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September 21, 2015

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By Electronic Mail and Hand Delivery

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City Attorney
City of Santa Barbara
740 State Street, Suite 201
Santa Barbara, California 93101

Mr. George Buell, Director
Community Development Department
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93101

Re: COASTAL BLUFF, 1925 EL CAMINO DE LA LUZ, SANTA BARBARA

Dear Messrs. Callone and Buell:

We, the undersigned, jointly represent the Emprise Trust ("Trust" or "our Client"), owner of the nearly one-half acre shoreline parcel at 1925 El Camino de la Luz in the City's West Mesa (R-3 District) neighborhood. This flag-lot parcel extends south from El Camino de la Luz to the surveyed coastal bluff edge, down the bluff face, and across the back beach to the Mean High Tide Line. (Exhibit 1, ABDS, Site Plan, September, 2015.) The location of that bluff edge determines the required set-back for permissible residential redevelopment of that parcel, pursuant to the controlling bluff edge determination criteria in the "coastal bluff regulation" set forth in Section 13577(h) of the Coastal Commission's adopted Regulations, and other standards in the City's certified Local Coastal Program ("LCP"), General Plan, and Municipal Code. (Exhibit 2, Regulation Section 13577; subdivision (h) is highlighted in bold.)

Our Client has recently submitted to the Community Development Department a DART/Coastal Development Permit application for a carefully designed and positioned single-family residence and appurtenances, with significant public benefits. To facilitate a cooperative and expeditious application filing, processing, and approval, our Client has requested that we evaluate both (1) the project team's determination of the current location of that bluff edge, at elevations 50-52 feet Mean Lower Low Water (MLLW, NAVD88; Cotton, Shires & Associates, [CSA], 2010, verified in 2014), and (2) City staff's preliminary self-described "belief" that the bluff edge is "near 127 feet" (no datum). (City Pre-Application Review Team Comments, August, 2013, at 1-2.) The application includes, among other evidence of the verified surveyed location of that bluff edge, an

annotated project topographic section which depicts the location and extent of the coastal bluff, and other slope gradients on the parcel, in cross-section. (Exhibit 3, GSI, April, 2015.) However, the City's comments provided no analysis or evidence supporting its position.

This letter sets forth below our views on, and concurrence in, the project team's determination of the present, and as applicable, historical location and extent of the bluff edge on the parcel pursuant to the coastal bluff regulation.

Regulatory Context.

Pursuant to Coastal Commission-certified City LCP Policy 8.2 and associated adopted standards in other parts of the LCP, General Plan, and Municipal Code, residential development (a) cannot occur on the parcel's bluff face (coastal bluff), and (b) must be set back from the upper termination of the bluff (bluff edge). This requirement is intended to maintain the safety and structural integrity of the development over its regulatory economic life (75 years), and to avoid significant adverse effects on the natural bluff landform and native vegetation.

Both the City and Coastal Commission (within whose Coastal Development Permit appeal jurisdiction the subject site is located) have adopted the seven fact-based criteria for determination of that bluff edge set forth in the coastal bluff regulation at Title 14, California Code of Regulations, section 13577(h):

- The present location of the bluff toe (base), subject to marine erosion;
- The historical location of the bluff toe (base), subject to marine erosion;
- The present location of the bluff toe (base), irrespective of its present or historical exposure to marine processes, if it is in one of the PRC section 30603(a)(1) or (a)(2);
- The present upper termination of a bluff, cliff, or sea cliff – provided that in the case of rounding of its top edge due to erosional processes related to the presence of the steep cliff face, the bluff edge constitutes the point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff;
- Where a step-like feature occurs at the top of the cliff face, the landward edge of the top-most riser constitutes the cliff edge;
- The intersection of a seaward facing bluff with an inland-facing bluff terminates the former; and
- A bluff edge must have a minimum of 500-foot length to be used in making a coastal bluff determination.

As is evident, the determination of the physical bluff edge becomes a critical factor in establishing the permissible development envelope on the parcel and, through it, its economic use. In addition, the Coastal Commission, in its unanimous decision to approve substantial landslide repair grading and development on four adjacent parcels

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to the subject parcel (CDP 4-84-017, Doolittle et al.), has provided the City with applicable guidance, pursuant to Pub. Res. Code section 30625(c), to distinguish between the bluff and the headscarp of the 1978 El Camino de la Luz landslide, which destructively also affected the subject parcel.

