



THE CITY OF SAN DIEGO

## REPORT TO THE HEARING OFFICER

HEARING DATE: September 11, 2013 REPORT NO. HO-13-077

ATTENTION: Hearing Officer

SUBJECT: **HENEY RESIDENCE**  
PTS PROJECT NUMBER - 279093.  
PROCESS 3.

LOCATION: 615 Wrelton Drive

APPLICANT: Donald and Celia Henely, Trustees of Henely Trust, Owner  
Mr. Claude-Anthony Marengo, Architect/Consultant

### SUMMARY

Requested Action - Should the Hearing Officer approve a Coastal Development Permit to demolish an existing residence and construct a new, two-story, single family residence on a 14,300 square foot property in the La Jolla Community Plan area?

Staff Recommendation – APPROVE Coastal Development Permit No. 980406.

Community Planning Group Recommendation – The La Jolla Community Planning Association voted 7-5-3 to recommend denial of the proposed project at their meeting on August 1, 2013. Their recommendation did not include any additional conditions or comments (Attachment 9).

Environmental Review – The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, 15303, that allows for new construction. This project is not pending an appeal of the environmental determination. The exemption determination for this project was made on July 19, 2013; and the opportunity to appeal that determination ended on August 22, 2013.

## BACKGROUND

The 14,300 square foot project site is currently developed with an approximate 2,110 square foot single family residence built in 1950. The surrounding properties are fairly well developed and form an established single-family residential neighborhood just east of a low coastal bluff region and directly north of the Tourmaline Surfing Park. The project site is located at 615 Wrelton Drive, in the RS-1-7 Zone, Coastal Overlay Zone (appealable), Coastal Height Limitation Overlay Zone, First Public Roadway, Parking Impact Overlay Zone and the Residential Tandem Parking Overlay Zone within the La Jolla Community Plan area (ATTACHMENTS 1 – 3).

A Coastal Development Permit is required for the current proposal, by the Land Development Code (Section 126.0702), for the proposed development on property within the Coastal Overlay Zone. During the processing of this Coastal Development Permit, Neighborhood Code Compliance opened up a code violation case regarding an existing unpermitted retaining wall located along the southern portion of the project site. The Engineering Section through a permit condition, Condition No. 18 (Page 4 of ATTACHMENT 6) is requiring this applicant to obtain a grading permit. The implementation of this required grading permit will correct the Neighborhood Code Violation.

## DISCUSSION

The project proposes to demolish the existing residence and construct an approximately 6,353 square-foot, two-story, single-family residence attached garage and spa on the previously disturbed 14,300 square-foot property. During the project's review with City staff, the applicant has modified the project to conform to all of the development regulations of the RS-1-7 Zone, the applicable Coastal Development Regulations.

### Visual Resources Analysis:

Staff relied on the City's Community Plan's Scenic Overlook and Scenic Roadway designations to determine the view potential and preserve, enhance or restore the public views at this site. Staff concluded that the Project conforms to the policies and public vantage point figures in the La Jolla Community Plan and Local Coastal Program by: conforming to the applicable side yard setbacks and height limitations; preserving the required 7' 4" (approximately) wide view corridor within the western and eastern side yards of the subject property; and (v) preserving a horizon line view of the ocean across the subject property from the portion of Wrelton Drive designated as a Scenic Overlook.

The Project site is located between the ocean and the first public roadway in a southern area of La Jolla near Tourmaline Surfing Park which is identified on Exhibit "A" of Appendix "G", Figure H of the La Jolla Community Plan as the Wrelton Drive Scenic Overlook as well as the La Jolla Boulevard Scenic Roadway. A Scenic Overlook is defined in the La Jolla Community Plan as, "a view over private property from a public right-of-way." The Scenic Overlook designation is different from the Major Viewshed designation which is defined as an, "unobstructed



panoramic view from a public vantage point” in Exhibit “A” of Appendix G of the Community Plan. The primary differences between these view designations are that the Scenic Overlook is defined as “over private property,” while a Major Viewshed designation requires an unobstructed view. The Scenic Roadways is defined as “Partially obstructed views over private properties and down public Right of Ways.” This view designation generally provides public views between homes along the side yard setbacks. Both of the applicable public views were evaluated for compliance with Exhibit “A” of Appendix G and Figure H of the La Jolla Community Plan and the Project was found to be consistent and have no significant adverse environmental impact.

The Project was reviewed for consistency with relevant La Jolla Community Plan policies and goals for the protection of visual resources. The Project complies with the requirements of the City’s Land Development Code and conforms to the Community Plan and applicable implementing regulations. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public access way identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. The proposed development is contained within the existing legal lot area, which would not encroach upon any existing or proposed physical access to the coast. The Natural Resources and Open Space Element of the La Jolla Community Plan and Local Coastal Program (Figure 9 and Appendix G) designates a Scenic Overlook on the property from the public right-of-way to the ocean and designated public open space. The project has been sited and designed to ensure it does not restrict visual access from the public right-of-way to the ocean.

Staff reviewed the analysis of the visual impacts, photo simulations, visited the site, and worked with the applicant to document the above mentioned view protections on the site plan and within the permit conditions. Staff concluded that the Project provides the required public view corridor protections and determined that proposed project is consistent with the La Jolla Community Plan and Local Coastal Program.

La Jolla Community Planning Association Recommendation – At the Community Group’s meeting on August 1, 2013, they voted 7-5-3 to recommend denial of this project. Issues brought up at the meeting involved building height, public views, potential flooding, current condition of the property, party noise and use of the property as a vacation rental. As detailed in a City Attorney Office Memorandum of Law (ATTACHMENT 11) the City does not regulate vacation or short term rentals of Single Family or RS Zoned properties.

## CONCLUSION

Staff has reviewed the proposed Coastal Development Permit and determined the project is consistent with the La Jolla Community Plan and Local Coastal Program Land Use Plan and the applicable Coastal Development regulations. Staff has provided draft findings supporting Coastal Development Permit approval (ATTACHMENT 9). Staff recommends the Hearing Officer approve the proposed Coastal Development Permit as proposed (ATTACHMENT 8).

