the impacts of developing a residence on the project site that has 484 fewer square feet of total floor area than the proposed project. The location of the smaller residence on the project would be similar to the location of the proposed residence. Depending on the final design of this alternative, the structure height could be similar to that of the proposed project or portions of the structure could be taller or shorter. This alternative would result in a slight increase in on-site earthwork for site preparation due to deeper excavation (15 feet rather than 8 feet).

The Second Revised Draft EIR concludes that the Smaller Project Alternative would result in a slight reduction in aesthetic impacts (impacts to ocean views) and would therefore be considered the environmentally superior alternative. However, the reduction in aesthetic impacts provided by the alternative would be very minor compared to the revised project, and is not required to reduce any aesthetic impacts of the proposed project to a less than significant level.

#### **D. Access**

The subject property was originally proposed in its current configuration as part of a lot split conditionally approved by City Council on May 29, 1958, which included the adjacent parcel to the north (1837 El Camino de la Luz). At the time of the lot split approval, the City required recordation of a written instrument to validate the subdivision within one year of approval. Because an instrument was not recorded within one year of the City Council approval, the lot split was invalidated. However, in 1963, a grant deed conveyed the subject parcel to a separate property owner. The City determined that the conveyance of the land was in violation of the Subdivision Map Act. In 1999, the City issued a Conditional Certificate of Compliance for the subject parcel, as required by the Subdivision Map Act, to allow the property to be legally sold, leased, or financed. The condition on the Conditional Certificate of Compliance reads as follows:

*Provide evidence, satisfactory to the City Engineer that the owner of the parcel described herein substantially possesses the required amount of legal access that formed the basis of the originally approved lot split.*

In September of 2009, the Superior Court of the State of California determined that the subject parcel has legal access easements that vary in width from 7.5 feet to 15 feet, as shown on the 1958 Record of Survey (see sheet A.5 of the project plans). The Superior Court “Stipulated Access Order” states in part:

*“All parties acknowledge that the access easement on the Franco Property is limited to 7.5 feet in width on the southern 7.14 feet of the Franco Property.”*

Transportation planning staff analyzed the width of the driveway available to access the subject property and states that the 7.5 foot wide access section, which spans a length of 7.14 feet, would provide less driveway access width than the City’s practice of 10 feet. However, a majority of passenger vehicles could access the site. The owners would need to be aware that some larger passenger vehicles, construction trucks, recreational vehicles, campers, etc. require a greater width, and, without permission from adjacent owners, could not access the site. For reference purposes, the City’s Parking Design Standards define a standard design vehicle width as 5 foot 10 inches wide. For comparison purposes, a wide passenger vehicle such as a 2010 H1 Hummer (though no longer in production) is 7 feet 1 inch wide.

Fire Department staff also reviewed the existing access driveway to the subject property. Due to the narrow width of the driveway, mitigation measures H-1 through H-4 described above, are required to reduce the potential for a significant fire protection hazard.

As required by mitigation measure T-1 discussed previously, the applicant has provided evidence of the required access in the November 7, 2016 letter (see attachment to staff report). Based on the decision of the Superior Court, and the analysis by City staff it has been determined that the property substantially possesses the required amount of legal access that formed the basis of the originally approved lot split, and that there is adequate access to serve the proposed project at the project site.

## **VI. DRAFT EIR PUBLIC REVIEW PERIOD**

**Notification.** A notice of the Second Revised Draft EIR document availability, 45-day comment period (October 17 – November 30, 2016), and public hearing date was mailed to surrounding property owners, interested parties, organizations, and agencies, and was also provided via newspaper notice. The Second Revised Draft EIR was also submitted to the State Clearinghouse for review by State agencies (e.g., Coastal Commission).

**Draft Document Availability.** The Second Revised Draft EIR is available for public review at the City Planning Division offices (630 Garden Street), the Downtown Branch of the public library (40 East Anapamu Street), and on the City web site at [www.santabarbaraca.gov/eir](http://www.santabarbaraca.gov/eir).

**Public Comment Period.** Written comments on the Second Revised Draft EIR for the 1837 ½ El Camino de la Luz project will be accepted through the end of the public review period on Wednesday, November 30, 2016, 4:30 p.m. Please submit mailed comments to the attention of the Planning Commission Secretary, City of Santa Barbara Planning Division, P. O. Box 1990, Santa Barbara, CA 93102. Comments may also be submitted electronically to [PCSecretary@santabarbaraca.gov](mailto:PCSecretary@santabarbaraca.gov), or delivered to the Planning Division office at 630 Garden Street.

