



**PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA**

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
LINDSEY P. HORVATH
JANICE HAHN
KATHRYN BARGER

Correspondence Received

Agenda #	Relate To	Position	Name	Comments
49.		Oppose	Kristina Kropp	
		Item Total	1	
Grand Total			1	

LUNA & GLUSHON

A Professional Corporation

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December 12, 2024

VIA EMAIL

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

**Re: Final Tract No. 45465-04
December 17, 2024 - Agenda Item 49**

Honorable Supervisors:

In the December 17, 2024 recommendation to this Board, the Director of Public Works recommends that the Board approve the final map for Tract 45465-04 stating that "subdivider has complied with all requirements imposed as a condition of the approval of the tentative map."

This recommendation is incorrect.

Our law firm represents Jennifer and Carey Chrisman (the "Chrismans"), the beneficial owners in escrow for the purchase of the property located at 26763 Mulholland Highway, Calabasas, CA 91302 (the "Subject Property") which is a part of the recommended approval action and to which the Chrismans do not consent. The County has no discretion to approve a map which includes property that the subdivider has no title or interest to.

I. Conditions of the Tract Map Not Met

The subject Vesting Tentative Map No. 45465 approved the subdivision of land into 81 single family lots (the "Vesting Tentative Map") and required the construction of "off-site improvements necessary to adequately serve" the 81-home single family subdivision.

Vesting Tentative Map No. 45465 is specifically conditioned upon the following condition:

“Subdivider shall secure at the subdivider’s expense sufficient title or interest in land to permit any off-site improvements.” [see Exhibit 1].

The Subdivider has failed to fulfill this condition of approval.

In particular, the required off-site improvements include a Drainage Concept dated 9/8/87 which incorporates a system of storm drains and debris basins on the Subject Property. As set forth herein, the subdivider has no title to the Subject Property.

II. The Subdivider Holds Insufficient Title or Interest to the Subject Property

On May 7, 2021, the Chrismans entered into a purchase and sale agreement to purchase the Subject Property from the Arthur A. Alisi Survivor’s Trust (the “Seller”). At that time, the subdivider of the property subject to the Vesting Tentative Map had no legal title or interest in the Subject Property. Therefore, in order to meet the requirements of the Vesting Tentative Map condition referenced above, the subdivider had to somehow acquire title or interest to the Subject Property.

On May 26, 2021, prior to the close of escrow and without informing the Chrismans, the Seller secretly conveyed certain rights to a portion of the Chrisman Property to the subdivider to meet the requirements of the Vesting Tentative Map (“Seller’s Conveyance in Dispute”). It is unlawful for a seller to secretly transfer a portion of property in escrow. Therefore, escrow on the Subject Property did not close and litigation between the Chrismans and the Seller ensued.

In November 2023, an arbitrator issued a binding award ordering that **the Chrismans were entitled to specific performance on the purchase and sale agreement so that the Chrismans are the rightful owners of the Subject Property**, subject only to a determination on the validity of the Seller’s Conveyance in Dispute. [Exhibit 2].

The issue of the Seller’s Conveyance in Dispute is currently pending in litigation in Los Angeles Superior Court Case No. 21STCV31211 (the “Litigation”). If the Court sets aside the Seller’s Conveyance in Dispute, as it should, the Vesting Tentative Map conditions including the approved Drainage

Concept dated 0/9/87, which includes the Subject Property, cannot be fulfilled. **Until there is a final, binding Court decision on this issue, including any possible appeals, the County should not and cannot approve the final map for Tract No. 45465-04.**

Again, the County has no discretion to approve a final map which includes property that the subdivider has no title to. The Chrismans are the beneficial owners of the Subject Property and have been awarded specific performance to the Subject Property. It is arbitrary, capricious and without any authority whatsoever that the County can unilaterally “impose” a debris basin on their private property.

III. The County Cannot Approve the Final Map

Government Code §66473 sets forth that “[a] local agency shall disapprove a map for failure to meet or perform any of the requirements or conditions imposed.” *Id.*; *Soderling v. City of Santa Monica* (1983) 142 Cal.App.3d 501, 509 (where a tentative map is approved subject to conditions and those conditions remain unfulfilled, approval of a final subdivision map is not a ministerial act).

Until the above-referenced litigation is resolved, the subdivider remains without sufficient title or interest in the Subject Property and cannot comply with the conditions of Vesting Tentative Map No. 45465. Accordingly, the subdivider has failed to fulfill the conditions of approval of Vesting Tentative Map No. 45465, applicable to the final map for Tract No. 45465-04.

The Chrismans request that the final map not be approved until the issue of Seller’s Conveyance in Dispute is resolved. Without such resolution, the County’s finding of “sufficient title or interest” is without substantial evidence and proposed in error.

Very truly yours,

LUNA & GLUSHON
A Professional Corporation

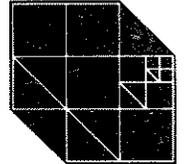


ROBERT L. GLUSHON

Exhibit 1

Certified - Receipt
Requested

October 7, 1988



Malibu Valley Farms, Inc.
2200 Stokes Canyon Road
Calabasas, California 91302

Gentlemen:

Subject: TENTATIVE TRACT MAP NO. 45465 (Map Date: July 13, 1988)
CONDITIONAL USE PERMIT NO. 87-058
OAK TREE PERMIT NO. 87-058

A public hearing on Tentative Tract Map No. 45465, Conditional Use Permit No. 87-058 and Oak Tree Permit No. 87-058 was held before the Regional Planning Commission on August 31, 1988.

After considering the evidence presented, the Regional Planning Commission in concurrent actions on October 5, 1988 approved the tentative tract map and granted the Conditional Use Permit and Oak Tree Permit in accordance with the Subdivision Map Act and Title 21 (Subdivision Ordinance) and Title 22 (Zoning) Ordinance of the Los Angeles County Code. These actions enable the property shown on the attached legal description and the tentative map dated July 13, 1988 to: (a) be subdivided into eighty one (81) single family lots; (b) be developed in compliance with the Performance Review Procedure as established by the County General Plan for proposed projects which have natural slopes of 25% and greater; and (c) permit removal of seventy eight (78) oak trees from the project site.

Your attention is called to the following:

1. Condition No. 1 of the Conditional Use Permit and the Oak Tree Permit provides that the permits shall not be effective for any purpose until the applicant and the owner of the property involved, or their duly authorized representative, have filed at the office of the Department of Regional Planning the affidavits stating that they are aware of and accept all the conditions of the permits.
2. Condition No. 3 of the Conditional Use Permit and Oak Tree Permit pointing out the limitations of the grants.

Tract Map No. 45465
Conditional Use Permit No. 87-058
Oak Tree Permit No. 87-058

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3. That during the fifteen-day period following your receipt of this letter, the Commission's decision regarding the Conditional Use Permit and Oak Tree Permit may be appealed to the Board of Supervisors through the office of the Clerk of the Board, Room 383, Hall of Administration, 500 West Temple Street, Los Angeles, California 90012. The permits will not become effective until and unless the appeal period has passed without the filing of an appeal.
4. That the decision of the Commission regarding the tentative tract map shall become final and effective on the date of decision, provided no appeal of the action taken has been filed with the Board of Supervisors within ten (10) days following the decision of the Commission through the office of the Clerk of the Board, Room 383, Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.

The tentative tract map, Conditional Use Permit and Oak Tree Permit approvals shall expire on October 5, 1990. If the subject tract map does not record prior to the expiration date, a request in writing for an extension of the approval must be received in writing prior to the expiration date. The Conditional Use Permit and Oak Tree Permit shall be null and void unless it is utilized prior to the expiration date. Recordation of the tract map shall constitute use of the Conditional Use Permit and Oak Tree Permit. Time extension granted for the tract map shall also apply to the Conditional Use Permit and Oak Tree Permit.

If you have any questions regarding this matter, please contact the Subdivision Section of the Department of Regional Planning at (213) 974-6433.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Acting Director of Planning



John Schwarze, Administrator
Current Planning Division

JS:PH:jc

cc: Subdivision Committee
Board of Supervisors
Zoning Enforcement
Building and Safety
HMK Engineering, Inc.

FINDINGS FOR CONDITIONAL USE PERMIT NO. 87-058

1. The subject property is an irregularly-shaped parcel of land with an area of approximately 443.35 acres. It is located on the northerly side of Mulholland Highway, and on the east and west sides of Stokes Canyon Road in the Malibu Zoned District.
2. The property is zoned A-1-1 (Light Agriculture - one acre minimum lot size).
3. The site is depicted within the Non-urban (hillside management) category of the Countywide General Plan; and within the Mountain Land II (1 du/20), Rural Land I (1 du/10 ac), Rural Land II (1 du/5 ac) and Rural Land III (1 du/2 ac) categories of the Malibu/Santa Monica Mountains Area Plan.
4. The proposed project and the provisions for its design and improvement are consistent with the goals and policies of the General Plan and with the zone classification since it is in substantial compliance with the following conditions and has met the burden of proof for the Conditional Use Permit for proposed developments which have a natural slope of 25 percent or greater, in that:
 - a. The proposed project is located and designed so as to protect the safety of current and future community residents, and will not create significant threats to life and/or property due to the presence of geologic, seismic, slope instability, fire, flood, or erosion hazard;
 - b. The proposed development demonstrates creative and imaginative design resulting in a visual quality that will complement community character and benefit current and future community residents;
 - c. The proposed project is compatible with the natural biotic, cultural and scenic resources of the area;
 - d. The proposed project will not be detrimental to public health and safety, design and/or environmental considerations;
 - e. The approval of proposed dwelling units exceeding the number permitted by the low density threshold (55) for the proposed development in Non-urban Hillside is based on the ability to mitigate problems of public safety, design and/or environmental considerations as provided in the General Plan;
 - f. The proposed project is conveniently served by neighborhood, shopping, and community facilities, can be provided with essential public services without imposing undue costs on the total community, and is consistent with the objectives and policies of the General Plan; and
 - g. The proposed project has the necessary provision for open space areas.