ALTERNATIVES

1. Approve Coastal Development Permit No. 980406, with modifications.
2. Deny Coastal Development Permit No. 980406, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

  
Glenn R. Gargas, AICP  
Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Site Plan
6. Draft CDP with Conditions
7. Draft CDP Resolution with Findings
8. Copy of Community Group Recommendation
9. Ownership Disclosure Statement
10. Copy of Public Notice
11. City Attorney's Memorandum of Law regarding Vacation Rentals

Job Order Number: 24002631

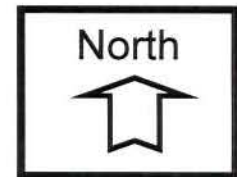
rev 10/20/03 dcj



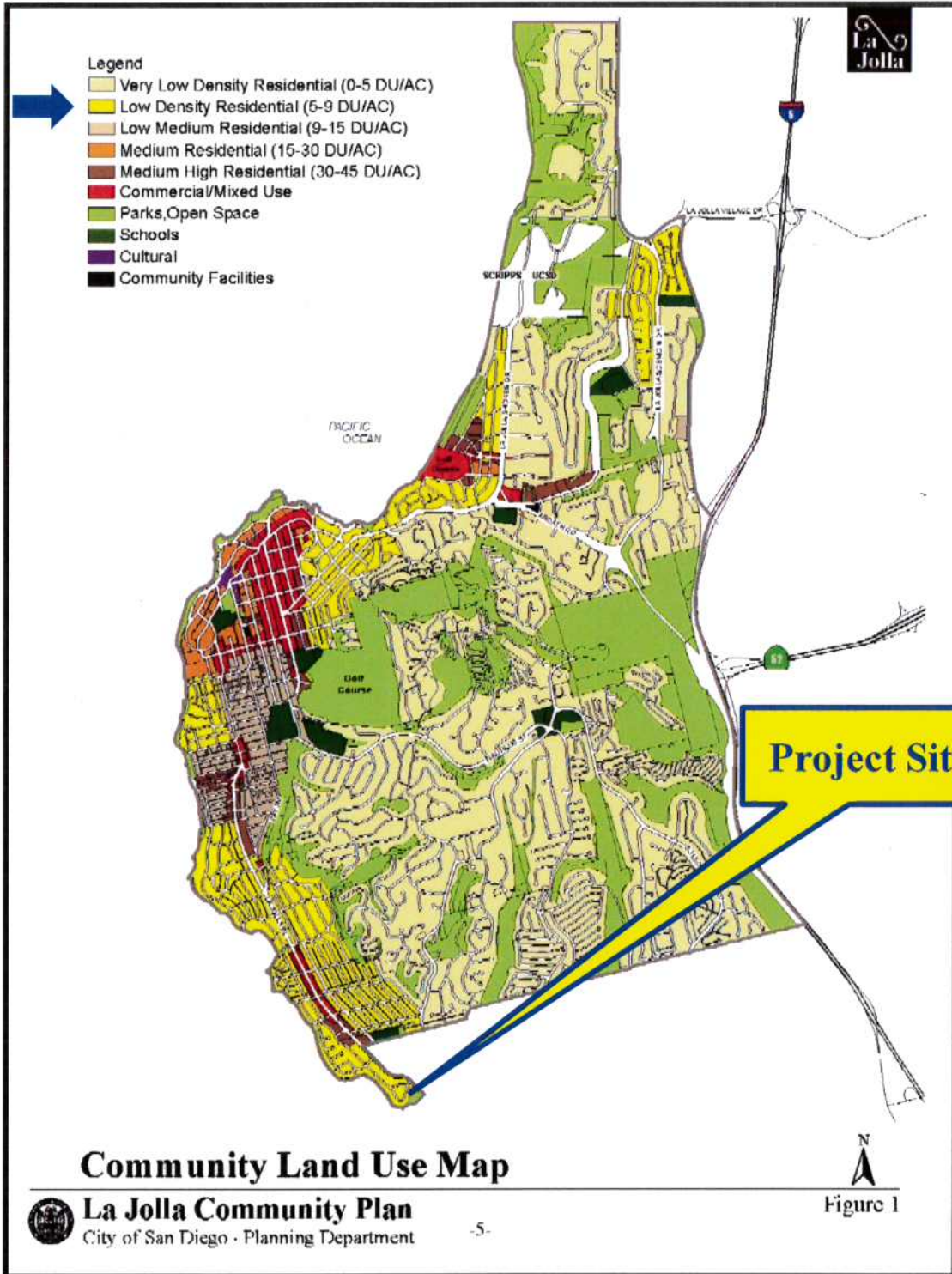


**Aerial Photo**

HENELY RESIDENCE – 615 WRELTON DRIVE  
PROJECT NO. 279093







## Land Use Map

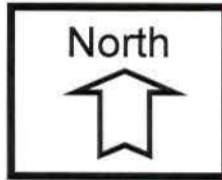
**HENELY RESIDENCE – 615 WRELTON DRIVE**  
PROJECT NO. 279093 La Jolla





## Project Location Map

**HENELY RESIDENCE – 615 WRELTON DRIVE**  
**PROJECT NO. 279093**





## PROJECT DATA SHEET

<b>PROJECT NAME:</b>	Henely Residence – Project No. 279093	
<b>PROJECT DESCRIPTION:</b>	CDP to demolish an existing residence and construct a new approximately 6,353 square foot single-family residence with a two car garage and swimming pool on a 14,300 square foot property.	
<b>COMMUNITY PLAN AREA:</b>	La Jolla	
<b>DISCRETIONARY ACTIONS:</b>	Coastal Development Permit	
<b>COMMUNITY PLAN LAND USE DESIGNATION:</b>	Low Density Residential (5-9 DUs per acre)	
<b><u>ZONING INFORMATION:</u></b>		
<b>ZONE:</b> RS-1-7 Zone		
<b>HEIGHT LIMIT:</b> 30/24-Foot maximum height limit.		
<b>LOT SIZE:</b> 5,000 square-foot minimum lot size – existing lot 14,300 sq. ft.		
<b>FLOOR AREA RATIO:</b> 0.50 max. allowed – 0.44 proposed		
<b>FRONT SETBACK:</b> 15 feet required – 15 feet proposed		
<b>SIDE SETBACK:</b> 7 feet 4 1/8 inches required – 7 feet, 4 1/8 inches proposed		
<b>STREETSIDE SETBACK:</b> NA		
<b>REAR SETBACK:</b> 13 feet required – 42 feet proposed		
<b>PARKING:</b> 2 parking spaces required – 2 proposed.		
<b><u>ADJACENT PROPERTIES:</u></b>	<b>LAND USE DESIGNATION &amp; ZONE</b>	<b>EXISTING LAND USE</b>
<b>NORTH:</b>	Low Density Residential; RS-1-7 Zone	Single Family Residence
<b>SOUTH:</b>	Parks & Open Space; RS-1-7 Zone	City Park
<b>EAST:</b>	Low Density Residential; RS-1-7 Zone	Single Family Residence
<b>WEST:</b>	Low Density Residential; RS-1-7 Zone	Single Family Residence
<b>DEVIATIONS OR</b>	None.	



**ATTACHMENT 4**

<b>VARIANCES REQUESTED:</b>	
<b>COMMUNITY PLANNING GROUP RECOMMENDATION:</b>	The La Jolla Community Planning Association voted 7-5-3 to recommend denial of the proposed project at their meeting on August 1, 2013.





**RECORDING REQUESTED BY**  
 CITY OF SAN DIEGO  
 DEVELOPMENT SERVICES  
 PERMIT INTAKE, MAIL STATION 501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24002631

**COASTAL DEVELOPMENT PERMIT NO. 980406**  
**HENEY RESIDENCE - PROJECT NO. 279093**  
**HEARING OFFICER**

This Coastal Development Permit No. 980406 is granted by the Hearing Officer of the City of San Diego to Donald Henely and Celia Henely, Trustees of the Donald and Celia Henely 2000 Trust dated June 27, 2000, Owner / Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0708. The 0.32-acre site is located at 615 Wrelton Drive, in the RS-1-7 Zone, Coastal (appealable) Zone, Coastal Height Limitation, First Public Roadway, Residential Tandem Parking and Transit Overlay Zones within the La Jolla Community Plan area. The project site is legally described as: Lot 19, Block 4, Pacific Riviera Villas Unit No. 1, Map No. 2531.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner /Permittee to demolish an existing residence and construct a new, two-story, single family residence described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 11, 2013, on file in the Development Services Department.