Attachment: Letter from Applicant (Hollister & Brace, November 7, 2016)



Richard C. Monk  
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Bradford F. Ginder  
Paul A. Roberts  
Peter Susi  
John G. Busby  
Susan H. McCollum  
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ATTORNEYS AT LAW

November 7, 2016

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Ms. Kathleen Kennedy, Associate Planner  
City of Santa Barbara  
630 Garden Street  
Santa Barbara, CA 93101

**Re: Barthels Residence, Access Easement  
1837 ½ Camino de la Luz, Santa Barbara, California**

Dear Kathleen:

Hollister & Brace, in conjunction with RRM Design Group, have been retained by Dr. Herbert E. Barthels, Trustee of the Herbert E. Barthels Trust dated December 9, 1985 (the "Applicant") in connection with the 1837 ½ El Camino de la Luz residential project (the "Project").

This letter will provide some early comments on the Project's Second Revised Draft Environmental Impact Report ("DEIR") as well as provide the additional information you requested regarding the legal status of the easements that provide access to the Applicant's property at the above referenced address.

The DEIR states as follows regarding Transportation/Circulation:

"The proposed project would have the potential to result in a significant vehicle access-related impact because the legal adequacy of the driveway providing access to the project site has been disputed. To resolve this issue and reduce potential access-related impacts to a less than significant level, Revised Initial Study mitigation measure T-1 requires the project parcel owner to provide the City with satisfactory evidence that 'the required amount of legal access that formed the basis for the original lot split' is available to serve the project." DEIR, Section 9.1.4, p. 9-8.

**ATTACHMENT**

And, Table 2.3-1 proposes the following Mitigation Measure:

**“T-1 Evidence of Adequate Access.** Provide evidence, satisfactory to the City Engineer and City Attorney, that the owner of the subject parcel substantially possesses the required amount of legal access that formed the basis of the original lot split.” DEIR, p. 2-11.

There is no evidence to support the DEIR’s conclusion that “the legal adequacy of the driveway provided to the project site has been disputed” nor that the “proposed project would have, the potential to result in a significant vehicle access-related impact.” In fact, as appears more fully below, the evidence proves the contrary.

In 2007 and 2008 Rafael Franco and some of the other residents of the subject stretch of El Camino de la Luz denied the City’s retained geologist, Dr. Anikouchine, access to the Barthels property for the purpose of performing certain geological investigations which Mr. Franco and said other residents had demanded be performed. As a result, Dr. Barthels’ attorneys, Hollister & Brace, filed a legal action on Dr. Barthels’ behalf against Mr. Franco and said other residents of El Camino de la Luz, being Santa Barbara Superior Case No. 1268293, in order to perfect Dr. Barthels’ legal easement rights. As the City’s Staff Report of September 8, 2009 correctly stated, the Santa Barbara Superior Court entered its Judgment on September 8, 2009 in said Case that Dr. Barthels has access easements varying in width from 7.5 feet to 15 feet in width along the subject stretch of El Camino de la Luz.

The Superior Court’s stipulated access order of September 9, 2009 entered in said Case provides that Mr. Franco and the other named defendants in the lawsuit:

- “(a) Shall not block, impede or limit access to the Benefitted Property over the Bound Properties to the full width of the Access Easement as described in Exhibits “A” and “B.”
- “(b) Shall sign any paperwork required by government agencies relating to or confirming access rights, as long as the paperwork accurately describes all easement terms.
- “(c) Shall provide access to City staff or other authorized persons who need access to address or handle a pending application of Benefitted Owner.”

and also provides as follows:

- “7. NOTICE TO ANY PEACE OFFICER: You may accept a copy of this Order, and are instructed to implement it if so requested by any party, on the conditions stated. You are authorized to order Bound

Party to comply with the Order, to tow any blocking vehicles or item blocking access, or to otherwise enforce this Order, subject to further instructions of the Court.

- "8. NOTICE TO BOUND PARTIES: Failure to comply with this Order shall subject you to further Orders of the Court, and the costs of any proceeding to enforce this Order."

The Superior Court's Judgment is final and binding and no appeal therefrom is possible.