1925 El Camino de la Luz Top of Bluff Determination.

Based on the coastal bluff regulation criteria (as informed by other applicable Coastal Act, LCP, and City General Plan/Municipal Code standards), our Client's interdisciplinary professional consultants performed (1) topographical surveys, (2) geological/geotechnical and coastal engineering investigations, (3) associated quantitative analysis, (4) reviews of historical topographic mapping and aerial photographs of the project site and respective Study Areas, and (5) prior California coastal program analyses regarding the bluff edge on neighboring properties. This body of information was submitted in preliminary form to the City's Preliminary Review Team and, as supplemented, is part of the present project application.

These site-specific studies determined, pursuant to the criteria of the coastal bluff regulation, that the coastal bluff edge on the parcel currently occurs at +50 feet to +52 feet (MLLW). They found no elevated step-like feature or upper riser, within the regulatory meaning, to occur (or have occurred during historic time) on the parcel in association, as required by the regulation, with the marine processes-controlled coastal bluff.

Preliminary Review Team Comment.

In August 2013, the City's Preliminary Review Team prepared a comment letter on our Client's pre-application submittal. That letter stated that the project Preliminary Geologic and Geotechnical Investigation Report (CSA, 2012), which expressly distinguishes between the coastal bluff and the headscarp of the 1978 landslide, "is thorough and demonstrates that the site can be adequately engineered to support a residential structure at the proposed location." (At 5.)

The comment letter, however, further stated, on "belief" and without reference to any facts, analysis, or Coastal Commission's directly relevant decision in *Doolittle*, that the bluff edge occurs near the upper end of the City's 1978 grading envelope. (At 1.) The comment letter erred in three significant ways: First, it posited the project development envelope to be located on the bluff face, from which the development envelope is actually set back some 117-129 feet. Second, it stated that the proposed residential development, based on its development envelope at/near elevation 127 feet (MLLW), is inconsistent with LCP Policy 8.2. Third, it proposed that such development would trigger the CEQA requirement for an Environmental Impact Report regarding the geologic stability of the site (as graded by the City in 1978) and potential development impacts to the coastal bluff - notwithstanding staff's (correct) opinion that "the site can be

adequately engineered to support a residential structure at the proposed location.” (At 2, 5.)

As a result of the City's 1978 cut and fill grading of the 1978 landslide headscarp on the subject parcel, the current terrain on the subject parcel near elevation 127 feet (in any datum) consists of the manufactured, locally rilling eroded, earthen buttress for the proximate municipal Mesa Trunk Line Sewer (MTLS) trench and pipe (CSA, 2012; WRA, 2012; D&A, 2013, 2015). The City's 50-foot long (horizontal) MTLS buttress on the parcel plainly is not a part of the 3-mile long continuous coastal bluff, referenced in the City LCP, between the mouth of Arroyo Burro Creek and near the City College campus. (City LCP Local Coastal Plan, at 8.)

Even assuming, *arguendo*, that the substantially altered headscarp on the parcel were to be construed to constitute a coastal bluff pursuant to some criterion of the coastal bluff regulation, the Coastal Commission's differentiation of the headscarp of the 1978 ECDLL landslide from the bluff in approving the *Doolittle* permit nonetheless reduced the residual length of the headscarp that could be considered to under 500 feet. Consequently, on that threshold criterion, the headscarp would not meet the minimum coastal bluff edge (line) length and no bluff edge based on it exists on the subject parcel.

Based on the site-specific studies, the Preliminary Review Team comment letter's "belief" in a (current or historical) coastal bluff edge "near 127 feet" is a physically impossible construct (CSA, 2012, 2015; GSI, 2012, 2015). It is not, and cannot be, supported by a fair application of the controlling criteria in the coastal bluff regulation at this site. It is directly in conflict with the guiding Coastal Commission bluff-headscarp distinction in *Doolittle*. It would locate the bluff edge in the very area of the City co-activated 1978 landslide and on the City's own post-1978 landslide grading envelope (CSA, 2012, 2015).

Conclusion.

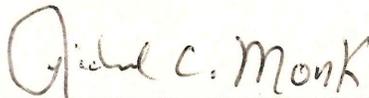
We are including the City Attorney and Director of Community Development in the dialogue about the proposed residential reuse project at this point because of the Preliminary Review Team's interpretation on "belief" of the location and extent of the coastal bluff on the parcel. If that "belief" were to be implemented by the City, it would preclude any economic use of the parcel, for which our Client has substantial investment-backed expectations. Further, it would deny the City, the public, and private property owners the benefits from our Client's fully consistent project on the stability of the City's infrastructure, lateral shoreline public access, nearshore water quality, and 1978 landslide-impacted terrain on adjacent parcels. City implementation of the "belief" would both constitute an unequal application of the law to our Client's property, in relation to what has been afforded to the similarly situated adjacent parcels within the 1978 ECDLL landslide area, and spell a regulatory taking of the subject parcel.