The project shall include:

- a. Demolition of an existing residence and construct of a new, two-story, 6,353 square foot single family residence, with an attached two car garage on a 14,300 square foot property;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking, two-car garage;
- d. Site walls, re-constructed retaining walls, swimming pool and spa; and

- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by October \_\_\_, 2016. (Pending State Coastal Commission Appeal Period)
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, or following all appeals.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).



8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

#### **ENGINEERING REQUIREMENTS:**

12. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the reconstruction of the existing driveway with a 12-foot wide City standard driveway, on Wrelton Drive, satisfactory to the City Engineer.

13. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for the curb outlet locate in Wrelton Drive right-of-way, satisfactory to the City Engineer.
14. Prior to the issuance of any construction permits, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
15. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications, satisfactory to the City Engineer.
16. Prior to the issuance of any construction permits, the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards, satisfactory to the City Engineer.
17. The drainage system proposed for this development is private and subject to approval by the City Engineer.
18. Prior to the issuance of a building permit, the Owner/Permittee shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

**PLANNING/DESIGN REQUIREMENTS:**

19. Owner/Permittee shall maintain a minimum of two (2) off-street parking spaces on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.
20. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
21. Prior to the issuance of any construction permits, the Owner/Permittee shall record a seven foot, four and 1/8 inch (7'4 1/8")-wide View Corridor Easement within both side yard setback areas as shown on Exhibit "A," in accordance with SDMC section 132.0403.
22. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.



**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on September 11, 2013, by Resolution No. \_\_\_\_\_.

**HEARING OFFICER RESOLUTION NO. \_\_\_\_\_**  
**COASTAL DEVELOPMENT PERMIT NO. 980406**  
**HENELY RESIDENCE - PROJECT NO. 279093**

WHEREAS, Donald Henely and Celia Henely, Trustees of the Donald and Celia Henely 2000 Trust dated June 27, 2000, Owner/Permittee, filed an application with the City of San Diego for a permit to demolish the existing residence and construct a new, two-story, single family residence on the property (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 980406), on portions of a 0.32-acre property;

WHEREAS, the project site is located at 615 Wrelton Drive, in the RS-1-7 Zone, Coastal (appealable) Zone, Coastal Height Limitation, First Public Roadway, Residential Tandem Parking and Transit Overlay Zones and within the La Jolla Community Plan area;

WHEREAS, the project site is legally described as Lot 19, Block 4, Pacific Riviera Villas Unit No. 1, Map No. 2531;

WHEREAS, on September 11, 2013, the Hearing Officer of the City of San Diego considered Coastal Development Permit No. 980406, pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on July 19, 2013, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15303 that allows for new construction and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated September 11, 2013.

FINDINGS:

**Coastal Development Permit - Section 126.0708**

- 1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.**

The 14,300 square-foot project site is located within a developed area of moderate scale single-family residences on moderately large, approximately 10,000 to 15,000 square foot sized lots. The development proposes to demolish the existing residence and construct a new, two-story, single family residence on the previously disturbed project site. The proposed development is located between the ocean and the first public roadway and the southern/western edge of the



project site is approximately 80 feet from the mapped mean high tide line. The project site is not located adjacent to and does not contain an identified public access path identified in the La Jolla Community Plan and Local Coastal Program [LCP] Land Use Plan. Therefore, the proposed project will not encroach upon any existing physical access way that is legally used by the public or any proposed public access way identified in a Local Coastal Program land use plan.

The Local Coastal Program land use plan identifies two public views that relate to the proposed development of the project site: Wrelton Drive Scenic Overlook and La Jolla Boulevard Scenic Roadway. The proposed development preserves, enhances or restores these designated public views. The Wrelton Drive Scenic Overlook is defined as a view over private property from a public right of way. Consistent with the Local Coastal Program land use plan, the project preserves the public view from the Wrelton Drive Scenic Overlook as illustrated by the view analysis prepared by the applicant and reviewed by City Staff.

The Scenic Roadway designation, which is defined as partially obstructed views over private property and down public rights of way, commences at the eastern beginning of the Wrelton Drive Scenic Overlook and continues south past the project site along Wrelton Drive. The project provides enhanced view corridor protections for the Wrelton Drive Scenic Roadway designation by establishing an eastern and western building setback of 7' to 4 1/8' on both side setbacks which complies with the required setback under applicable regulations. As a condition of approval, the public views down each side yard setback area will be protected by the recording of a view easement that places limits on encroachments by buildings, landscaping and fencing.

In addition, the Local Coastal Program land use plan, La Jolla Community Plan, and the Land Development Code include numerous other goals, policies or regulations regarding public views, including protections that apply to properties such as the project site that are located between the sea and the first public roadway. The project has been analyzed for consistency with all of those applicable public view protection provisions. Consistent with the City Council adopted Resolution No. R-298578, the proposed residence meets all of the RS-1-7 zone development regulations and enhances view corridor protections by establishing building setbacks required under applicable regulations, policies and goals. The applicant also prepared a project specific visual and community plan consistency analysis that helps illustrate that the proposed structure does not encroach into the designated public views. The visual and community plan analysis submitted to the City was reviewed and it has been determined that the proposed project's design and public view protections are consistent with the Local Coastal Program land use plan, La Jolla Community Plan and the Land Development Code. As such, the proposed development would enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

## **2. The proposed coastal development will not adversely affect environmentally sensitive lands.**

The 14,300 square-foot project site is currently developed with an existing single family residence and the lot is previously disturbed within an area of developed residential homes. The project site is located within a well established residential neighborhood and it is surrounded by large to moderate sized single family homes to the north, east and west.

The proposed demolition of the existing residence and construction of a new, two-story, single-family residence would be developed within the previously disturbed portion of the property. The



proposed residence will not encroach on the Environmentally Sensitive Lands. Furthermore, the project site is not located within the Multiple Habitat Planning Area [MHPA].

The environmental review, determined that the project would not have a significant environmental effect on environmentally sensitive lands and was found to be categorically exempt from environmental review under CEQA. The project proposes only a minimal amount of grading, for the foundation and reconstruction of existing retaining walls only and will not result or propose any encroachment into Environmentally Sensitive Lands. Thus this proposed redevelopment of the property will not adversely affect environmentally sensitive lands.