The Conditional Certificate of Compliance issued by the City of Santa Barbara for the subject legal parcel and recorded December 8, 1999 as Instrument No. 99-0095608 provides that the owner of said parcel must:

"Provide evidence satisfactory to the City Engineer that the owner of the parcel described herein substantially possesses the required amount of legal access that formed the basis of the originally approved lot split."

Evidence presented to the City of Santa Barbara by the Applicant's surveyors, land use agents, and attorneys over the past eleven years demonstrates that the existing width of the road accessway to the subject parcel, which generally ranges from 9 feet to 15 feet (except for the 7.5 pinch point) is in substantial conformity with the width of the road access shown on the 1958 Lot Split Map. Moreover, City Fire Department representatives have consistently opined over the past eleven years that the width of the road access way is sufficient to provide adequate and safe access, including fire protection access to the parcel.

Based upon all of the foregoing, the subject parcel has legal access and such access substantially conforms to the access approved on the 1958 Lot Split Map. And, there is no necessity for proposed Mitigation Measure T-1. Further, there is no evidence whatsoever that the "proposed project would have the potential to result in a significant vehicle access-related impact" because the Applicant's legal access easements over the subject stretch of El Camino de la Luz have been conclusively judicially determined to exist and are legally enforceable. Hence, no land use nor CEQA issue is presented which requires mitigation.

We are providing the following exhibits below, for your reference:

- A. Aerial view showing location of the easement
- B. Parcel Map
- C. Legal Access Exhibit per Title Report
- D. Larger Scale Map Legal Access Exhibit per Title Report
- E. Establishment of Legal Access (narrative)

Ms. Kathleen Kennedy, Associate Planner  
November 7, 2016  
Page 4

We trust that this information provides you with the documentation needed to show that the Applicant has a legally established easement that provides adequate access to his property for the purpose of developing the proposed residence.

Please let us know if we can be of further assistance.