5. The proposed project requires the approval of a Conditional Use Permit to insure compliance with the Performance Review Procedure as established by the County General Plan to regulate development where slopes are 25% or greater.
6. It is the intent of the Conditional Use Permit to protect the resources in the hillside management areas as specified in the County General Plan from incompatible development, which may result in or have the potential for environmental degradation and/or destruction of life and property. It is not the purpose to preclude development within these areas but to ensure to the extent possible, that such development maintains and where possible enhances the natural topography, resources and amenities of the hillside management areas while allowing for limited controlled development therein.
7. The site is physically suitable for the type of development and the density being proposed, since the property has adequate building sites, to be developed in accordance with the Grading Ordinance; has access to a County-maintained street; shall be served by sanitary sewers, except for Lots 80 and 81 which are to be served by private sewage disposal system, to be installed in accordance with the requirements of the Health Services Department; shall be provided with water supplies and distribution facilities, with sufficient capacity to meet anticipated domestic and fire protection needs; and shall have geologic hazards and flood hazards mitigated in accordance with the requirements of the Department of Public Works.
8. An Environmental Impact Report was prepared for the project, discussing in detail the potential impacts of the proposed development and the mitigation measures which will be undertaken. The findings of facts with respect to these impacts are set forth on the final EIR.

BASED ON THE FOREGOING, THE REGIONAL PLANNING COMMISSION CONCLUDES:

1. That the proposed uses will not be in substantial conflict with the adopted general plan for the area.
2. That the requested uses at the location proposed will not:
 - a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, or
 - b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or
 - c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

3. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping, other development features prescribed in this ordinance, or as otherwise required in order to integrate said uses with the uses in the surrounding area; and
4. That the proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

THE REGIONAL PLANNING COMMISSION APPROVES:

1. The Final Environmental Impact Report and certifies that it has been completed in compliance with the California Environmental Quality Act and the State and county Guidelines. The Planning Commission has reviewed and considered the information contained in the Final Environmental Impact Report, and determined that the proposed project will not have a significant adverse effect on the environment because all recommended mitigation measures are incorporated within the conditions imposed on this proposed development.
2. That, in view of the findings of fact presented above, Conditional Use Permit No. 87-058 is GRANTED, subject to the attached conditions.

CONDITIONAL USE PERMIT NO. 87-058
CONDITIONS

1. This permit shall not be effective for any purpose until a duly authorized representative of the owner of the property involved has filed at the office of the Department of Regional Planning his affidavit stating that he is aware of, and accepts all the conditions of this permit.
2. It is hereby declared to be the intent that if any provision of this permit is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
3. It is further declared and made a condition of this permit that if any condition hereof is violated, the permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicant has been given written notice to cease such violation and has faith to do so for a period of thirty (30) days.
4. That all requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless set forth in the permit or shown on the approved plot plan.
5. That the subject property shall be developed and maintained in substantial compliance with the tentative tract map on file marked "Exhibit A". Amended or revised tentative tract map approved for Tract Map No. 45465 shall be deemed to be a revised Exhibit A.
6. That development of the subject property shall conform to the conditions approved for Tentative Tract Map No. 45465.
7. That a maximum of eighty one (81) residential units may be constructed on the subject property.
8. That all development shall comply with all applicable requirements of the County Zoning Ordinance and the County Subdivision Ordinance.
9. That open space shall comprise not less than 70 percent of the net area.
10. That any adjustment to the lot lines must be to the satisfaction of the Department of Regional Planning.
11. All utilities shall be placed underground.
12. Private sewage disposal system shall be installed in compliance with Los Angeles County Ordinance No. 2269 and 7583, to the satisfaction of the Health Services Department.
13. Prior to the issuance of a building permit, a site plan shall be submitted to and approved by the Planning Director indicating that the proposed construction and grading is compatible with hillside resources. Review of this site plan, within the limits established by geologic and engineering constraints, shall emphasize grading amount and technique, preservation of natural features, landscaping of altered open space and graded slopes, and placement of residences on site.

14. That the applicant shall contact the Fire Prevention Bureau of Los Angeles County Forester and Fire Warden to determine facilities that may be necessary to protect the property from fire hazard. Water mains, fire hydrants, and fire flow shall be provided as may be required.
15. Contour grading shall be used on manufactured slopes.
16. To minimize impacts of the easterly entry gate on adjacent residences, comply with the following:
 - a. Relocate road alignment and entry gate on the easterly side of Stokes Canyon Road as far as practical from the existing property line;
 - b. Construct a minimum six-foot high wall northeasterly of the guard house to buffer existing adjacent residences, deflect vehicle and project lights, and reduce noise; and
 - c. Provide screening landscaping around guard house area.
17. Submit a plot plan for said wall, gate and landscaping for review and approval by the Department of Regional Planning prior to recordation of the tract map.
18. Provide an intercom system outside the gate for use by visitors when the gate is unmanned.
19. That the acceptance of the conditions of this grant be recorded with the County Recorder.
20. That unless this grant is used within two years from the date of the Regional Planning Commission approval, the grant will expire. A one year time extension may be requested prior to such expiration date.

FINDINGS OF THE REGIONAL PLANNING COMMISSION
FOR OAK TREE PERMIT NO. 87-058

1. This application for an Oak Tree Permit is for the purpose of removing seventy eight (78) oak trees from the 443.35-acres project site, which is proposed to be developed with 81 single family lots.
2. The subject property is located at the northerly side of Mulholland Highway, and on the east and west sides of Stokes Canyon Road in the Malibu Zoned District.
3. Out of the 78 oak trees for removal, 49 have either very poor health, dead or nearly so, have heavy trunk damages or cavities because of fires, or are regrowth from old damaged stumps. Twenty nine healthier trees are determined that they will interfere with the proposed development of the site.
4. The proposed construction or use will be accomplished without endangering the health of the remaining trees on the property.
5. The necessary drainage improvements for soil erosion control will be designed in accordance with the standards of the Department of Public Works as conditioned for tract map approval.
6. The trees to be removed shall be replaced with 15-gallon oak trees on a 2:1 ratio.

BASED ON THE FOREGOING, THE REGIONAL PLANNING COMMISSION CONCLUDES:

1. That the oak trees for removal for development reason will interfere with the proposed interior rights-of-way, building pads or driveway locations and that no alternative to such interference exists other than removal of the trees; and the rest of the oak trees for removal are necessary for horticultural reasons.
2. That removal of the 78 trees will not result in soil erosion through the diversion of increased flow of surface waters which cannot be satisfactorily mitigated.
3. Removal of the oak trees for development reason is necessary as continued existence at their present location frustrates the planned improvement or proposed use of the subject property.

THEREFORE, in view of the foregoing findings of facts, Oak Tree Permit No. 87-058 is GRANTED, subject to the attached conditions.

CONDITIONS

1. This permit shall not be effective for any purpose until a duly authorize representative of the owner of the property involved has filed at the office of the Department of Regional Planning his affidavit stating that he is aware of, and accepts all the conditions of this permit.
2. It is hereby declared to be the intent that if any provision of this permit is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
3. It is further declared and made a condition of this permit that if any condition hereof is violated, the permit shall be suspended and the privileges granted hereunder shall lapse, provided that the applicant has been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
4. Access for storage or equipment and materials shall be restricted to areas outside of oak tree driplines. This shall be ensured by the installation of fencing, of not less than four (4) feet in height around the dripline of affected oak trees. The oak trees should be centered within fenced perimeters.
5. All excavation within or close to driplines shall be carried out with small power equipment or hand tools. Any major roots exposed during this work shall be properly protected in a moistened condition until construction is completed in adjacent areas, at which time they will be sealed. All excavation work within or near driplines shall be supervised by a qualified arborist.
6. The permittee shall provide and plant 156 trees of the oak genus in fifteen (15) gallon or larger size, at locations on the property designated by a qualified arborist.
7. Replacement trees shall be properly maintained for a period of two (2) years and replaced by the permittee if mortality occurs within that period. These trees should receive regular watering during the summer months throughout the replacement period. This can be accomplished by manual means or by the installation of an appropriate (drip or low flow) irrigation system. All watering should be done so as to wet the entire root zone.
8. The permittee shall give special consideration to any impacts made to those trees designated as heritage trees. All due planning and precautions shall be exercised to preserve these trees.
9. That acceptance of the conditions of this grant be recorded with the County Recorder; and
10. That unless this grant is used within two (2) years from the date of Regional Planning Commission approval, this grant will expire. A one-year time extension may be requested prior to such expiration date.