**3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.**

The project proposes construction of a new, two-story, single-family residence. The project site has a Residential – Low Density (5-9 DU/AC) land use designation as identified by the La Jolla Community Plan, which allows for low density residential development. The surrounding neighborhood is entirely built out with an eclectic mix of architectural styles and sizes of residences. As described previously in these findings, the proposed residence will not encroach upon, negatively alter or reduce the existing publicly designated physical access or visual access to and along the coast nor will it adversely affect Environmentally Sensitive Lands. The project also complies with all applicable requirements of the Land Development Code, which is part of the certified Local Coastal Plan Implementation Program. The project proposes to set the first story of the residence approximately 20 feet, and the closest second story element approximately 25 feet, from the curb of Wrelton Drive when only a 15 foot setback from the property line is required. In addition, only a small portion of the residence is proposed to be at the project's maximum height of 30 feet, the proposed floor area ratio is 0.42 when 0.45 is allowed and the amount of livable area above grade is limited to approximately 4,600 square feet. The increased setbacks and other off-setting elements of the project depicted on Exhibit "A" minimize the bulk and scale of the project, help to preserve protected public views and ensure overall conformity with the adopted La Jolla Community Plan, the Land Development Code and the certified Local Coastal Program land use plan and Implementation Program.

**4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.**

The Local Coastal Program land use plan and the Land Development Code identify the permitted use of the project site as single family residential. The 14,300 square-foot project site is currently fully developed with a single family residence. The project site is located within an existing residential neighborhood of larger to moderate size single family homes. The project site is located between the first public road and the sea or shoreline, but the development will be fully within the private property. The western edge of the project site is approximately 80 feet east of the mapped mean high tide line. The proposed development does not encroach onto or adversely affect any public access way. The project does not impact public, pedestrian/recreation access as depicted in Exhibit "A." Therefore, the project is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act.

Although the issue is not addressed in the public access and public recreation policies of Chapter 3 of the California Coastal Act, the project is consistent with City's policies, goals and regulations regarding public view protections. The Natural Resources and Open Space Element of the La Jolla Community Plan designates a Scenic Overlook and a Scenic Roadway public view corridor within the vicinity of the project site and adjacent properties. As described previously in these findings, and based on factors including the location of the proposed home relative to the designated view corridors, compliance with applicable Land Development Code requirements, the requirement of setback based view corridor protections and the preservation of a horizon line view of the ocean above the proposed home from the designated Wrelton Drive Scenic Overlook, the project will preserve, enhance or restore the public view corridors. The applicant prepared a visual and community plan analysis that helps illustrate that the proposed structure does not encroach into the designated public views. City Staff reviewed the applicant's visual analysis and determined that the proposed project's design and public view protections comply with the Local Coastal Program land use plan, the Coastal Act, the La Jolla Community Plan and the Land Development Code.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Coastal Development Permit No. 980406, is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 980406, a copy of which is attached hereto and made a part hereof.

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Glenn R. Gargas  
Development Project Manager  
Development Services

Adopted on: September 11, 2013

Job Order No. 24002631



LA JOLLA COMMUNITY PLANNING ASSOCIATION

P.O. Box 889 La Jolla CA 92038 Ph 858.456.7900  
<http://www.LaJollaCPA.org> Email: [Info@LaJollaCPA.org](mailto:Info@LaJollaCPA.org)

**Regular Meeting – 1 August 2013**

**Attention:** Glenn Gargas, PM  
City of San Diego

**Project:** Henely Residence  
615 Wrelton Dr.  
PN: 279093

**Motion:** That the findings are not sufficient for a Coastal Development. **Vote: 7-5-3**

01 August 2013

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**Submitted by:** Tony Crisafi, President  
La Jolla CPA

**Date**



**From:** Michelle Meade [mmeade@islandarch.com]  
**Sent:** Tuesday, August 06, 2013 11:53 AM  
**To:** Gargas, Glenn  
**Subject:** FW: FW: La Jolla Community Group Vote/Recommendation - Henley Res. - Project No. 279093 - 615 Wrelton Drive

See Helen's notes below on Henley.

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**From:** Helen Boyden [mailto:hboyden@san.rr.com]  
**Sent:** Tuesday, August 06, 2013 11:15 AM  
**To:** Michelle Meade  
**Subject:** Re: FW: La Jolla Community Group Vote/Recommendation - Henley Res. - Project No. 279093 - 615 Wrelton Drive

Here is the motion and vote: Please note that the vote was 7-5-3. Only 15 people voted. The six came from when I asked for the nos to raise their hands again and one person has difficulty understanding how she should raise her hand when the motion is a negative one. This motion is not very helpful as to why.

I will quote the minutes below, but they don't give the acrimonious nature of the hearing. If you want you can quote the trustee comments if you wish in sending it down.

**Approved Motion: That the findings are not sufficient for a Coastal Development Permit (Little, Collins: 7-5-3)**

In favor: Bond, Brady, Collins, Emerson, Little, Steck, Zimmerman

Opposed: Ahern, Boyden, Fitzgerald, LaCava, Weiss

Abstain: Courtney, Crisafi, Manno

Recused: Merten

## REst of discussion

Presented by **Claude-Anthony Marengo**. This is a five bedroom house intended for owner occupancy. He stated the slope is already disturbed and the majority of the new structure is in the same place. The soil will be recompacted, to a depth of 15 feet. Drainage will be collected and pumped to the street. The second story covers about 35% of the street frontage of the first story. Geological investigation will continue, particularly with respect to the existing retaining walls, making adjustment during the construction process. Due to the short driveway, guest parking will be provided abutting the property in the street. He responded to queries by **Trustees Manno, Fitzgerald and Zimmerman**: the compaction resulting in no need for caissons; the FAR being .44 where .50 is allowed; the pool was staying; no deviations were being requested; and the total square footage for house and garage would be 6297.

**Civil Engineer Daniel Valdez**, representing neighbors, made several criticisms of the as yet incomplete geological studies, but said issues could probably be ironed out.

Neighbors testifying against the project citing current use and condition of the property, party noise, potential for flooding, view considerations, size of the usable footprint included: **Mr. Gafford, Dr. Nathaniel Rose, Charles Redfern, Alex Jvirblis, Mary Kenyon, Evelyn Hill, Brandon Wander, Elisha Shaprut, and Mike Costello.**

Additional comments and queries were made by **Trustees LaCava, Boyden, Little, Collins, Emerson, Manno, Crisafi, Weiss and Fitzgerald:** establishing side yard setbacks, driveway width and length, jacuzzi being built in the ground, building height, party noise from rentals, sympathizing with the noise problem, but also stating that it was a separate issue not under LCPA jurisdiction, the fact that NCCD requirements with respect to unpermitted retaining walls would be fulfilled during the permitting process.

Helen

On 8/6/2013 9:19 AM, Michelle Meade wrote:

Hi Helen, do you know the vote / motion on Henley Residence we could send to Glenn. I found Tony's voting record (attached here) & it shows 7-6-3 vote. He abstained for all else. Also attaching a scan of a membership application receive in July. AND...I have the public copy of the agenda pkg here at my desk whenever you are ready for pick up.

Michelle

Michelle (Meagher) Meade



[mmeagher@islandarch.com](mailto:mmeagher@islandarch.com) | [www.islandarch.com](http://www.islandarch.com)

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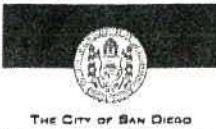
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**From:** Michelle Meade  
**Sent:** Tuesday, August 06, 2013 7:53 AM  
**To:** 'Gargas, Glenn'; 'Info'  
**Subject:** RE: La Jolla Community Group Vote/Recommendation - Henley Res. - Project No. 279093 - 615 Wrelton Drive

Hi Glenn, Henley Residence did not get approved by the trustees (it was a full hearing at request of the applicant).  
I will get you the details / vote today.