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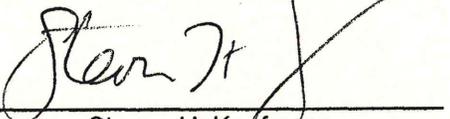
We look forward to conferring with you about these matters in the very near term, before City staff arrives at any decisions regarding the filing, level of environmental review, and/or regulatory permit processing of our Client's application.

Very truly yours,

HOLLISTER & BRACE
A Professional Corporation

By 
Richard C. Monk

RICHARDS, WATSON & GERSHON
A Professional Corporation

By 
Steven H. Kaufmann

RCM/crr

cc: Emprise Trust

EXHIBIT 1

AB

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CLIENT:
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DATE:
 09/15/2015

PROJECT:
 1925 E COLLIER
 SAN ANTONIO, TX 78201
 (214) 343-1111
 WWW.1925E.COLLIER.COM

SCALE:
 AS SHOWN

PROJECT NUMBER:
 1925 E COLLIER

PROJECT TITLE:
 1925 E COLLIER

PROJECT LOCATION:
 1925 E COLLIER

PROJECT AREA:
 1925 E COLLIER

PROJECT PERIOD:
 1925 E COLLIER

PROJECT STATUS:
 1925 E COLLIER

PROJECT CONTACT:
 1925 E COLLIER

PROJECT PHONE:
 1925 E COLLIER

PROJECT FAX:
 1925 E COLLIER

PROJECT EMAIL:
 1925 E COLLIER

PROJECT WEBSITE:
 1925 E COLLIER

PROJECT ADDRESS:
 1925 E COLLIER

PROJECT CITY:
 1925 E COLLIER

PROJECT STATE:
 1925 E COLLIER

PROJECT ZIP:
 1925 E COLLIER

PROJECT COUNTY:
 1925 E COLLIER

PROJECT COUNTRY:
 1925 E COLLIER

A0.03

CONCEPT SITE PLAN

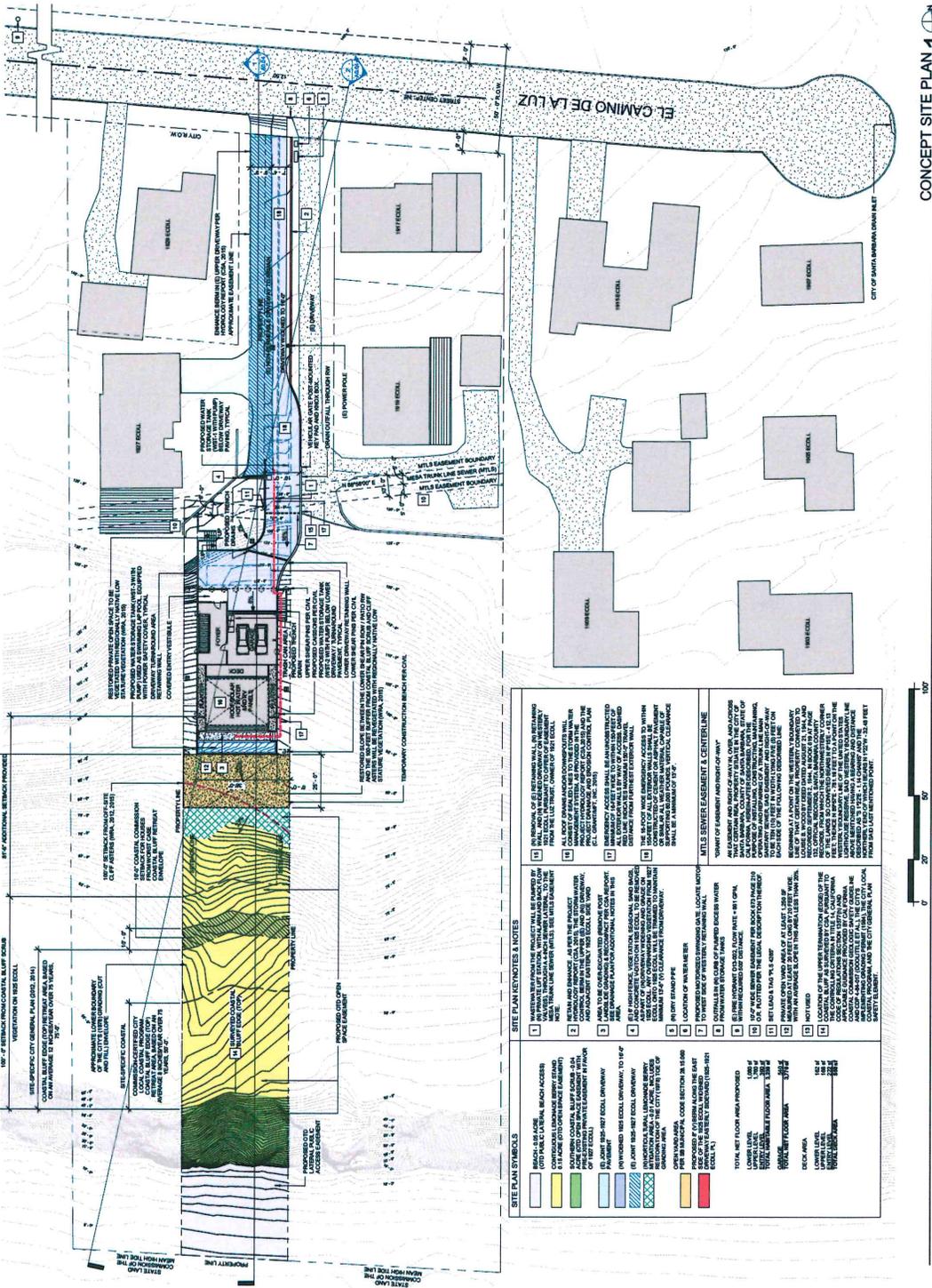


EXHIBIT 1, ABDS SITE PLAN, SEPT. 2015

EXHIBIT 2

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.
14 CA ADC § 13577 BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Barclays Official California Code of Regulations Currentness
Title 14. Natural Resources
Division 5.5 California Coastal Commission [FNA1]
Chapter 8. Implementation Plans
Subchapter 2. Local Coastal Programs (Lcps) and State University or College Long Range
Development Plans (Lrdps)
Article 18. Map Requirement and Boundary Determination Criteria

14 CCR § 13577

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands.