**FINDINGS OF THE REGIONAL PLANNING COMMISSION FOR
TENTATIVE TRACT MAP NO. 45465**

1. The tentative map proposes eighty one (81) single family lots on approximately 443.35 acres which are situated within the A-1-1 zone classification in the Malibu Zoned District.
2. The subject property is depicted within the Non-urban (hillside management) category of the Countywide General Plan and within the following categories of the Malibu/Santa Monica Mountains Area Plan: Mountain Land II (1 du/20 ac), Rural Land I (1 du/10 ac), Rural Land II (1 du/5 ac) and Rural Land III (1 du/2 ac). The proposed subdivision and the provisions for its design and improvements are consistent with the goals and policies of the General Plan and with the zone classification in that:
 - a. Conditional Use Permit No. 87-058 has been approved for this project as required by the Zoning Ordinance to implement and insure compliance with the Performance Review Procedure for proposed developments which have a natural slope of 25 percent or greater.
 - b. The proposed project is located and designed so as to protect the safety of current and future community residents, and will not create significant threats to life and/or property due to the presence of geologic, seismic, slope instability, fire, flood, or erosion hazard.
 - c. The proposed development demonstrates creative and imaginative design resulting in a visual quality that will complement community character and benefit current and future community residents.
 - d. The proposed project is compatible with the natural biotic, cultural and scenic resources of the area.
 - e. The proposed project will not be detrimental to public health and safety, design and/or environmental considerations.
 - f. The approval of proposed dwelling units exceeding the number permitted by the low density threshold (55 units) for the proposed development in Non-urban Hillside is based on the ability to mitigate problems of public safety, design and/or environmental considerations as provided in the General Plan.
 - g. The proposed project is conveniently served by neighborhood, shopping, and community facilities, can be provided with essential public services without imposing undue costs on the total community, and is consistent with the objectives and policies of the General Plan.
 - h. The proposed project has the necessary provision for open space areas.

3. The site is physically suitable for the type of development and the density being proposed, since the property has adequate building sites, to be developed in accordance with the Grading Ordinance; has access to a County-maintained street; shall be served by sanitary sewers, except for Lots 80 and 81 which are to be served by private sewage disposal system, to be installed in accordance with the requirements of the Health Services Department; shall be provided with water supplies and distribution facilities, with sufficient capacity to meet anticipated domestic and fire protection needs; and shall have geologic hazards and flood hazards mitigated in accordance with the requirements of the Department of Public Works.
4. The design of the subdivision and the proposed improvements will not cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat, since the project is not located in a Significant Ecological Area and the Environmental Impact Report and recommended conditions of approval provides for appropriate mitigation measures.
5. The design of the subdivision and the type of improvements will not cause serious public health problems since sewage disposal, storm drainage, fire protection, and geological and soils factors are addressed in the recommended conditions of approval.
6. The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. The proposed lots are of sufficient sizes so as to permit orientation of structures in an east-west alignment for southern exposure or to take advantage of shade or any prevailing breezes.
7. The design of the subdivision or the type of improvements will not conflict with public easements for access through or use of, property within the proposed subdivision, since the design and development as set forth in the conditions of approval and on the tentative map provides adequate protection for easements.
8. The proposed subdivision does not contain or front upon any public waterway, river, stream, coastline, shoreline, lake or reservoir.
9. The division and development of the property in the manner set forth on this map will not unreasonably interfere with the free and complete exercise of the public entity and/or public utility rights-of-way and/or easements within this map, since the design and development as set forth in the conditions of the case and on the tentative map, provide adequate protection for easements.
10. The discharge of sewage from this land division into the public sewer system will not violate the requirements of the California Regional Water Quality Control Board pursuant to Division 7 (Commencing with Section 13000) of the Water Code.

11. Pursuant to Sections 21.32.150 and 21.32.190 of the Subdivision Ordinance, the requirements of street lights (except at the intersections of "A" and "D" Streets with Stokes Canyon Road, and Stokes Canyon Road with Mulholland Highway) and sidewalks are waived since all lots in the division of land contain a net area of not less than 40,000 square feet and street lights and sidewalks are not in keeping with the neighborhood pattern.
12. Pursuant to Sections 21.28.060 and 21.24.120 of the Subdivision Ordinance, all the streets serving this land division as shown on the tentative map and as required (except for Mulholland Highway and Stokes Canyon Road) are approved as private and future streets.
13. Pursuant to Section 21.24.100 of the Subdivision Ordinance, a modification to permit street grades in excess of 10% but not to exceed 15% (except on Stokes Canyon Road) is approved on portions of the streets in this land division, with final determination within these limits to be made by the Department of Public Works, since a lower grade is not possible due to topographic condition.
14. The housing needs of the region were considered and balanced against the public service needs of local residents and available fiscal and environmental resources when this project was determined to be consistent with the Los Angeles County General Plan.
15. It is determined that the Mello Bill requirement to provide housing units for persons and families of low or moderate income on the subject property is unfeasible.
16. The Regional Planning Commission certified that the Final Environmental Impact Report which was prepared for this project has been completed in compliance with the California Environmental Quality Act and the State and County Guidelines. The Planning Commission has reviewed and considered the information contained in the Final Environmental Impact Report, and determined that the proposed subdivision will not have a significant adverse effect on the environment because all recommended mitigation measures are incorporated within the conditions imposed on this tract map.

THEREFORE, the Final Environmental Impact Report and the tentative tract map are approved subject to the conditions recommended by the Los Angeles County Subdivision Committee.

1. Conform to the requirements of the Subdivision Ordinance and the A-1-1 zone.
2. Permission is granted to adjust lot lines to the satisfaction of the Department of Regional Planning.
3. Provide for the ownership and maintenance of the private and future streets and for the driveway serving Lots 9, 10 and 11.
4. Provide at least 40 feet of frontage at the property line and approximately radial lot lines for all lots fronting on the cul-de-sacs, except for those lots shown as being served by access strips.
5. Label the access strip serving Lots 9, 10 and 11 as "Private Driveway and Fire Lane" on the final map.
6. Construct or bond with the Department of Public Works for paving over the driveway serving Lots 9, 10 and 11 with width as shown on the tentative map, and over the fee access strips serving Lots 32, 53 and 78 with a minimum width of 15 feet.
7. The maximum allowable grade for the driveway/access strips shall be 20%.
8. Provide slope planting and an irrigation system in accordance with the Grading Ordinance. Include conditions in the tract covenants which would require continued maintenance of the plantings for lots having planted slopes. Prior to recordation, submit a copy of the document to be recorded to the Department of Regional Planning.
9. Prior to recordation, obtain any permit required for the subdivision under the provisions of the California Coastal Act of 1976, or provide evidence that the subdivision is exempt from the permit requirements of the Act.
10. Dedicate secondary construction rights over all the residential lots in the subdivision.
11. In lieu of standard street lights, provide low-level, low intensity, decorative project lights to the satisfaction of the Department of Public Works.
12. Prior to recordation, submit a copy of the plan for the proposed east gate, including the wall and landscaping at this entry for review and approval by the Department of Regional Planning.

DEPARTMENT OF PUBLIC WORKS
AND DEVELOPMENT DIVISION

TRACT/PARCEL MAP NO. 45465

TENTATIVE MAP DATED 10-23-87

The following report consisting of 17 pages are the recommendations of the Department of Public Works. The following comments/requirements for this tentative map are indicated by an X in the appropriate box along the left margin of the page.

- Details and notes shown on the tentative map are not necessarily approved. Any details or notes which may be inconsistent with requirements of ordinances, general conditions of approval, or Department policies must be specifically approved in other conditions, or ordinance requirements are modified to those shown on the tentative map upon approval by the Advisory agency.
- The distances from the proposed lot/parcel lines to the buildings which are to remain must be shown. If such distances will create nonconforming conditions under Building Code Chapters 5, 18, 19 and 21 or Zoning Ordinance requirements, such lot/parcel lines shall be relocated or the non-complying conditions of the buildings shall be corrected prior to the division of land.
- The relationship of existing buildings/sewage disposal component to the new lot/parcel lines will create conditions that do not comply with the Building Code/Plumbing Code/Zoning Ordinance. These non-complying conditions shall be corrected or the lot/parcel lines relocated prior to the division of land.
- Easements are tentatively required, subject to review by the Director of Public Works to determine the final locations and requirements.
- Easements shall not be granted or recorded within areas proposed to be granted, dedicated, or offered for dedication for public streets, highways, access rights, building restriction rights, or other easements until after the final map is filed with the County Recorder. If easements are granted after the date of tentative approval, a subordination must be executed by the easement holder prior to the filing of the final map.
- In lieu of establishing the final specific locations of structures on each lot/parcel at this time, the owner, at the time of issuance of a grading or building permit, agrees to develop the property in conformance with the County Code and other appropriate ordinances such as the Building Code, Plumbing Code, Grading Ordinance, Highway Permit Ordinance, Mechanical Code, Zoning Ordinance, Undergrounding of Utilities Ordinance, Water Ordinance, Sanitary Sewer and Industrial Waste Ordinance, Electrical Code, and Fire Code. Improvements and other requirements may be imposed pursuant to such codes and ordinances.
- Prior to final approval, arrangements will be made for the County to accept _____ as offered on _____ filed in _____

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION

TRACT/PARCEL MAP NO. 45465

TENTATIVE MAP DATED 1-23-87

- It appears that off-site improvements are necessary to adequately serve this development. If off-site easements are required, this tentative map approval is subject to the subdivider's acceptance of the following conditions for acquisition of these easements:
- a. Subdivider shall secure at the subdivider's expense sufficient title or interest in land to permit any off-site improvements to be made.
 - b. If the subdivider is unable to acquire sufficient title or interest to permit the off-site improvements to be made, the subdivider shall notify the County of this inability not less than six months prior to approval of the final map.
 - c. In such case, the County may thereafter acquire sufficient interest in the land which will permit the off-site improvements to be made by subdivider.
 - d. Subdivider shall pay all of the County's costs of acquiring said off-site property interests pursuant to Government Code Section 66462.5. Subdivider shall pay such costs irrespective of whether the final map is recorded or whether a reversion occurs. The cost of acquisition may include, but is not limited to, acquisition prices, damages, engineering services, expert fees, title examination, appraisal costs, acquisition services, relocation assistance services and payments, legal services and fees, mapping services, document preparation, expenses and/or damages as provided under Code of Civil Procedure Sections 1263.510-.620 and overhead.
 - e. At the time subdivider notifies County as provided in b. hereinabove, the subdivider shall simultaneously submit to the County in a form acceptable to the County all appropriate appraisals, engineering specifications, legal land descriptions, plans, pleadings and other documents deemed necessary by County to commence its acquisition proceedings. Said documents must be submitted to County for preliminary review and comment at least thirty days prior to subdivider's notice described hereinabove at b.
 - f. Subdivider agrees to deposit with County, within five days of request by County, such sums of money as County estimates to be required for the costs of acquisition. County may require additional deposits from time to time.
 - g. Subdivider agrees that County will have satisfied the one hundred and twenty day limitation of Government Code Section 66462.5 and the foregoing conditions relating thereto when it files its eminent domain action in superior court within said time period.
 - h. Subdivider shall not sell any lot/parcel shown on the final map until County has acquired said sufficient land interest.
 - i. If the superior court thereafter rules in a final judgement that the County may not acquire said sufficient land interest, the subdivider agrees that the County may initiate proceedings for reversion to acreage.
 - j. Subdivider shall execute any agreement or agreements mutually agreeable prior to approval of the final map as may be necessary to assure compliance with the foregoing conditions.