Michelle





City of San Diego  
 Development Services  
 1222 First Ave., MS-302  
 San Diego, CA 92101  
 (619) 446-5000

# Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested:  Neighborhood Use Permit  Coastal Development Permit  
 Neighborhood Development Permit  Site Development Permit  Planned Development Permit  Conditional Use Permit  
 Variance  Tentative Map  Vesting Tentative Map  Map Waiver  Land Use Plan Amendment  Other \_\_\_\_\_

Project Title 615 Wreilton Drive Project No. For City Use Only \_\_\_\_\_

Project Address: 615 Wreilton Drive, LaJolla

**Part I - To be completed when property is held by Individual(s)**

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached  Yes  No

Name of Individual (type or print): Donald Henely  
 Owner  Tenant/Lessee  Redevelopment Agency  
 Street Address: 615 Wreilton Drive  
 City/State/Zip: LaJolla, CA, 92037  
 Phone No: 858-336-7030 Fax No: \_\_\_\_\_  
 Signature: [Signature] Date: 4-18-12

Name of Individual (type or print): \_\_\_\_\_  
 Owner  Tenant/Lessee  Redevelopment Agency  
 Street Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_  
 Owner  Tenant/Lessee  Redevelopment Agency  
 Street Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Individual (type or print): \_\_\_\_\_  
 Owner  Tenant/Lessee  Redevelopment Agency  
 Street Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_





THE CITY OF SAN DIEGO

DATE OF NOTICE: August 26, 2013

# NOTICE OF PUBLIC HEARING

## HEARING OFFICER

DEVELOPMENT SERVICES DEPARTMENT

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<b>DATE OF HEARING:</b>	September 11, 2013
<b>TIME OF HEARING:</b>	8:30 A.M.
<b>LOCATION OF HEARING:</b>	Council Chambers, 12th Floor, City Administration Building, 202 C Street, San Diego, California 92101
<b>PROJECT TYPE:</b>	COASTAL DEVELOPMENT PERMIT / CEQA EXEMPTION / PROCESS THREE
<b>PROJECT NO:</b>	<u>279093</u>
<b>PROJECT NAME:</b>	<u>HENELY RESIDENCE</u>
<b>APPLICANT:</b>	Donald and Celia Henely
<b>COMMUNITY PLAN AREA:</b>	La Jolla
<b>COUNCIL DISTRICT:</b>	District One
<b>CITY PROJECT MANAGER:</b>	Glenn Gargas, Development Project Manager
<b>PHONE NUMBER/E-MAIL:</b>	(619) 446-5142 / ggargas@sandiego.gov

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As a property owner, tenant, or person who has requested notice, please be advised that the Hearing Officer will hold a public hearing to approve, conditionally approve, or deny an application for a **Coastal Development Permit to demolish an existing residence and construct a two-story, an approximate 6,353 square foot single family residence on a 14,300 square foot property. The project site is located at 615 Wrelton Drive, in the RS-1-7 Zone, Coastal Overlay Zone (appealable), Coastal Height Limitation, Parking Impact, Residential Tandem Parking Overlay Zones and First Public Roadway, within the La Jolla Community Plan area.**

The decision of the Hearing Officer is final unless appealed to the Planning Commission. In order to appeal the decision you must be present at the public hearing and file a speaker slip concerning the application or have expressed interest by writing to the Hearing Officer before the close of the public hearing. The appeal must be made within 10 working days of the Hearing Officer's decision. Please do not e-mail appeals as they will not be accepted. See Information Bulletin 505 "Appeal Procedure", available at [www.sandiego.gov/development-services](http://www.sandiego.gov/development-services) or in person at the Development Services Department, located at 1222 First Avenue, 3rd Floor, San Diego, CA 92101

The decision made by the Planning Commission is the final decision by the City.

This project was determined to be categorically exempt from the California Environmental Quality Act on July 19, 2013, and the opportunity to appeal that determination ended on August 22, 2013.

Appeals to the Coastal Commission must be filed with the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108. (Phone: 619-767-2370) Appeals must be filed within 10 working days of the Coastal Commission receiving a Notice of Final Action from the City of San Diego, Development Services Department. Please do not e-mail appeals as they will not be accepted. If you want to receive a Notice of Final Action, you must submit a written request to the City Project Manager listed above.

If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written in correspondence to the City at or before the public hearing. If you have any questions after reviewing this notice, you can call the City Project Manager listed above.

This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call Support Services at (619) 321-3208 at least five working days prior to the meeting to insure availability. Assistive Listening Devices (ALD's) are also available for the meeting upon request.

Internal Order Number: 24002631

SHANNON THOMAS  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**Michael J. Aguirre**  
CITY ATTORNEY

**MEMORANDUM OF LAW**

**DATE:** September 12, 2007

**TO:** Honorable Mayor and City Councilmembers

**FROM:** City Attorney

**SUBJECT:** Regulation of Short-Term Vacation Rentals in Residential--Single Unit (RS) Zones

**INTRODUCTION**

Councilmember Faulconer, in response to inquiries from members of the public, recently asked our office to conduct research and provide advice on issues relating to the regulation of short-term vacation rentals in the single-family residential zone. In addition, the Pacific Beach Community Planning Committee recently requested that the City review and take action on this issue. While there is no definition of "short-term vacation rentals," the term is used throughout this memorandum to mean the rental of a single-family dwelling for any time period less than 30 consecutive calendar days.

Communication from members of the public indicates that short-term vacation rentals in the single-family residential zone cause disturbances relating primarily to noise and overcrowding. Other jurisdictions have addressed similar problems by regulating the use through a permit and/or prohibiting short-term rentals; the permissible rental period varies. The City of San Diego could consider adopting similar municipal code sections. Any prohibition in the Coastal Zone would be subject to approval by the California Coastal Commission prior to being effective.

**QUESTIONS PRESENTED**

1. Are short-term vacation rentals currently regulated or prohibited in single-family residential zones?
2. Can the Land Development Code be amended to regulate or prohibit short-term vacation rentals in single-family residential zones?



Honorable Mayor and City  
Councilmembers

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### SHORT ANSWERS

1. No. There are currently neither regulations nor prohibitions on short-term vacation rentals in single-family residential zones.
2. Yes. The Land Development Code may be amended to regulate the use of single-family dwellings in single-family residential zones and/or amended to prohibit the use of single-family dwellings in single-family residential zones. However, the California Coastal Commission must certify any amendments to the Land Development Code before they can be effective in the Coastal Overlay Zone.

### BACKGROUND

An inquiry was made as to whether prior to the Land Development Code [LDC] update (adopted in 1997, effective in 2000), short-term vacation rentals had been prohibited in the single-family residential zone. The single-family residential zone permitted uses, former §101.0407.B, permitted “[o]ne-family dwellings, provided that if the dwelling or any portion thereof is rented, leased or sublet, and the property is located within the area designated on Map C-841 on file in the office of the City Clerk, it must also be maintained and used in accordance with the One-Family Dwelling Rental Regulations of Section 101.0463.”