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and

(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

EXHIBIT 2, COASTAL BLUFF REGULATION (14 CAL. CODE. REGS., SEC. 13577)

(c) Estuaries. Measure 300 feet landward from the mean high tide line of the estuary. For purposes of this section, an estuary shall be defined as a coastal water body, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with the open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. The salinity level may be periodically increased to above that of the open ocean due to evaporation. The mean high tide line shall be defined as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station.

(d) Tidelands. Tidelands shall be defined as lands which are located between the lines of mean high tide and mean low tide.

(e) Submerged Lands. Submerged lands shall be defined as lands which lie below the line of mean low tide.

(f) Public Trust Lands. Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

(g) Beaches. Measure 300 feet landward from the inland extent of the beach. The back beach, or dry beach, if it exists, shall be included. The inland extent of the beach shall be determined as follows:

(1) from a distinct linear feature (e.g., a seawall, road, or bluff, etc.);

(2) from the inland edge of the further inland beach berm as determined from historical surveys, aerial photographs, and other records or geological evidence; or

(3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence.

(h) Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean:

(1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and

(2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

(i) First Public Road Paralleling the Sea.

(1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

- (A) is lawfully open to uninterrupted public use and is suitable for such use;
- (B) is publicly maintained;
- (C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;
- (D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and
- (E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