Very truly yours,

HOLLISTER & BRACE

By:   
Richard C. Monk

RRM DESIGN GROUP

By:   
Detlev Peikert, AIA, LEED  
AP BD+C  
Principal  
CA License No. C15008

RCM:crr  
Enclosures: Exhibits A-E

cc: Dr. Herb Barthels  
N. Scott Vincent, Deputy City Attorney

EXHIBIT A

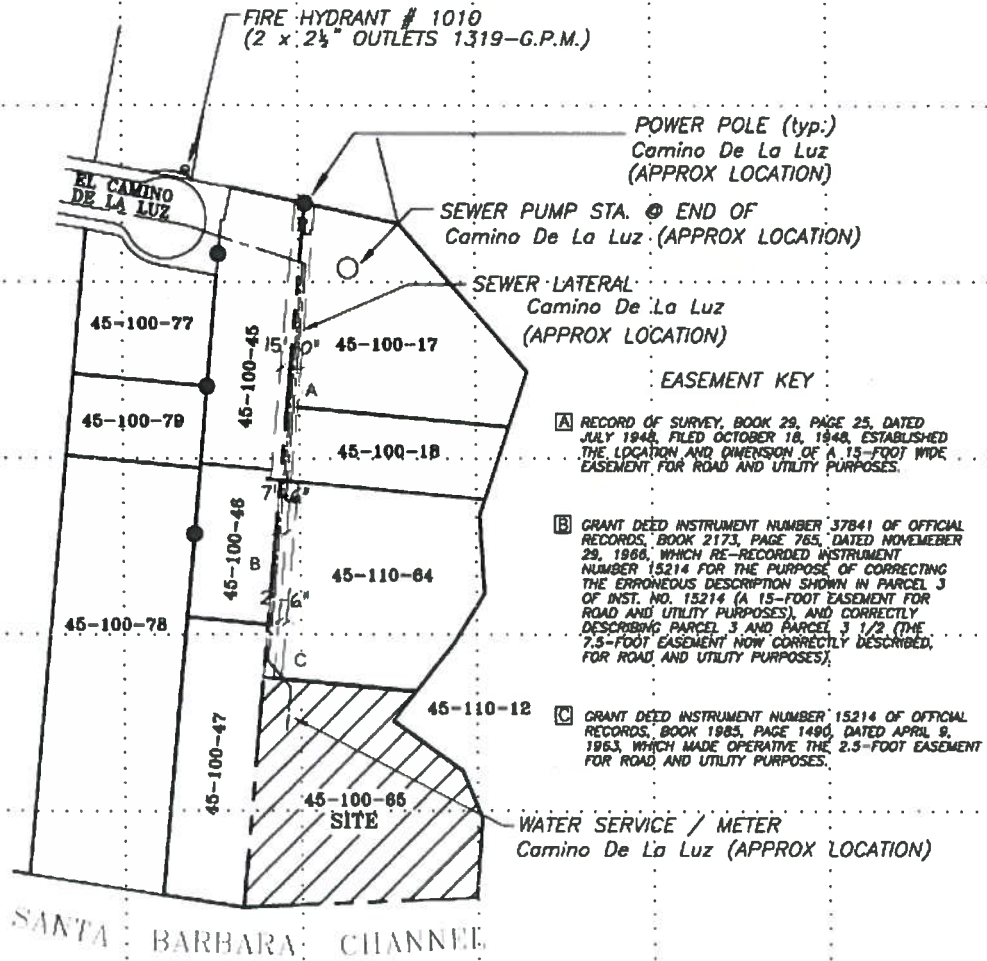
# Aerial photo

Taken from the north



EXHIBIT B

# Parcel Map



## EASEMENT & UTILITY PLAN

SCALE: NTS



EXHIBIT C

# Legal Access Exhibit Map Per Title Report

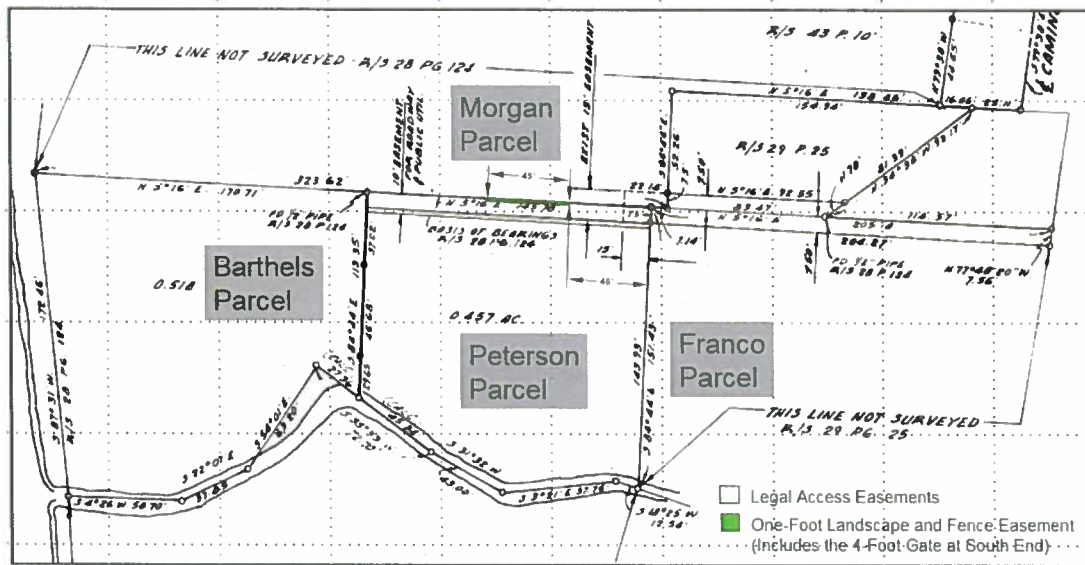
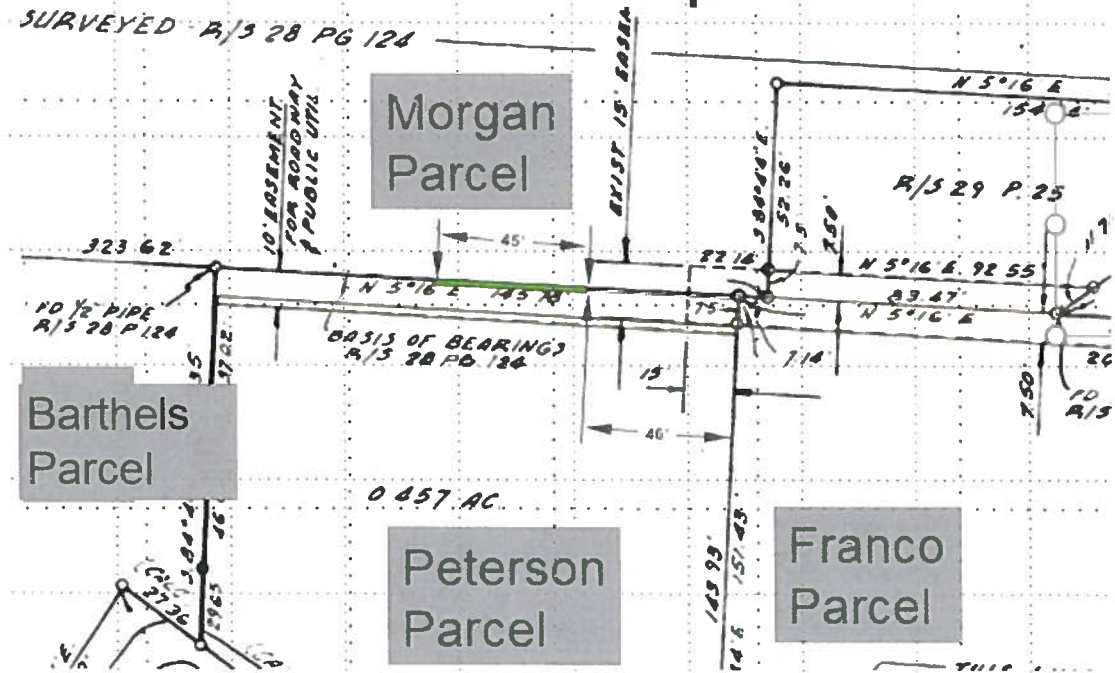