Then, as is true now, the LDC contained defined terms. A “dwelling, one-family” meant “a detached building, containing only one kitchen, designed or used to house not more than one family, including all necessary employees of such family. Unless otherwise defined or provided for, the term ‘one-family dwelling’ is synonymous with the terms ‘single family dwelling’ or ‘single family residence,’ as they may appear elsewhere in the Municipal Code.” San Diego Muni. Code §101.0101.17 (repealed, 2000). A “family” was defined as “two or more persons who are related by blood, marriage, or legal adoption, or joined through a judicial order of placement of guardianship. When used as an adjective to describe the occupants of a residential dwelling, or as an adjective to describe a type of residential dwelling, the term ‘family’ is synonymous with the term ‘single housekeeping unit’.” San Diego Muni. Code §101.0101.20 (repealed, 2000).

A “single housekeeping unit” was added to the Municipal Code on June 22, 1992, by ordinance O-17785.<sup>1</sup> New §101.0101.76.1 stated, “The term ‘single housekeeping unit’ refers to the status of the occupants of a residential dwelling unit and means one person, or, two persons who reside together, jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit for a period of occupancy which exceeds one month.” When the LDC was updated in 1997, this definition was deleted and the definition of “family” was amended and no longer included a reference to a “single housekeeping unit.” See, San Diego Muni. Code §113.0103.

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<sup>1</sup> This ordinance was enacted on the same day as ordinance O-17786, which made minor amendments to the One-Family Dwelling Rental Regulations, yet neither municipal code section references the other.

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The One-Family Dwelling Rental Regulations, former §101.0463, were added in 1991 by ordinance O-17652. The regulations made it unlawful for any “owner of a one-family dwelling within an R-1-5000 zone located within the area designated on Map C-841 on file in the office of the City Clerk to rent, lease, or allow to be occupied or subleased, for any form of consideration, any one-family dwelling unit which is not occupied by that owner, in violation of any of the following regulations....” San Diego Muni. Code §101.0463.C (repealed, 2000). The regulations required, among other things, that there be at least 80 square feet of bedroom area for each person over 18 years old. In 1993, this section was amended by ordinance O-17893, in light of the ruling in the case of *Briseno v. City of Santa Ana*, 6 Cal.App.4<sup>th</sup> 1378 (1992). The court held that state law preempted local regulations related to minimum room dimensions. Therefore, the regulations in § 101.0463 were amended to delete the City’s more restrictive bedroom size requirements, and to reflect state law instead. Non-substantive changes were made in 1992 by ordinance O-177786. Later amendments to this section related to non-substantive changes in department names and renumbering. (See O-17956; O-18088.) In 1997, effective 2000, this section was repealed as part of the LDC update.

## ANALYSIS

### 1. Former Regulations

The former LDC regulated rentals through the One-Family Dwelling Unit Regulations by requiring that the rooms be of a certain size in rental units. Once the regulations were amended to conform to the ruling in *Briseno*, the only remaining requirement was compliance with the State Housing Code; compliance with which is already mandated. There was no restriction in the One-Family Dwelling Unit Regulations on the length of time a unit could be rented.

The former “single housekeeping unit” definition did contain a reference to a period of occupancy. The definition referred to residents who “reside together, jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit for a period of occupancy which exceeds one month.” San Diego Muni. Code §101.0101.76.1 (repealed, 2000). However, the section is awkwardly worded at best and seems to be an attempt to define the type of relationships appropriate for the “single-family” zone in that it “refers to the status of the occupants.” San Diego Muni. Code §101.0101.76.1 (repealed, 2000). It does not seem to refer to the length of time that residents- regardless of their relationship- must occupy the dwelling. In addition, the application of the ordinance is not limited to non-owner occupants. To interpret this section to have required occupants to reside for a minimum of a “month,” which is undefined, would have put every category of occupant in an illegal status until the expiration of that first “month,” at which time legitimacy would be granted retroactively. To have attempted to apply these code sections in this manner would have resulted in uncertainty for the occupants, landlords, and law enforcement, and there has simply been no evidence to support that this definition of “single housekeeping unit” was applied to create a required period of occupancy.



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By way of contrast, the former regulations for the Multiple Family Residential Zones allowed apartment houses, “excluding premises designed or used for the temporary residence of persons for less than one week.” San Diego Muni. Code §101.0410.B.3 (repealed, 2000). Therefore, the use of apartment houses for residence of less than a week was prohibited. Similar language appears in the current Municipal Code pertaining to multiple-dwelling unit uses, § 131.0422. Table 131-04B reflects that in the RM zone (Residential--Multiple Unit), “Non-owner occupants must reside on the *premises* for at least 7 consecutive calendar days” (except for the RM-5 zone, which does not contain this restriction). This clear language regarding the required length of occupancy is missing from both the former and the current Municipal Code sections on uses in the single-family residential zone. Finally, the One-Family Dwelling Rental Regulations also did not contain any restriction on the length of occupancy.

## 2. Current Regulations

The City of San Diego zones are set forth in Chapter 13. The general rules for the base zones are set forth in Article 1, Division 1. The base zones are Open Space; Agriculture; Residential; Institutional; Retail Sales; Commercial Services; Office Use; Vehicle and Vehicular Equipment Sales and Services; Wholesale, Distribution, Storage Use; Industrial Use; and Signs Use. *Id.*

The Residential Use category “includes uses that provide living accommodations for one or more persons.” San Diego Muni. Code §131.0112(a)(3). The single dwelling unit subcategory is “[d]welling units where no more than one dwelling unit is located on a *lot*, usually detached, and occupied by a single household unit.” San Diego Muni. Code §131.0112(a)(3)(D).

Permitted uses in the RS (Residential--Single Unit) zone are set forth in section 131.0422, Table 131-04B. It is unlawful to use or maintain any *premises* for any purpose not listed in §131.0422. San Diego Muni. Code §131.0420(a). Residential uses allowed in the RS zone are mobile home parks, single dwelling units, boarder and lodger, companion, employee housing of less than 6 employees, garage, yard and estate sales, home occupations, housing for senior citizens, and residential and transitional care facilities. Some of these uses, such as employee housing for 6 or fewer employees and boarder or lodger accommodations, are permitted uses, provided that certain set standards are adhered to. Other uses, such as residential or transitional care for more than 6 people, require a conditional use permit.

The Commercial Services category “includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment.” San Diego Muni. Code §131.0112(a)(6). The subcategories are building services; business support; eating and drinking establishments; financial institutions; funeral and mortuary services; off-site services; personal services; assembly and entertainment; radio and television studios; and visitor accommodations. *Id.* Commercial Services in the RS zone are generally not an allowed use. Bed and Breakfast Establishments and Child Care facilities are exceptions. San Diego Muni. Code §131.0422, Table 131-04B.



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Visitor accommodations are uses “that provide lodging, or a combination of lodging, food, and entertainment, primarily to visitors and tourists. (Outside of the Coastal Overlay Zone, includes single room occupancy hotels.)” San Diego Muni. Code §131.0112(a)(6)(K). There are no examples given in the current code of these uses.<sup>2</sup> However, because there is no definition of “visitor” or “resident” in the Land Development Code, the “visitor accommodation” regulations do not prohibit the short-term rental of a single-family dwelling.<sup>3</sup> Furthermore, the Visitor Accommodations section does not even pertain exclusively to visitors, only referring to “primarily to visitors and tourists.” Id., emphasis added.

