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To: Mr. Glenn Gargas, Development Project Manager

July 3th, 2018

Torrey Pines Committee Planning Board Public Input regarding a Process 5 Public Right-of-Way Project 550469 La Amatista Vacation and vacate a portion of excess right-of-way along south side of La Amatista Road.

General notes for all questions submitted by the public:

- Please answer separately for both the alley and street vacations where applicable
- Please provide support (maps, case law, statutes, etc.) for all answers as opposed to “the city has determined.” We are looking for the underlying basis for the contentions, as opposed to just the contentions, which we already know at this point

*italicized quoted sections are the city’s responses from their memo dated Feb 26, 2018 from Glenn Gargas to Dennis Ridz

Questions:

1) During the initial review of the project, we were told adjacent property owners must agree to the vacation. Now we are being told that was a mistake and adjacent property owners do not need to agree because “*that is not the case when the right of way is unimproved and not used for right of way purposes. That mistake was corrected during the second review and the review issue was cleared.*” What is the underlying support (statute, etc.) for this contention made during the second review? Please be specific and provide specific reference to what is being used as the underlying support for this contention.

2) The City claims residents already own the land in question for the proposed vacations, and there are easements in place supporting this contention for both the alley and the street. *“This is not a new fee interest. The adjoining property owner has always owned the land encumbered by the street easement.”* Please provide support for these contentions including maps, documented easements (that have been accepted by the then property owners), or other statutes or documentation being used to make these claims, for both the alley and the street, separately. Please include all the relevant supporting documents, including their dates and signatories if relevant for acceptance.

* To the degree the City has actual documentation to support these contentions, does the City know why none of this documentation was disclosed to buyers of the properties in question? What are the legal implications of none of this being disclosed to purchasers?

* If the residents already own the land in question, why wasn't it included in their lot size/ buildable FAR calculations for development purposes that were being used by the City when these homes were built or re-modeled?

3) The vacation of the ROW **cannot be for the exclusive and sole benefit of the applicant**. The City believes the alley (and potentially the street) is a liability to them. If it is a liability to the City, how is it conferring a benefit to homeowners that do not want it (neighborhood petition vast majority against this)?

If someone does not want something (neighborhood petition vast majority against this) and potentially has a significant expense without choice to inherit it (forced fencing, etc. described in question #4 that follows) how is it a benefit to them? Shouldn't "benefit" be in the eye of the beholder?

4) The City has claimed *“The La Amatista Vacation does not include a grading plan or development plans to construct anything. The project is proposing a mapping action to vacate the existing public right-of-way easement. There is no physical change to the land with this proposal.”*

-Clearly the application is being made to accommodate future development plans that are not possible with the existing property lines and zoning. The applicant has already admitted his intent to develop and the specific need for these vacations to allow for his development plans in a neighborhood meeting in roughly the Fall of 2016 (November 13th) at the start of this process (neighbors who were at this meeting can verify the applicant made these statements). How can the city ignore the underlying intent of the application and claim there are no development plans to construct anything when the

applicant has already publicly stated he will be and the application if granted will allow for it?

-If the alley vacation is granted, numerous homeowners that have their homes fenced off at the existing property lines may be forced to fence around the new property they inherit to protect against liability issues and for other reasons. In order to absorb and fence in the area in question, existing property owners may also have to re-grade. These actions will be without choice. If the alley vacation is granted, homeowners will be forced against their will to take these actions, at significant expense as well. Fencing and regrading will also affect drainage. These actions would be direct consequences of the alley vacation being granted, therefore it seems disingenuous to claim this is just a mapping action with no physical change to the land, no grading plan, and no plans to construct anything. In the face of the direct consequences of these mapping actions, how is the City able to claim the La Amatista vacations will not affect drainage when drainage will be affected as a direct consequence of these vacations?

-Will the city then try to claim the land was improved by actions of fencing off and grading the area (that homeowners were forced to take against their will) and increase the assessed value of said properties for property tax purposes due to these “improvements”?

5) As another underpinning of its determinations that the right of way can be vacated, the City has also claimed “*The alley is currently not accessible for vehicular traffic, including construction traffic*”. This blanket statement is demonstrably false. The alley is clearly accessible to construction equipment, foot, or other vehicular traffic where it lets out to Condesa Dr between La Amatista and El Amigo. There is ample evidence to show it has been used for construction traffic (**very recent pictures attached at end of document, other pictures can be provided**) showing construction access and vehicles in the alley for two different properties), amongst other things:

<https://www.google.com/maps/place/Condesa+Dr+%26+La+Amatista+Rd,+Del+Mar,+CA+92014/@32.9509335,-117.2601578,294m/data=!3m1!1e3!4m5!3m4!1s0x80dc08ae4ef82bf3:0xf760085669496e1d!8m2!3d32.950867!4d-117.2593>)

How did the City come to the incorrect determination that the alley is not accessible to vehicular traffic and what are the implications of the alley in fact being accessible to vehicular traffic?