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION

TRACT/PARCEL MAP NO. 45465 TENTATIVE MAP DATED 10-23-87

Prior to issuance of a permit or other grant of approval for development of the designated remainder parcel, comply with the following:

- The owner at the time of issuance of a permit or other grant of approval for development over the designated remainder parcel, shall develop the property in conformance with the County Code and other appropriate ordinances such as the Building Code, Plumbing Code, Grading Ordinance, Highway Permit Ordinance, Mechanical Code, Zoning Ordinance, Undergrounding of Utilities Ordinance, Water Ordinance, Sanitary Sewer and Industrial Waste Ordinance, Electrical Code, and Fire Code.
- Provide drainage facilities to eliminate the flood hazard to the satisfaction of the Department.
- Connect to a mainline sanitary sewer to the satisfaction of the Department.
- Provide water facilities to the satisfaction of the Department.
- Provide road right of way and construct street improvements to the satisfaction of the Department.
- Provide easements to the satisfaction of the Department.
- Eliminate any geologic and soil hazards to the satisfaction of the Department.
- Additional Comments/Requirements: _____

Name David A. DiTolone Phone 213-772-2337 Date 11-12-87

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - SUBDIVISION SECTION

TRACT/PARCEL MAP NO. 45465 TENTATIVE MAP DATED 10-28-87

- Thirty days prior to requesting final approval of the tract/parcel map submit gummed mailing labels for each tenant in the structure to be converted, a notarized affidavit signed by all of the owners listing all vacant units, a minimum deposit of twenty-five (\$25) dollars for each occupied unit, and recorded copies of all covenants and agreements applicable to this conversion project to the Director of Public Works. Copies of the covenants and agreements must be mailed to all tenants by the applicant at least thirty days prior to final approval.
- Prior to final approval of the tract/parcel map submit a notarized affidavit to the Director of Public Works, signed by all owners of record at the time of filing of the map with the County Recorder, stating that any proposed condominium building has not been constructed or that all buildings have not been occupied or rented and that said building will not be occupied or rented until after the filing of the map with the County Recorder.
- All easements existing at the time of final map approval must be accounted for on the approved tentative map. This includes the location, owner, purpose, and recording reference for all existing easements. If an easement is blanket or indeterminate in nature, a statement to that effect must be shown on the tentative map in lieu of its location. If all easements have not been accounted for, submit a corrected tentative map to the Department of Regional Planning for approval.
- Furnish this Department's Street Name Unit with a list of street names acceptable to the subdivider. These names must not be duplicated within a radius of 20 miles.
- A Mapping and Property Management Division house numbering clearance is required prior to approval of the final map.
- The following note shall be placed on all tract and parcel maps with lot/parcel sizes of five acres or more: "Further division of this property to lot/parcel sizes below five acres will require standard improvements be completed as a condition of approval. The improvements will include but not be limited to providing access, installation of water mains, appurtenances and fire hydrants, and conformance to Los Angeles County development standards."
- Place standard condominium/residential planned development/commercial planned development/Landscape Maintenance District notes on the final map to the satisfaction of the Department.
- Place standard lease purpose only/division of land for lease purpose only notes on the final map to the satisfaction of the Department.
- Label driveways and multiple access strips as "Private Driveway and Fire Lane" and delineate on the final map to the satisfaction of the Department.
- If unit filing occurs, reserve reciprocal ingress and egress easements in documents over the private driveways and delineate on the final map to the satisfaction of the Department.
- Place a note on the final map to the satisfaction of the Department to convey as a unit both portions of ownership within lot/parcel _____, separated by _____, and connect said portions with a standard land hook.

DEPARTMENT OF PUBLIC WORKS
AND DEVELOPMENT DIVISION - SUBDIVISION SECTION

TRACT/PARCEL MAP NO. 45465 TENTATIVE MAP DATED 10-23-87

- Remove existing structures prior to final approval.
to lots without street frontage
- Provide proof of access, prior to final approval and delineate on the final map.
- Quitclaim or relocate easements running through proposed structures.
- A final tract ~~and/or parcel~~ map must be processed through the Director of Public Works prior to being filed with the County Recorder. ~~unless the final parcel map is waived by the Advisory Agency.~~
- Prior to submitting the tract ~~and/or parcel~~ map to the Director of Public Works for his examination pursuant to Sections 66442 and/or 66450 of the Government Code, obtain clearances from all affected Departments and Divisions, including a clearance from the Subdivision Section of the Land Development Division of this Department for the following mapping items: mathematical accuracy; survey analysis; and correctness of certificates, signatures, etc.
- If the subdivider intends to file multiple final maps, he must so inform the Advisory Agency at the time the tentative map is filed. The boundaries of the unit final maps shall be designed to the satisfaction of the Director of Public Works and the Department of Regional Planning.
- Show the remainder of the last legally created parcel as a "Remainder Parcel" on any final map to the satisfaction of the Director of Public Works.
- Extend lot/parcel lines to the center of private and future streets.
- If signatures of record title interests appear on the final map, a preliminary guarantee is needed. A final guarantee will be required. If said signatures do not appear on the final map, a title report/guarantee is needed showing all fee owners and interest holders and this account must remain open until the final parcel map is filed with the County Recorder.
- Additional Comments/Requirements: _____

Name David A. Distalini Phone 213-739-2837 Date 11-17-87

TRACT/ NO. 45465 (REV.) TENTATIVE MAP DATED 10-23-87

- The subdivider shall prepare signing and striping plans for all multi-lane streets and highways within or abutting this land division to the satisfaction of the Department.
- The centerlines of all local streets shall be aligned without creating jogs of less than 150 feet. A one foot jog may be used where a street changes width from 60 feet to a 58 feet right of way.
- The minimum centerline radius is 350 feet on all local streets with 40 feet between curbs and on all streets where grades exceed 10%.
- The minimum centerline radius on a local street with an intersecting street on the concave side should comply with design speeds per Road/Sewer/Water Section's "Requirements for Street Plans" and sight distances per Caltrans' current Highway Design Manual.
- Design local streets to have minimum centerline curve radii which will provide centerline curves of 100 feet minimum length. Reversing curves need not exceed a radius of 1,500 feet and any curve need not exceed a radius of 3,000 feet. The length of curve outside of the BCR is used to satisfy the 100 foot minimum requirement.
- Compound curves are preferred over broken-back curves. Broken-back curves must be separated by a minimum of 200 feet of tangent.
- The central angles of the right of way radius returns shall not differ by more than 10 degrees on local streets.
- Provide standard property line return radii of 13 feet at all local street intersections, including intersection of local streets with General Plan Highways, and 27 feet where all General Plan Highways intersect, or to the satisfaction of the Department.
- Construct drainage improvements and offer easements needed for street drainage or slopes.
- Driveways to be abandoned shall be replace with standard curb, gutter, and sidewalk.
- Repair any broken or damaged curb, gutter, sidewalk, and pavement on streets within or abutting the subdivision.
- Construct additional pavement on partially improved highways to provide a striped left-turn lane at entrance street intersection, *widening to be to the Dept's. satisfaction.*
- Driveways will not be permitted within 25 feet upstream of any catch basins when street grades exceed 6%.
- Construct full width sidewalk at all walk returns.
- Construct a slough wall outside the street right of way when the height of slope is greater than five feet above the sidewalk and the sidewalk is adjacent to the street right of way.
- Provide and install street name signs prior to occupancy of building(s).

Revised 9-30-88

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - ROAD UNIT

TRACT/ ██████ MAP NO. 45405 (REV) TENTATIVE MAP DATED 10-23-67

Make an offer of future right of way _____ feet from centerline on _____

Make an offer of future right of way _____ feet from centerline on _____

Make an offer of future right of way _____ feet from centerline on _____

Make an offer of future right of way _____ feet from centerline on _____

Dedicate slope easements _____ feet wide on _____

Dedicate slope easements to the satisfaction of the Department of Public Works on _____

Dedicate vehicular access rights on Mulholland Hwy., ^{except a common dwy. for lots 24 & 25 and the private & future street} unless the Department of Regional Planning requires the construction of a wall. In such cases, complete access rights shall be dedicated.