A dwelling that is rented out in its entirety as a short-term rental is not a hotel or motel. Hotel/motel is defined as “a building containing six or more *guest rooms* that are rented for less than 30 days and used or designed to be used for sleeping purposes. *Hotel* or *motel* does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention home, or other institution in which human beings are housed and detained under legal restraint.” San Diego Mun. Code §113.0103. A guest room is then defined as “any rented or leased room that is used or designed to provide sleeping accommodations for one or more guests in *hotels*, *motels*, bed and breakfast facilities, private clubs, lodges, and fraternity or sorority houses.” Id. The rental of an entire dwelling does not constitute the rental of guest rooms, and thus, the dwelling does not become a hotel or motel.

Additionally, to interpret the rental of an entire dwelling as creating a hotel or motel creates a conflict in the LDC sections. Hotels and motels, which fit the description of a type of visitor accommodation, are not a permitted use in the RE (Residential--Estate), RS, RX (Residential--Small Lots), or RT (Residential--Townhouse) zones, nor are they a permitted use in any of the RM zones, except for the RM-4 and RM-5. Multiple-family dwellings are also allowed in the RM-4 zone, however, non-owner occupants must reside on the premises for at least 7 consecutive calendar days. Therefore, in the RM-4 zone only, interpreting the rental of an entire dwelling as creating a hotel/motel directly conflicts with the restrictions placed on multiple-family dwellings: a non-owner occupant in the RM-4 zone must reside in the hotel/motel for at least 7 consecutive calendar days. There is no rational basis for such a distinction.

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<sup>2</sup>The former code, §101.0426.1, Commercial Visitor- Service, was “intended to provide for establishments catering to the lodging, dining, and shopping needs of visitors....” Section 1010.0426.1.B listed numerous uses: hotels and motels; retailing of goods and services from the following establishments: agencies for tickets, travel, and car rental; antique shops; apparel shops; art stores and art galleries; bakeries; barber shops and beauty shops; bicycle shops, including rental and repair; book stores; cocktail lounges; confectionaries; delicatessens; drug stores; florists; food stores; gift shops; greeting card shops; hobby shops; jewelry shops; laundromats; liquor stores; music stores; photographic equipment stores and outlets; restaurants, including outdoor dining; shoe stores and shoe repair shops; sporting good stores, including rental and repair; and stationers. In addition, the following uses were allowed on floors other than the ground floor: business and professional offices (excluding employment agencies and hiring halls); private clubs, lodges, and fraternal organizations; studios for teaching art and music; and apartments. Id.

<sup>3</sup>Transient Occupancy Taxes (TOT) must be paid for occupancy of less than 30 days. San Diego Muni. Code, Chapter 3, Article 5, Division 1. While compliance with all laws is required, this section regarding payment of transient occupancy taxes is not a definition of visitor for land uses purposes. See, §§ 111.0101, defining the Land Development Code; and 113.0101, containing definitions specific to the Land Development Code.

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Councilmembers

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Finally, the issue whether to create a minimum stay for single dwelling units was presented in 1997 to the Land Use & Housing Committee, which recommended against regulating the minimum stay in single dwelling units. On November 18, 1997, the City Council introduced the LDC amendments without a minimum stay requirement. *See*, City Manager's Report P97-153, September 29, 1997, attach. 1, pg. 11; attach. 8, pg. 6.

If the prohibition of short-term rentals is desired, amendments to the Land Development Code should define what length of stay is prohibited, similar to the regulations for the apartment houses in the Residential--Multiple Unit zone.

### 3. Future Regulations

Many jurisdictions have struggled with issues relating to vacation rentals. Some jurisdictions have addressed the problem by regulating short term vacation rentals in single-family residentially zoned areas. Some common requirements:

- obtain a permit, although some jurisdictions just use the business license as a permit
- length of rental required varies from 7 days to 1 month
- a contact person must be designated that can respond 24 hours a day, 7 days a week; this contact information must be publicly posted and/or on file
- no on-site advertising allowed
- parking restrictions
- occupancy restrictions
- trash collection
- penalties vary- increasing levels of fines, revocation of the business license, misdemeanor prosecution

Other jurisdictions have attempted to ban short-term rentals. Anecdotal evidence supports the belief that most short-term vacation rentals are in the coastal area; any amendments to the City's local coastal program must be certified by the California Coastal Commission [CCC]. However, because of the reduced access to the coast the CCC has rarely approved an actual prohibition on short-term rentals in residential areas. The City of Imperial Beach did succeed in prohibiting the use in residential areas, but they allowed it as a new use in commercial areas, also on the coast. In addition, there were only nine residences affected, and the use was to be phased out at those locations. The City of Coronado also prohibits "transient occupancy" of less than 25 days in any residential area, with a few exceptions. The following is a summary of regulations in various coastal cities and counties:

#### Encinitas:

Over the last couple of years, the City of Encinitas proposed two changes to their municipal code that are relevant to this issue. One change was that short-term vacation rentals, defined as a rental of 30 days or less, would be completely prohibited in all residential areas. At



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the CCC meeting of November 14, 2006, the Coastal Commission approved this proposed amendment to Encinitas' Local Coastal Program [LCP], with modifications. However, the modifications were that short-term vacation rentals would in fact be *allowed* in residential areas west of Highway 101, where 90% or more of the city's vacation rentals were located, essentially gutting the very regulation that Encinitas was attempting to have the CCC approve.

The second amendment to the Encinitas' municipal code was a regulation of the short-term vacation rentals. Chapter 9.38 was amended to require that short term rentals obtain a permit prior to operation, the operators use their "best efforts" to control various nuisances such as noise, and respond within 2 hours of a report of the nuisance and use their best efforts to resolve the complaint within 24 hours. Any operator that fails to timely respond to two or more complaints is subject to specified fines that range from \$250-\$1000. The occupancy of the short-term rental unit is limited and cannot exceed two persons per bedroom unit, plus one additional person per dwelling.<sup>4</sup> The number of vehicles is limited to the number of on-site parking spaces. Trash may not be in public view, except for from sunset on of the day prior to trash pick up, and must be in approved receptacles. The information regarding the permissible number of occupants and vehicles, and trash disposal requirements must be included in each rental agreement. The operator must display the permit, which includes the maximum number of applicants and vehicles and the 24 hour, 7 day phone number of the responsible operator, on the inside of the main entry door. This same information must also be displayed on the outside of the unit, in plain view of the general public.

In commenting on the proposed permit system, the Coastal Commission found that the nuisances associated with short-term rentals "can be substantially regulated to assure the compatibility of vacation rentals in the residential neighborhoods." (CCC staff report, Tue 9c, October 26, 2006, pg. 2.) Therefore, the CCC found a complete prohibition on short-term rentals unnecessary.