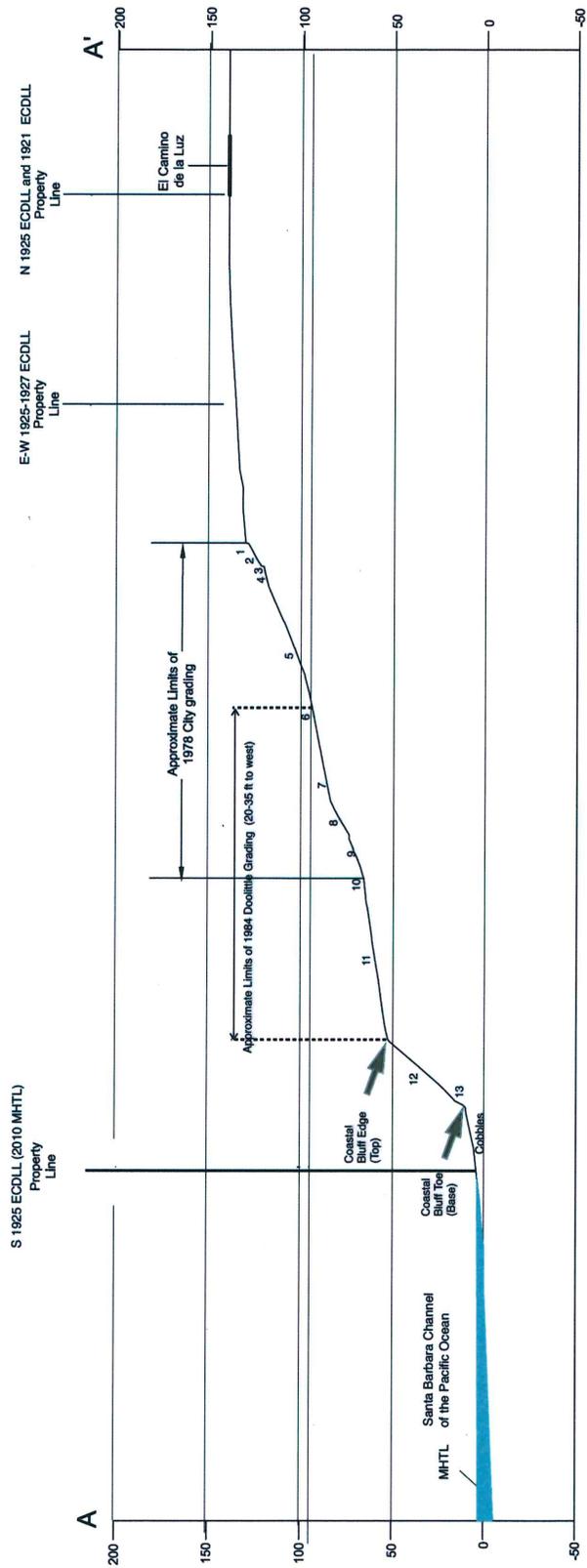
(2) Whenever no public road can be designated which conforms to all provisions of (i)(1) above, and a public road does exist, which conforms to all provisions of (i)(1) except (i)(1)(v), the effect of designating the first public road paralleling the sea shall be limited to the following:

- (A) all parcels between the Pacific Ocean and such other public road; and
- (B) those parcels immediately adjacent of the sea inland of such other public road.

(3) Where the Commission determines that the designation of the "first public road paralleling the sea" results in the inclusion of areas within the permit and appeal jurisdiction where the grounds for an appeal set forth in Public Resources Code Section 30603(b) are not an issue, the Commission may take action to limit the geographic area where developments approved by a local government may be appealed to the Commission, to that area where any such grounds are, in fact, an issue.

Note: Authority cited: Sections 30501 and 30620.6, Public Resources Code. Reference: Sections 30519 and 30603, Public Resources Code.

EXHIBIT 3



NOTES:
 1) Topographic Profile surveyed by Cotton, Shires and Associates on April 15 and April 16, 2010.
 2) Mean Lower Low Water (MLLW) data obtained from National Oceanic and Atmospheric Administration (NOAA), April 2010 tidal predictions for the Santa Barbara Area.
 3) MLLW datum is 2.788' lower than Mean Sea Level (MSL)

- NOTES ON SLOPES/GRADIENTS 1-11**
1. Slope of 1:1 (V) and 1:1.5 (V) below rail; house entry, turnaround, lower driveway pavement, 90°
 2. Scaled and filled in; Chy (1978) Mesa Train Line Sewer buttress, 31°
 3. Northernly edge, 2 ft (V) of CSA SD-2 area, 85°
 4. CSA SD-2 area on Chy (1978) MTL.S buttress, 12°
 5. Chy (1978) MTL.S buttress and excavation area, 24°
 6. Chy (1978) excavation area, 12°
 7. Chy (1978) excavation area, 11°
 8. Chy (1978) use of fill cover grading area, 28°
 9. Landslide (1978)-impacted hillside, 23°
 10. Landslide (1978)-impacted hillside, 17°
 11. Landslide (1978)-impacted hillside (with dense contiguous lemonade berry stand cover), 9°
 12. Mid-upper Coastal Bluff, 49°
 13. Lower Coastal Bluff, 71°

EXHIBIT 3, Annotated Topographic Cross-Section A-A', GSI, 2015