Construct curb and gutter _____ feet from centerline on _____

Construct curb and gutter _____ feet from centerline on _____

Construct curb and gutter _____ feet from centerline on _____

Construct curb and gutter _____ feet from centerline on _____

Construct base and pavement on _____

Construct drainage facilities on _____

Construct sidewalks on _____

Construct grading and drainage facilities on _____

Street lights are/are ~~not~~ required on _____ to the satisfaction of the Department. * Contact Street Lighting Section, (213) 226-8441.

* at the intersections of "A" & "D" Sts. with Stokes Cyn. Rd. & Stokes Cyn. Rd. with Mulholland Hwy.

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - ROAD UNIT

TRACT/ MAP NO. AS465 (REU) TENTATIVE MAP DATED 10-23-87

- Prior to final approval, the subdivider shall enter into an agreement with the County franchised cable TV operator to permit the installation of cable in a common utility trench.
- Whenever there is an offer of a future street or a private and future street, provide a drainage statement/letter.
- Whenever the centerline of the existing pavement does not coincide with the record centerline, provide a new centerline to the satisfaction of the Department of Public Works.
- Design the intersections of local streets with General Plan Highways to provide a 55 mph sight distance along the highway. Additional right of way dedication and/or grading may be required.
- Bear the cost of any traffic signal relocation or modification at the intersection of _____ and _____.
- Dedicate right of way 50 feet from ^{latest approved} centerline on Mulholland Hwy.
Dedicate right of way 32 feet from centerline on Stokes Cyn. Rd.
Dedicate right of way _____ feet from centerline on _____
Dedicate right of way _____ feet from centerline on _____
- Make an offer of private and future right of way 30 feet from centerline on "A" St., "D" St. from Stokes Cyn. Rd. to "H" St. & "E" St. from "D" St. to "G" St.
Make an offer of private and future right of way 32 feet from centerline on West property line from Mulholland Hwy. to "A" St.
Make an offer of private and future right of way 29 feet from centerline on west property line from "A" St. to lot 1.
Make an offer of private and future right of way 29 feet from centerline on all cul-de-sac streets.

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - ROAD UNIT

TRACT/ ~~MAP~~ MAP NO. AS465 (REV) TENTATIVE MAP DATED 10-30-67

- Offsite improvements are tentatively required.
- Existing trees in dedicated right of way or right of way to be dedicated shall be removed if they are not acceptable as street trees.
- Prior to final approval, enter into a written agreement with the County of Los Angeles whereby the subdivider agrees to pay to the County of Los Angeles a sum not to exceed \$ 2,000 times the factor per development unit for the purpose of contributing to a proposed Bridge and Thoroughfare Benefit District to implement the highway element of the General Plan as a means of mitigating the traffic impacts of this and other subdivisions in the area. The form of security for performance of said agreement shall be negotiable.

The agreement shall include the following provisions:

Upon establishment of the District and the area of benefit, the fee shall be paid to a special Department of Public Works fund.

In the event funds are required for work prior to formation of the District, the Director of Public Works may demand a sum up to a maximum of \$1,000 times the factor per development unit to be credited toward the final fee established under the District.

The subdivider may construct improvements of equivalent value in lieu of paying fees established for the District subject to approval of the Director of Public Works.

The Director of Public Works may require the developer to submit a traffic report periodically that addresses traffic congestion and the need to mitigate the problems prior to issuing building permits.

Factors for development units are as follows:

<u>Development Unit</u>	<u>Factor</u>
Single family residential	1.0
Townhouses per residential unit (4 or more residential units per structure)	0.8
Apartments per residential unit	0.7
Neighborhood commercial per acre*	1.0
Industrial per acre*	3.0
Regional shopping commercial including office commercial per acre*	5.0

*Slopes greater than 10' vertical in height may be deducted from net lot acreage.

- Postal delivery receptacles shall be located behind the sidewalk and installed in groups to serve two or more residential units.

TRACT/ ~~MAP~~ MAP NO. 45465 (REV.) TENTATIVE MAP DATED 10-23-87

- Construct inverted shoulder pavement 14 feet (lane width) and 4 feet (shoulder width) with concrete flowlines on all local streets.
- Construct Mulholland Hwy. to the satisfaction of the Dept. to correct any drainage deficiencies.
- Construct inverted shoulder pavement _____ feet (lane width) and _____ feet (shoulder width) on _____.
- Construct inverted shoulder pavement _____ feet (lane width) and _____ feet (shoulder width) on _____.
- Plant street trees on _____.
- Construct curb, gutter, base, pavement, sidewalks and street lights on _____.
- Permission granted for street grades up to 15 %, except Stokes Cyn. Rd.
- Permission granted to vacate ^{excess R/W on} Stokes Cyn. Rd. Easements shall be provided for all utility companies that have facilities remaining within the vacated area.
- Prior to final approval, pay the fees established by the Board of Supervisors for the _____ Bridge and Major Thoroughfare Construction Fee District. The applicable fee is \$ _____ per _____.
- A traffic study is required to the satisfaction of the Department. Comply with any additional requirements, if any, as a means of mitigating any traffic impacts as identified in the traffic study approved by this Department. If a Bridge and Thoroughfare District is formed and if signals identified in the study are included as facilities specifically identified for inclusion in that approved District, then the amount and eligibility for a credit against your District obligation may be given if approved by the Department of Public Works.
- Comments/Additional Requirements: 1.) Align dwy. opposite "C" St. with "C" St. 2.) Provide landing on "A" & "D" Sts at Stokes Cyn. Rd to the Dept's. satisfaction. 3.) Modify culvert under Mulholland Hwy. as necessary for construction of left turn pocket at Stokes Cyn. Rd. to Dept's. satisfaction. 4.) Construct medians & transitions on "A" & "D" Sts. to Dept's. satisfaction.

HCA/for
Name Jim Erpenbach Phone (818) 458-4910 Date 9-30-88
(REVISED)

TRACT MAP NO. 45465 TENTATIVE MAP DATED 10/23/87

- The distances from all sewage disposal components to the proposed lot/parcel lines must be shown. If any such sewage disposal component is not on the same lot/parcel as the building it serves, or if it does not meet the horizontal clearance requirement of the Plumbing Code (Table 11-1), the proposed lot/parcel line shall be relocated to so provide, or a replacement sewage disposal system complying with Plumbing Code requirements shall be provided prior to division of land.
- The subdivider shall install and dedicate main line sewers and serve each lot/parcel with a separate house lateral or have approved and bonded sewer plans on file with the Department of Public Works. (Except lots 80 & 81)
- The subdivider shall install separate house laterals to serve each building/lot/parcel in the land division. Installation and dedication of main line sewers may be necessary to meet this requirement.
- The subdivider shall submit an area study to the Director of Public Works to determine whether capacity is available in the sewerage system to be used as the outlet for the sewers in this land division. If the system is found to have insufficient capacity, the problem must be resolved to the satisfaction of the Director of Public Works.
- The subdivider shall send a print of the land division map to the County Sanitation District, with a request for annexation. Such annexation must be assured in writing.
- Sewer reimbursement charges as determined by the Director of Public Works shall be paid to the County of Los Angeles before the filing of this land division map.
- Ordinance frontage charges as determined by the Director of Public Works shall be paid before filing this land division map.
- The subdivider shall determine from the Las Virgenes Municipal Water District where the connection to the trunk sewer system and disposal facilities of the District shall be made, and shall meet the requirements of the Water District for the use of the sewerage facilities. Acceptance by the District must be assured in writing.
- Off-site improvements are tentatively required.
- Easements are tentatively required, subject to review by the Director of Public Works to determine the final locations and requirements.
- A deposit is required to review documents and plans for final map clearance in accordance with Section 21.36.010(c) of the Subdivision Ordinance.
- The discharge of sewage from this land division into the public sewer system will not violate the requirements of the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code.
- Approved without conditions.
- Comments/Additional Requirements: _____

Name FRANK KOLLER Phone 213 738-2851 Date 9-30-88
(REVISED).

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - WATER ORDINANCE UNIT

Revised

TRACT/PARCEL MAP NO. 45465 TENTATIVE MAP DATED 10-23-87

- Provide all materials necessary to substantiate that there is an adequate water supply and a firm commitment from the water purveyor that the necessary quantities of water will be available to the proposed development. From the information available to this office, there are only limited water supplies available to the area.
- Construct a water system with appurtenant facilities to serve all lots/parcels in the land division. The system shall include fire hydrants of the type and location as determined by the Forester and Fire Warden. The water mains shall be sized to accommodate the total domestic and fire flows.
- Construct the necessary improvements to the existing water system to accommodate the total domestic and fire flows. According to our records, the water mains serving this proposed land division do not have adequate capacity.
- There shall be filed with the Department a statement from the water purveyor indicating that the water system will be operated by the purveyor and that under normal operating conditions, the system will meet the requirements for the land division, and that water service will be provided to each lot/parcel.
- This proposed land division is not within the service area of a water utility. A water utility to provide service to all lots/parcels within the land division must be formed and registered.
- A water Utility Certificate of Registration shall be filed with the Department.
- A warning note shall be placed on the final map and/or in the CC & R's indicating that the area has a limited ground water supply and water may not be available during periods of severe drought.
- Off-site improvements are tentatively required.
- Easements shall be granted to the County, appropriate agency or entity for the purpose of ingress, egress, construction and maintenance of all infrastructure constructed for this land division to the satisfaction of the Department.
- A deposit is required to review documents and plans for final map clearance in accordance with Section 21.36.010(c) of the Subdivision Ordinance.
- Approved without conditions.
- Comments/Additional Requirements: _____

Name Mekter S. Saleh Phone (213) 738-2863 Date 11-4-87

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - DRAINAGE AND GRADING SECTION