#### Imperial Beach:

In 2002, the City of Imperial Beach also sought to amend their LCP to prohibit short-term rentals (defined as rental of a dwelling for less than 30 consecutive calendar days) in all residential zones. The CCC rejected this proposed amendment as unnecessarily restrictive. However, in 2004, the CCC did approve an LCP amendment to add the short-term rentals as a permitted use in the Commercial and Mixed-Use zones near the shoreline, and to phase out the existing uses in the residential area (9 affected residences).

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<sup>4</sup> This occupancy restriction would seem to be preempted by the ruling in *Briseno v. City of Santa Ana*, 6 Cal.App.4<sup>th</sup> 1378 (1992), in which the court held that local standards on occupancy were preempted by the State Housing Code. An occupancy standard based on state law standards would be permissible. The City of Solana Beach has a handout for landlords of short term vacation rentals, which reminds the landlords of the state occupancy requirements and their duty to comply with the law.



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City of Solana Beach:

In 2003 and 2004, the City of Solana Beach enacted an ordinance requiring a permit for short-term vacation rentals. A short-term vacation rental is defined as the rental of any structure or portion thereof for "occupancy for dwelling, lodging or sleeping purposes for more than seven, but no more than 30, consecutive calendar days in duration in a residential zoning district, including detached single-family residences, condominiums, duplexes, twinplexes, townhomes and multiple-family dwellings." Solana Beach Muni. Code §4.47.030. Rental for less than seven consecutive calendar days is prohibited; rental for more than 30 consecutive calendar days is not regulated. Solana Beach Muni. Code §§4.47.040; 4.47.050.

The operator of a vacation rental is responsible for the nuisance behaviors of the occupants; failure to control the occupants is considered failure to respond. Solana Beach Muni. Code §4.47.060. The permit must be displayed on the inside of the main entry door and posted in public view. Solana Beach Muni. Code §§4.47.080; 4.47.090. Failure to comply results in a \$500 fine for the first violation in any 12 month period, \$1000 fine for the second violation in any 12 month period, and revocation of the permit for the third violation in any 12 month period. Solana Beach Muni. Code §4.47.070.

The City of Solana Beach has not yet submitted their ordinances for CCC certification.

Humboldt County:

The county ordinances had previously prohibited short term vacation rentals, although it seemed the use continued. In 2005, the CCC approved an LCP amendment to allow the use in the single family residential and mixed residential areas in a newly created zone, with a permit. A vacation home rental is defined as the "transient use of single and two family (duplex) dwelling units." Humboldt Co. Code §314-157. A dwelling unit is defined as a "room or combination of rooms including one and only one kitchen (unless otherwise specified in these regulations), and designed or occupied as living or sleeping purposes for a person or family." Humboldt Co. Code §313-139. Transient habitation "includes motels, hotels, resorts and other facilities other than for recreational vehicle parks providing lodging services to guests on a less-than-weekly basis." Humboldt Co. Code §172.17.

The permit requires compliance with residential parking standards<sup>5</sup>, limits the occupancy to 10 persons,<sup>6</sup> prohibits on-site advertising, and requires that a contact name and number be mailed to all occupied residences within a 300 foot radius. Humboldt Co. Code §314-37.1. The contact person must reside within a 5 mile radius, and must be available 24 hours a day to respond to tenant and neighborhood questions and concerns and to ensure compliance with the

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<sup>5</sup> There are no parking requirements specific to Vacation Rentals.

<sup>6</sup> See fnt. 1.

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code. Id. The operator must obtain a business license, collect the appropriate transient occupancy tax, and ensure that trash is disposed of on a weekly basis. Id.

San Luis Obispo County:

In 2003, the CCC approved an amendment to the San Luis Obispo County's LCP to allow short term vacation rentals in some areas, with regulations.<sup>7</sup> Vacation rentals are limited to one individual tenancy within seven consecutive days (excluding the property owner). San Luis Obispo Co. Code §23.08.165. Vacation rentals may not be located within 200 linear feet of another residential vacation rental or "other type of visitor- serving accommodation that is outside of the Commercial land use category." Id. The code limits the maximum number of occupants to the amount of on-site parking available, not to exceed two persons per bedroom, plus two additional persons.<sup>8</sup> Id. Advertising on-site is prohibited, all parking is required to be on-site, noise is regulated, and the use of large electrical equipment is prohibited. Id. All vacation rentals must designate a local property manager who is available 24 hours a day to respond to tenant and neighborhood questions or concerns. Id. This contact information must be on file with the county sheriff, provided to property owners within a 300 foot radius, and posted in the rental unit. Id. Failure of the responsible person to respond more than three times in any consecutive six month period may be grounds for revocation of the business license. Id.

City of Coronado:

The City of Coronado generally prohibits "transient occupancy," which is defined as a stay of 25 consecutive calendar days or less, in any residential area. Coronado Muni. Code §§ 86.78.020; 86.78.060; 86.78.070.<sup>9</sup> However, the Coronado Local Coastal Program was approved by the CCC in 1983, and based on recent CCC actions; it is unlikely that the Commission would support such a restriction today.

Possible future City of San Diego actions regarding short-terms rentals could include a permit system and/or a ban on rentals of a certain length of time. However, should a ban be sought, it is not possible to predict what length of stay the CCC is likely to approve.<sup>10</sup> The CCC staff report for the City of Encinitas' application summarized some of their recent short-term rental decisions, and stated: "In each case, the Commission must evaluate the availability of existing hotel/motel accommodations in the near shore area, the historic pattern of short-term vacation rentals in the area, the specific visitor serving uses available, the services available to

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<sup>7</sup> In comparison to the County of San Luis Obispo, the City of San Luis Obispo prohibits vacation rentals in any zone. San Luis Obispo Muni. Code §17.22.010.G. A vacation rental is a "dwelling or part of a dwelling where lodging is furnished for compensation for fewer than thirty consecutive days." San Luis Obispo Muni. Code §17.100.220.

<sup>8</sup> See fnnt. 1.

<sup>9</sup> Dwelling units within R-4 zone motels, or lodging houses with in the "P" Overlay Zone may be used as transient rentals. Coronado Muni. Code §§ 86.78.060.B.

<sup>10</sup> The May 23, 2007 letter from the Pacific Beach Community Planning Committee requested a minimum rental period of one month.

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serve the proposed vacation rental use, and the impacts of such vacation rental use in the residential community.” CCC Staff Report, Tue 9C, October 26, 2006, pg. 12.<sup>11</sup>

Any proposed amendment to the City’s local coastal program that proposes to ban short-term rentals should include at a minimum information regarding the size of the area affected, the approximate number of short-term rentals currently available, whether the short-term nature is seasonal or not, where other short-term lodging is located in relation to the coastal area and how much lodging is available, and the historical availability of short-term rentals.

### CONCLUSION

There is no evidence that the past zoning codes prohibited short-term vacation rentals in the single-family zone, nor do the current regulations prohibit such a use. Should the City decide that there is sufficient rationale, it may consider requiring a permit, similar to that used by other cities, and/or a prohibition on short-term rentals. A change in the zoning laws of the Coastal Zone will require CCC approval prior to becoming effective.

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By

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<sup>11</sup> The report is available at <http://documents.coastal.ca.gov/reports/2006/11/T9c-11-2006.pdf>.