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March 7, 2012

Michael D. McCracken, Esq.
Messrs. McCracken, Byers & Richardson LLP
870 Mitten Road
Burlingame, CA 94010

Re: PLN 2010-00112 - 101 7th Street, Montara

Dear Mr. McCracken:

I write to provide information regarding statements contained in the March 17, 2011, report from the San Mateo County Planning Department staff to the Zoning Hearing Officer regarding a permit application bearing County File Number PLN 2010-00112.

This application sought a Coastal Development Permit and a Design Review Permit in connection with a proposal to construct a 380 square foot second floor addition to an existing 1,738 square foot single family residence located at 101 7th Street in the unincorporated Montara area of San Mateo County. An Off-Street Parking Exception was also sought in order to allow two uncovered tandem parking spaces whereas the requirement would otherwise be to provide two non-tandem covered parking spaces in garages or carports.

While considering the project, the Zoning Hearing Officer was asked to consider whether the property owner should be required to remove a fence located at the base of 7th Street. By way of background, the 7th Street right-of-way extends to the coastal bluff area located at the western end of this public street, but a fence lying somewhat to the east of the coastal bluff area was built at some point prior to 1974, pursuant to an encroachment permit from the San Mateo County Department of Public Works.

I consulted with County Planning Department staff and I shared my view that requiring the property owner to relinquish benefits under the existing encroachment permit and to remove the fence could be subject to a significant risk of legal challenge as failing the "essential nexus" and "rough proportionality" tests set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), respectively. Specifically, I indicated that there did not appear to be a nexus between the proposal to add 380 square feet to the second floor of the existing structure and any requirement to remove the fence. Planning staff

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specifically found that the proposed addition would allow continued unobstructed views of the ocean over the house from the surrounding area.

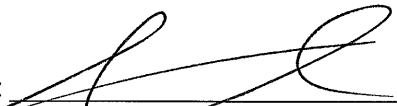
I was present at the hearing before the Zoning Hearing Officer on March 17, 2011, and, at that time, I informed the Zoning Hearing Officer of my analysis with respect to the issue of whether the County should require that the fence be removed.

Please let me know if you have further comments or questions regarding this matter.

Very truly yours,

JOHN C. BEIERS, COUNTY COUNSEL

By:



John J. Nibbelin, Chief Deputy

JCB:JDN/sw