LOT/PARCEL MAP NO. 95465 TENTATIVE MAP DATED 10/23/87

- The property is reasonably free of flood hazard.
- Portions of the property lying in and adjacent to Stikes Cyn. Floodway natural drainage courses () and are subject to flood hazard because of () overflow, inundation and mudflows from steep hillsides.
- Portions of the property are subject to sheet overflow, ponding and mudflows from steep hillsides.
- Drainage plans and necessary support documents to comply with the following requirements must be approved to the satisfaction of the Director of Public Works prior to filing of the final map:
 - Provide drainage facilities to remove the flood hazard and dedicate and show necessary easements and/or rights of way on the final map.
 - Place a note of flood hazard per Stikes Canyon Floodway (Ord. 84-006) on the final map and delineate the areas subject to flood hazard. Dedicate to the County the right to restrict the erection of buildings in the flood hazard areas. Place a note of flood hazard on the large open space lots on the final map (lots larger than 5 acres only)!
 - Show on the final map the County's/Flood Control District's right of way for P.D.T. 43. A permit will be required for any construction affecting the right of way or facilities.
 - If a Grant of Waiver is allowed, the flood hazard note (and area) shall be shown on (a plat which is made part of) the waiver.
 - Provide for the proper distribution of drainage.
 - Show and label all natural drainage courses.
 - No building permits will be issued for lots/parcels subject to flood hazard until the buildings are adequately protected.
 - Provide for road drainage.
 - Provide for contributory drainage from adjoining properties.
- Prior to approval of the final map, the subdivider shall be required to enter into an agreement with the County to pay to the County a sum of _____ for the purpose of contributing to the proposed regional drainage improvements in the Antelope Valley prior to occupancy or upon demand of payment by the Director of Public Works. The performance of said agreement shall be guaranteed by the filing of an appropriate security authorized by Government Code Section 66499 and approved by the County.
- Notify the State Department of Fish and Game prior to commencement of work within any natural drainage course.
- Contact the Corps of Engineers to determine if a 404 permit is required for any proposed work within the major watercourse.

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - DRAINAGE AND GRADING SECTION

TRACT/PARCEL MAP NO. 45465 TENTATIVE MAP DATED 10/23/87

This site is located in zone "A" per the Federal Flood Insurance Rate Map. Upon construction of the storm drain facilities, contact the Planning Division (213/226-4329) to obtain procedures for revising the flood insurance rate map.

A deposit is required to review documents and plans for final map clearance in accordance with Section 21.36.010(c) of the Subdivision Ordinance.

Offsite improvements are tentatively required.

Approval of this map pertaining to drainage is recommended.

Comments/Additional Requirements: Comply with the requirements of the approved Drainage Concept dated 9/8/87 to the satisfaction of the Department of Public Works

A grading plan must be submitted and approved prior to approval of the final map.

A preliminary soil report must be submitted prior to approval of the final map. The report, based upon adequate test borings or excavations, shall (1) describe any soil or geologic conditions(s) which, if not corrected might lead to structural damage or slope failure, and (2) recommend action likely to prevent structural damage or slope failure. A soil expansion index test is required and shall be done in accordance with the procedures of UEC Std. No. 29-2.

The tentative map shows that proposed slopes will cross lot/parcel lines. For approval of grading plans, these slope or lot/parcel lines shall be adjusted so that lot/parcel lines are located at or near the top of the slopes, along drainage terraces, or at similar locations acceptable for establishment of slope maintenance responsibilities.

Approval of this map pertaining to grading is recommended.

Comments/Additional Requirements:

Name [Signature] Phone 213-738-4091 Date 11/3/87

DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION - GEOLOGY AND SOILS SECTION

TRACT/PARCEL MAP NO. 45465

TENTATIVE MAP DATED 10-28-87

- The final map must be approved by the Geology and Soils Section to assure that all geologic factors have been properly evaluated.
- A grading plan must be approved by the Geology and Soils Section. This grading plan must be based on a detailed engineering geology report and/or soils engineering report and must be specifically approved by the geologist and/or soils engineer and show all recommendations submitted by them. It must also agree with the tentative map and conditions as approved by the Planning Commission. All buttresses over 25 feet high must be accompanied by calculations.
- A detailed engineering geologic report and soils engineering report must be approved.
- All geologic hazards associated with this proposed development must be eliminated.
- or delineate a restricted use area approved by the consultant geologist to the satisfaction of the Geology and Soils Section and dedicate to the County the right to prohibit the erection of buildings or other structures within the restricted use areas.
- Specific recommendations ~~will~~^{may} be required from the consultant(s) regarding the suitability for development of all lots/parcels designed essentially as ungraded site lots. A report ~~will~~^{may} be filed with the State Real Estate Commissioner indicating that additional geologic and/or soils engineering studies may be required for ungraded site lots/parcels by the Geology and Soils Section.
- The subdivider is advised that approval of this division of land is contingent upon the installation and use of a sewer system.
- The Health Services Department is advised that there is no assurance at this time that geologic and soil conditions will allow the sustained use of private sewage disposal on each lot/parcel.
- The Real Estate Commissioner ~~will~~^{may} be advised that, due to adverse geologic conditions which exist on the land division, a final geologic report approved by the Geology and Soils Section ~~will~~^{may} be filed with the Commissioner concurrently with the filing of the final land division map.
- A geology and/or soil engineering report may be required prior to approval of building or grading plans.
- Approved without conditions.
- Comments/Additional Requirements: 1) Response needed for Soils Engineering Review Sheet dated 8/31/87 2) Lot line adjustments may be necessary according to geotechnical consultants. Example is lot line between lots 57 and 58.

Name D. Sattzman

Phone 313-738-4061

Date 10-28-87

FORESTER AND FIRE WARDEN

CONDITIONS OF APPROVAL FOR SUBDIVISIONS IN UNINCORPORATED AREAS

TRACT MAP NO. 45465

PARCEL MAP NO. _____

PROVISORY MAP DATE 10/23/87

VICINITY MALIBU

- This property is located within the area described by the Forester and Fire Warden as Fire Zone 4 and future construction must comply with applicable code requirements.
- Provide water mains, fire hydrants, and fire flows as required by the County Forester and Fire Warden for all land shown on the map to be recorded.
- If the installation of a fire hydrant is required where grading of natural slopes about the hydrant, a retaining wall shall be constructed to insure adequate access to the hydrant.
- Brush clearance shall comply with the Los Angeles County Fire Code, Division 7, Section 11.501 thru Sections 11.529.
- Fire Department access shall extend to within 150 feet distance of any portion of structures to be built.
- Provide Fire Department approved street signs and building address numbers prior to occupancy.
- [] Prior to recordation of the final map, application shall be made to the Los Angeles County Fire Department requesting annexation into the Fire Protection District.
- [] Access shall comply with the Los Angeles County Fire Code, Section 10.207 which requires all weather access. All weather access may require paving.
- Where driveways extend further than 300 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure their integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways which extend over 150 feet.
- The private driveway shall be indicated on the final map as "FIRE LANES" and shall be maintained in accordance with the Los Angeles County Fire Code Section 10.207.
- [] The County Forester and Fire Warden is prohibited by the Subdivision Ordinance from setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and submitted.
- [] The Forester and Fire Warden has no additional requirements for this division of land.
- [] There are no additional fire hydrants or fire flows required for this division of land. Requirements for fire protection water and access will be determined at time of building permit issuance.
- All required fire hydrants shall be installed, tested and accepted prior to construction. Vehicular access must be provided and maintained serviceable throughout construction.
- [] Additional fire protection systems shall be installed in lieu of suitable access and or fire protection water.

Comments: Driveways serving more than 1 residence shall be minimum 20' wide paving. Driveways serving only 1 residence shall be minimum 15' wide paving.

Previous

For further information on the above conditions, please contact the County of Los Angeles Fire Department, Fire Protection Engineering Section, 1320 N. Eastern Avenue, Los Angeles, California 90051 (213) ~~269-0194~~ 269-0194

By: Bruce A. Mitchell

Date: 11/5/87

FORESTER AND FIRE WARDEN

CONDITIONS OF APPROVAL FOR SUBDIVISIONS IN UNINCORPORATED AREAS

TRACT MAP NO. 45465

PARCEL MAP NO. _____

TENTATIVE MAP DATE 7/13/88

VICINITY MALIBU

- This property is located within the area described by the Forester and Fire Warden as Fire Zone 4 and future construction must comply with applicable code requirements.
- Provide water mains, fire hydrants, and fire flows as required by the County Forester and Fire Warden for all land shown on the map to be recorded.
- If the installation of a fire hydrant is required where grading of natural slopes about the hydrant, a retaining wall shall be constructed to insure adequate access to the hydrant.
- Brush clearance shall comply with the Los Angeles County Fire Code, Division V, Section 11.501 thru Sections 11.529.
- Fire Department access shall extend to within 150 feet distance of any portion of structures to be built.
- Provide Fire Department approved street signs and building address numbers prior to occupancy.
- Prior to recordation of the final map, application shall be made to the Los Angeles County Fire Department requesting annexation into the Fire Protection District.
- Access shall comply with the Los Angeles County Fire Code, Section 10.207 which requires all weather access. All weather access may require paving.
- Where driveways extend further than 300 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure their integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways which extend over 150 feet.
- The private driveway shall be indicated on the final map as "FIRE LANES" and shall be maintained in accordance with the Los Angeles County Fire Code Section 10.207.
- The County Forester and Fire Warden is prohibited by the Subdivision Ordinance from setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and submitted.
- The Forester and Fire Warden has no additional requirements for this division of land.
- There are no additional fire hydrants or fire flows required for this division of land. Requirements for fire protection water and access will be determined at time of building permit issuance.
- All required fire hydrants shall be installed, tested and accepted prior to construction. Vehicular access must be provided and maintained serviceable throughout construction.
- Additional fire protection systems shall be installed in lieu of suitable access and or fire protection water.