6) The City seems to have determined CEQA does not apply. However, CEQA clearly states **all foreseeable events must be considered**. Future development (and its

impacts on drainage, the environment, and the character of the neighborhood) are clearly foreseeable events as direct results of this process. The application is being made to allow for future development. The applicant has already admitted his intent to develop and the specific need for these vacations to allow for his development plans in a neighborhood meeting in roughly the Fall of 2016 at the start of this process (neighbors who were at this meeting can verify the applicant made these statements). How can the City ignore CEQA when development is clearly a foreseeable event, amongst other things including drainage and storm water run-off?

7) There is a community plan for the area (which has been approved by the Mayor's office, City Council, and the Coastal Commission) that amongst other things is designed to preserve "neighborhood character" and ensure that "single-family homes that are similar in bulk and scale to existing homes within the immediate neighborhood." The 50% rule allows the applicant to avoid appearing in front of the Torrey Pines Planning Group at a public meeting. This denies the neighborhood and the Planning Group the ability to ask questions and ensure conformity with the community plan. Therefore, what is the City's plan for ensuring the conformity of future development with the community plan?

- By definition, if lot lines/FAR are all of the sudden expanded by about 33% for certain homes, it seems challenging to believe new development on these properties will be consistent with what is already in the neighborhood and designed around the currently existing lot lines. How can the city argue otherwise?

8) Who from the City was involved in making the determinations in the Feb 26, 2018 memo? At that point which of those people had actually visited the areas in question specifically as part of this process?

9. Why has not anyone from the Development Services Department actually physically inspected the subject ROW?

10. Why does the Notice of the revised application for vacation of the ROW not specifically state the actual lots that are going to be affected by the vacation?

11. Has the actual ownership of the ROW been established, as there is much confusion as to if the lot owners actually own the area that is to be vacated? On what factual and legal grounds have you determined ownership of the ROW for each and every affected homeowner? Please be specific and refer to legal and factual authority?

12. Why has the revised application included both the vacation of the ROW for La Amatista and the alley? Is not it a fact that there are different criterion to be investigated and analyzed to determine if a vacation of the ROW for La Amatista versus the alley are to be approved?

PROW and Alley Vacation - Project No. 550469 –**additional questions** submitted to Chair Dennis Ridz

13. Has the City of Del Mar been noticed and contacted regarding this application and how it might affect the City of Del Mar regarding storm water run-off and the drain system?

14. What are the specific benefits to the City if the vacation of the ROW is granted?

15. Have you fully determined that there are no potential detriments to vacating this ROW?

16. Has there been a CEQA review?

17. What sections of the General Plan for this area, the Torrey Pines Community Plan, and the North City Local Coastal Plan have been reviewed for this application?

18. Have you taken into consideration the potential effect this vacation will have upon the compatibility and character of this neighborhood

19. Although the application is for unimproved property, have you inquired of the applicant his reason for the application, and if his intent is to develop and improve his property in the ROW being vacated? If you have not, why not?

20. Can you locate on Map 157 in 1989 of the ROW dedication? If not, why not?

21. Have you reviewed Government Code 65402? If not, why not?

22. Have you taken into consideration the impact of this vacation will have upon neighborhood character and the integrity of the community's unique scenic and visual qualities of the coastal areas? Have you considered the visual impact this vacation will have upon the residents?

23. How have you verified that the alley is not accessible for vehicular and pedestrian traffic?

24. Are you able to verify the new setbacks that will be applicable for each lot affected by the vacation of the ROW?

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25. Are you aware if the applicant has building plans on file with the City of San Diego?

26. Why have you decided to bypass the Torrey Pines Community Planning Board for a decision of this project?

27. Who has been contacted in the City of San Diego concerning this project?

28. Can you provide a summary of the communications between the applicant and/or his representative and/or legal counsel with Glen Gargas concerning this ROW vacation?

29. Did you not take into consideration that all the affected property owners, except the applicant are opposed to this vacation?

30. Have you taken into consideration the possible impact of sea-level rise, storm surge, coastal flooding, and erosion if this vacation were to be granted?

End of Public Questions

Questions from the TPCPB that require more clarification.

31. La Amatista street vacation states “a portion” of excess right-of-way. Why only a ‘portion’? What public liability passes to property from 2201 to 2223 La Amatista Road?

32. **Coastal Development Permit – Section 126.0708.** Finding for all Coastal Development permits. The site is located adjacent to the coast view corridor within Torrey Pines border with Del Mar. Due to the location of this project, any future development would block numerous public view(s) of the Pacific Ocean or other scenic coastal areas as specified in the Torrey Pines Community Plan and the Local Coastal Program. Any possible increase in Floor Area Ratio (FAR) caused by this development will impact the current Public View as protected under the Local Coastal program. Would you agree with this statement? If not, explain why this project does not **violate the intent** by the California Coastal Commission to protect Public Ocean or scenic coastal views? Even a ‘map change’ clearly implies that future development of the property can occur.

Conclusion

The TPCPB submits the above questions and clarifying statements to Development Services in the hope of eliciting enough detailed answers for the public and TPCPB to make a **reasoned judgment** about the merits of this application. We expect to receive detailed answers to the above 32 questions in a timely manner for discussing and review at a public board meeting on Thursday, July 12th, 2018, at 7:00 PM – Del Mar Hills Academy on Mango Drive.

Dennis Ridz, Chair TPCPB