EXHIBIT D

# Legal Access Exhibit Map Per Title Report





## EXHIBIT E

### Establishment of Legal Access to Parcel

#### NOVEMBER 17, 1995 EASEMENT DEED -

► On November 17, 1995, Dr. Barthels executed an Easement Deed in favor of Joanna K. Morgan granting to Morgan the following one-foot wide easement within the aforesaid combined 10-foot easements:

“An easement , of a prescriptive nature, for fence and landscaping purposes only, and expressly limited to those present and current exact uses only, on and over a strip of land one foot in width, located within a non-exclusive right of way easement presently owned by Herbert E. Barthels, said one foot wide strip being located immediately to the east of and contiguous with and adjacent to the easterly property line of said ‘MORGAN PROPERTY’,” **Instrument No 95-066680, recorded November 30, 1995, Official Records, Santa Barbara County.**

#### NOVEMBER 17, 1995 AGREEMENT -

► The aforesaid one-foot easement was further referenced in a written agreement entered into between Dr. Barthels and Joanna K. Morgan dated November 17, 1995 (“the November 17, 1995 Agreement”), wherein the parties confirmed that Dr. Barthels has combined record access easements of 10 feet in width:

“The 10 feet (being the 7 ½ foot of driveway easement plus the 2 ½ foot other easement) on the PETERSON side of the centerline is valid and still existing.” **November 17, 1995 Agreement, p.3.**

► The November 17, 1995 Agreement further confirms that the one-foot easement strip granted by Dr. Barthels to Joanna K. Morgan pursuant to the Easement Deed is concurrent with the aforesaid combined 10-foot wide access easement:

“That said one foot easement strip was and is concurrent with the easement rights held by BARTHELDS as to the 10 foot driveway easement on the PETERSON property held by BARTHELDS.” **November 17, 1995 Agreement, p.3.**

#### COURT OF APPEAL OPINION -

► Court of Appeal acknowledged that the Property still has access, albeit not 15 feet in width:

“Barthels, a local dentist, planned to build his residence on the parcel. In June of 1989, during the permitting process, he learned that the access easement was only 7½ feet wide, and not 15 feet as represented by the title company.” **Barthels v. Santa Barbara Title Co. (1994) 28 Cal.App.4th 674 at 677.**

► Joanna K. Morgan confirmed in the November 17, 1995 Agreement that the subject Property has a valid and existing access easement:

“The 10 feet (being the 7 ½ foot of driveway easement plus the 2 ½ foot other easement) on the PETERSON side of the centerline is valid and still existing.” **November 17, 1995 Agreement, p.3.**

#### SUBJECT PROPERTY HAS LEGAL ACCESS IN SUBSTANTIAL CONFORMITY TO 1958 LOT SPLIT MAP –

► The Conditional Certificate of Compliance recorded December 8, 1999 as Instrument No. 99-0095608 provides that the subject Property is required to comply with the following specific condition:

“Provide evidence satisfactory to the City Engineer that the owner of the parcel described herein substantially possesses the required amount of legal access that formed the basis of the originally approved lot split.”