Comments

Driveways serving more than 1 residence shall be minimum 20' wide paving. ~~Driveways~~ Driveways serving only 1 residence shall be minimum 15' wide paving.

Previous

For further information on the above conditions, please contact the County of Los Angeles Fire Department, Fire Protection Engineering Section, 1320 N. Eastern Avenue, Los Angeles, California 90051 (213) ~~269-0199~~ *269-0199*

By: Bruce A. Mitchell

Date: 7/21/88

COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION

NOTICE OF PARK DEDICATION

-7/15/87

Tentative Map No. 45465 Tentative Map Date 4/6/87
Vicinity Agua Caliente / Calabasas Planning Area No. 336
Subdivision Acreage 4.39 Number of Lots 84 zoning M-1

Sections 21.24.040, 21.24.050, 21.23.100, 21.23.150 and 21.23.160 of the Los Angeles County Code, Title 21, the Subdivision Ordinance, requires that each subdivision include park space for the residents of the subdivision.

- Since the subdivision contains more than fifty lots, the subdivision is required to provide approximately _____ acres of land suitable for park use. In the event that the Department of Parks and Recreation determines that it is inadvisable to accept land, the subdivider will be required to pay an estimated park in-lieu fee equal to the fair market value of an equivalent amount of land as established by ordinance.
- Since the subdivision contains fifty or less lots, the subdivider has the option of either providing approximately _____ acres of land suitable for a park site or pay a park in-lieu fee equal to the fair market value of an equivalent amount of land as established by ordinance.
- If a fee is paid in lieu of suitable land dedication, the fee will be based on the average fair market value per acre for the planning area as contained in the Subdivision Ordinance at the time the in-lieu fee is paid. The present average fair market value for this planning area is \$ _____/acre.
- No local park space dedication or payment of an in-lieu fee is required by the County for this project because:
 - a. This subdivision is not an unincorporated portion of the County. Contact _____ for any questions about park area obligation for that city.
 - b. No new units are being added to an existing condominium project where the building is more than five years old.
 - c. The subdivision has a potential density of one unit per acre or less.
 - d. Other _____

A subdivider may, by written petition to the Board of Supervisors, request that a local park site be privately owned and maintained by the future residents of the subdivision. Prior to submission of the petition, the subdivider shall obtain any permits required by Title 22, the Zoning Ordinance.

For further information on the Park Dedication Ordinance, please contact the County of Los Angeles Department of Parks and Recreation, 433 South Vermont Avenue, Los Angeles, California 90020, (213) 723-2971.

Comments: Dedicate Stokes Ridge Riding and Hiking Trail easement To The satisfaction of The Parks and Recreation Department.

11/13/87

-8/7/87

By [Signature] Title PARK PLANNER Date 5/11/87



COUNTY OF LOS ANGELES

DEPARTMENT OF PARKS AND RECREATION

433 South Vermont Avenue - Los Angeles, California 90020 - (213) 738-2961

Ralph S. Corder - Director

COUNTY OF LOS ANGELES
BOARD OF SUPERVISORS

7-13-88

(Date)

Pete Schabanum
First District

Kenneth Hahn
Second District

Edmund Edelman
Third District

Deane Dana
Fourth District

Mike Antonovich
Fifth District

Thomas Tidemanson, Director
Department of Public Works
Los Angeles County
550 South Vermont Avenue
Los Angeles, CA 90020

Attention: Subdivision Section

Dear Mr. Tidemanson:

CLEARANCE TO RECORD
TRACT NO. 45465

PARK AND RECREATION
COMMISSION

James Bishop

Arturo Chayra

Gloria Heer

George Ray

Douglas Washington

Sections 21.24.340, 21.24.350, 21.28.120, 21.28.130 and 21.28.140 of the Los Angeles County Code, Title 21, the Sub-division Ordinance, requires the dedication of park space, or the payment of a fee-in-lieu thereof, or a combination of both as a condition for final approval of maps of residential subdivisions. The park land obligation for (this/these) (Tract/Tracts) has been fulfilled for the following reason(s):

Map dated July 13, 1988

Shows trail as required by the Trail Coordinator.

(Stokes Ridge Trail)

FISH AND GAME
COMMISSION

J. Bradford Crow

Charles G. Johnston

Richard Knerr

George Kobayashi

David Lippey

Sincerely yours,

Joan A. Rupert
Park Planner

css

cc: Tract File



PARKS ARE FOR
PEOPLE

TRACT NO. 45465

TENTATIVE MAP DATE: 4/20/87

CITY CALABASAS

Revised " " 7-19-88

- Approved on the condition that sanitary sewers be installed and used as the method of sewage disposal.
- The owner's statement indicates that domestic water will be supplied by Las Virgenes MWD

The Los Angeles County Department of Health Services has no objection to the approval of Proposed Tract No. _____ on condition that the subdivider notify the State of California, Division of Real Estate that:

- a. Sanitary sewers are not available and the tract will be dependent upon the use of individual, private sewage disposal systems.
- b. The private sewage disposal systems will be installed in compliance with Los Angeles County Health Codes and Building and Safety Codes.
- c. If, because of future grading, or for any other reason, it is found that the requirements of the Plumbing Code cannot be met on certain lots, the Los Angeles County Department of Health Services will recommend that no building permit be issued for the construction of homes on such lots.
- d. The usage of the lots may be limited by the size and type of sewage systems that can legally be installed.
- e. The owner's statement indicates that domestic water will be supplied by _____

The Los Angeles County Department of Health Services has no objection to the approval of the tentative map of this tract. However, it must be understood that the method of sewage disposal has not yet been determined nor approved.

Until we have approved the method of sewage disposal, we shall be unable to approve the final tract map.

We shall ask Dept. of Public Works to withhold occupancy of buildings within the tract until they have been connected to the sanitary sewer.

The owner's statement indicates that a sewage treatment plant will be constructed to serve Proposed Tract No. _____

We have no objection to the approval of the tentative map; however, plans and specifications of the proposed treatment plant and disposal facilities must be submitted to legally interested governmental agencies for approval.

We shall be unable to approve the final map until we have evidence that these approvals have been given.

A legal entity shall be established to assume responsibility and authority to maintain jointly owned facilities in a clean and sanitary manner at all times.

Approval of the method of sewage disposal is contingent upon the approval by the California Regional Water Quality Control Board _____ Region.

The subdivider shall obtain a permit and approval from the Los Angeles County Department of Health Services for the destruction or construction of any water well on this property. In the event the well is to be maintained for future use, the well shall be protected from flooding or contamination or such protection which the Health Officer determines to be adequate.

Comments: Private Sewage disposal Systems Proposed for lots 80 & 81

By: Cal M. Hill

Date: 4/21/87

Exhibit 2

1 Hon. Lisa Hart Cole (Ret.)
SIGNATURE RESOLUTION
2 633 West 5th Street, Suite 1000
Los Angeles, California 90071
3 Arbitrator
4

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 COUNTY OF LOS ANGELES
7

8 **JENNIFER CHRISMAN, an individual;**
9 **and CAREY CHRISMAN, an individual,**

Case No. DXLRD

**PARTIAL FINAL ARBITRATION
AWARD**

10
11 Claimants and Counter-
Respondents,

12 vs.

13 **FREER FREER, as Co-Trustee of the**
14 **Arthur A. Alisi Survivor's Trust dated**
15 **December 21, 1995; VARLEY VARLEY, as**
Co-Trustee of the Arthur A. Alisi
Survivor's Trust dated December 21, 1995,

16 Respondents and Counter-
17 Claimants

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I. THE PARTIES AND THEIR COUNSEL

1. Claimants and Counter-Respondents Jennifer Chrisman (“Jennifer”) and Carey Chrisman (“Claimants” or “Chrismans” or “Buyers”) are individuals seeking to purchase a family home in the Calabasas.

2. Claimants are represented in this arbitration by Keith M. Gregory Esq. and Aliya L. Astaphan of Snell & Wilmer LLP. Martin S. Rudoy Esq. of Rudoy Law assisted at the arbitration.

3. Respondents and Counter-Claimants Justin Freer (“Freer”) and Jaime Varley (“Varley”), (“Respondents” or “Trustees” or “Sellers”) are co-trustees of the Arthur A. Alisi Survivor’s Trust dated December 21, 1995 (“the Trust”). The Trust contains the property located at 26763 Mulholland Highway, Calabasas, CA 91302, described by the Los Angeles County Records as Lot 1 of Tract 45465-01 (“the Property”). The Trustees are the grandchildren of the now deceased Arthur and Mary Alisi. They listed the property to sell pursuant to the wishes of all the beneficiaries of the Trust.

4. Respondents are represented in this arbitration by Lisa A. Weinberg Esq. of Gaines & Stacey LLP.

II. THE AGREEMENT

5. On May 6, 2021, the Chrisman’s signed and dated a standard California Real Estate Purchase Agreement and Joint Escrow Instructions (C.A.R. Form RPA-CA, Revised 12/18) (“RPA”) for the purchase of the Property at the asking price of \$3,195,000. Claimant Jennifer Chrisman is a real estate agent.

6. On May 7, 2021, the Trustees responded with Seller Counter Offer No. 1 (“Counter”), defining the close of escrow date to be 45 days from acceptance, that the escrow to be Chartwell Escrow, Title Company to be Old Republic, and sellers retention of some potted plants. The Chrismans accepted all terms in the on the same day.

7. On 5/10/2021, Seller’s Broker, John K. Herkenrath (“Herkenrath”) confirmed acceptance.

III. PROCEDURAL HISTORY

8. On 8/21/2021, the Chrismans filed a verified complaint in the Los Angeles

1 Superior Court, case number 21STCV31211, against the Trustees, Spectrum Development Inc.
2 and Brian Boudreau. The action was originally filed in Los Angeles Superior Court alleging
3 claims for Breach of Contract, Specific Performance Negligent Misrepresentation, Quiet Title, and
4 Declaratory/Injunctive Relief against the Respondents. Claims were filed against Spectrum
5 Development Inc. (“Spectrum”) and Brian Boudreau (“Boudreau”) for Intentional Interference
6 with Prospective Economic Relations and Slander of title. Additional claims of Quiet Title,
7 Declaratory/Injunctive Relief, Declaratory/Injunctive Relief was filed against Spectrum,
8 Boudreau, Malibu Canyon Trust, Malibu Valley Partners LLC, and Malibu Canyon LP.

9 9. On August 27, 2021, the Chrismans filed a Lis Pendens on the property. The
10 Trustee’s moved to expunge the Lis Pendens, which was denied on 10/4/2022.

11 10. On 1/820/22, the Court granted the Motion to Compel arbitration filed by the
12 Trustees as to the Breach of Contract, Specific Performance, Negligent Misrepresentation, Quiet
13 Title and Declaratory Relief. (10/4/22 Ruling by Judge Lui.)

14 11. The Chrismans moved to compel arbitration as to Defendant who were non-
15 signatories to the RPA, including Spectrum and Boudreau. On 10/4/2022, the Court denied the
16 Chrismans’ request to compel arbitration as to all non-signatories to the RPA, and stayed all
17 Superior Court proceedings. (10/4/22 Ruling by Judge Lui.)

18 12. On 5/13/ 2022, the Claimants filed a Demand for Arbitration with Signature
19 Resolution based on a Verified Complaint, 21STCV31211, filed on 8/23/21 in the Los Angeles
20 Superior Court, alleging claims for Breach of Contract, Specific Performance Negligent
21 Misrepresentation, Quiet Title, and Declaratory/Injunctive Relief against the Respondents. Claims
22 were filed against Spectrum Development Inc. and Brian Boudreau for Intentional Interference
23 with Prospective Economic Relations, Quiet Title, Slander of Title and Declaratory/Injunctive
24 Relief.

25 13. On 5/20/2022, the Respondents filed a Response to the Demand for Arbitration and
26 Cross-Claims, against the Chrismans, alleging Breach of Contract, Slander of Title, Intentional
27 Interference with Prospective Economic Relations. An additional claim was filed, against Jennifer
28 Chrisman only, for Breach of Fiduciary Duty based on her conduct as a dual agent in the

1 transaction.

2 14. On 5/25/2023, the arbitrator was appointed.

3 15. On 11/4/2022, Claimants filed an answer to Respondents' Cross-Claim.

4 16. On 11/7/2022. Claimants filed deposition subpoenas on Boudreau and Spectrum
5 seeking production of documents and testimony from Spectrum's PMK. Boudreau's and
6 Spectrum's PMK, Beth Palmer ("Palmer") were deposed. Chrisman's sought to depose Palmer as
7 a non-party individual alleging that her answers as a PMK were evasive. Spectrum and Palmer
8 moved to quash the subpoena and requested a protective order.

9 17. The Motion to Quash/Request for a Protective Order was fully briefed and a
10 tentative ruling issued. After hearing, the Motion to Quash was granted and Motion for Protective
11 Order was deemed moot. (1/26/2023 Arb. Order.)

12 18. On 2/8/2023, Counter-Respondents filed a Motion to Dismiss Counter-Claimants
13 claim for Breach of Fiduciary Duty based on lack of subject matter jurisdiction. Jennifer
14 Chrisman based her motion on the grounds that neither she, nor the Sellers agent are bound to
15 arbitrate pursuant to RPA, ¶22C(3). On 2/15/2023, Cross-Claimants opposed on the grounds that
16 Jennifer Chrisman consented to the jurisdiction of this Arbitrator when she filed her demand for
17 arbitration. The Motion was fully briefed, hearing held and granted without prejudice to refile
18 the same claim in the underlying lawsuit in the Los Angeles Superior Court. (2/20/2023 Arb.
19 Order.)

20 19. On 2/13/23, a Final Status Conference ("FSC") was held telephonically to discuss
21 the logistics of the arbitration and Respondent's Motion in Limine #1. The Trustees sought to
22 preclude any argument or evidence attempting to establish that the 1986 Option is invalid, that its
23 1989 Assignment was invalid, or that its 2021 Exercise was invalid on the grounds that it is
24 "outside the pleadings." (Resp. MIL #1.) Claimants opposed it on multiple factual grounds. (Cl.
25 Opp. to MIL #1.)

26 20. At the 2/13/2023 FSC, the Arbitrator found that the way the Respondents chose to
27 exercise the Option as a weapon to encourage settlement during the escrow period is relevant to
28 Claimant's Breach of Contract Claim. However, the validity of the Option, the Assignment and

1 the ultimate use of the Option are beyond the scope of the claims assigned to the arbitration. The
2 Respondents' MIL #1 was granted in part and denied in part.

3 21. Within the discussion of the MIL, the Arbitrator found that there was confusion
4 about the remedies available to the Claimants in arbitration. Counsel were asked to prepare a
5 short joint statement of the remedies each side was seeking.

6 22. On 2/18/23, the parties filed a short joint statement on available remedies in
7 response to the arbitrator's request. The document speaks for itself and will be discussed more
8 fully below. In summary, Claimants request: "A decree ordering Respondents to convey the
9 Property in the condition that it was in as of the date they entered into the RPA (May 7, 2021) to
10 the extent they still own it and to compensate the Chrismans for deficiency in performance...."
11 Respondents dispute that Specific Performance should be awarded but if it were, "at most [the
12 Claimants would] be entitled to an order compelling the Trust to close escrow in the same manner
13 it was willing to do in September 2021: in exchange for payment of \$3,145,000, the Trust would
14 be ordered to convey a grant deed to Lot 1 of Tract 45465-01 subject to all encumbrances existing
15 on the property's title as of May 7, 2021, which includes the 1986 Easement and Option."

16 23. The hearing commenced as scheduled at 9:00 on 2/21/2023, at the Signature
17 Offices in Century City, and continued on 2/22, 2/23, 3/3, 3/9, 4/7.

18 a. The following witnesses gave testimony for the Claimants: Jennifer Chrisman,
19 Edward Broder (776), John Herkenrath (776), Freer Freer (776), Varley Varley
20 (776), Beth Palmer (776), Brian Boudreau (776), Alan Wallace (real estate expert),
21 Michelle Lefever (Supervisor, Old Republic), Karl Shultz (valuation expert),
22 Anthony Valencia (title officer, Old Republic), Carey Chrisman, Dennis Hunter
23 (land use expert)

24 b. The following witnesses gave testimony for the Respondents: Jennifer Chrisman
25 (776), Carey Chrisman (776), Edward Broder, John Herekenrath, Justin Freer,
26 Jaime Varley, Beth Palmer, Brian Boudreau.

27 24. On 4/11/2023, Claimants filed their Closing Brief; on 4/28/2023, Respondents filed
28 their Closing Brief; and on 5/5/2023, Claimants filed their Reply brief.

1 **IV. FACTS PRESENTED**

2 25. In addition to the original and additional pleadings, during the course of the
3 arbitration the arbitrator received a large volume of information from the parties including reports
4 from purported experts, live testimony of 14 witnesses and more than 250 exhibits comprising
5 numerous pages, as well as arguments of counsel.

6 26. Some of the testimony was inconsistent and raised issues either irrelevant to, or
7 beyond the scope, of this arbitration. As a result, not all of the contentions made by the parties on
8 all of the issues raised during this arbitration will be addressed.

9 27. The following is a statement of facts found by the arbitrator to be true and
10 necessary to resolve the claims presented in this arbitration. The arbitrator has given full and
11 careful consideration to all the evidence of record and all arguments advanced by the parties at the
12 hearing and in their pre and post hearing submissions. To the extent that the following
13 foundational recitation and additional discussion of the factual record in this interim award do not
14 present certain factual contentions of a party, or differ from a party's stated position, that is the
15 result of the arbitrator's determination as to relevance, credibility, burden of proof consideration
16 and weight of the evidence.

17 **A. Origin of the Relationship of the Parties**

18 28. Arthur and Mary Alisi owned 26763 Mulholland Highway, Calabasas, CA 91302,
19 described by the Los Angeles County Records as Lot 1 of Tract 45465-01 ("the Property"). The
20 Property was historically part of a large working farm which has since been subdivided into
21 individual parcels to be developed into a residential community, originally called Malibu Valley
22 or Malibu Valley Farms. (See, Exh. 1, Malibu Valley HOA CCRs; Exh. 8, Amended CCRs; Exh.
23 9, Amended CCRs.) The Alisis purchased their property early in the development process and
24 built the home on the parcel at issue in this dispute.

25 29. Prior, and subsequent, to the Alisi's purchase of the property, numerous easements
26 were granted to the HOA, various utilities and governmental agencies to further the development
27 process. (See, Exh. 6, 7.)

1 30. Among these transfers was a recorded “Easement and Option to Purchase Real
2 Property” (the “1986 Option” or “Option”) from the Alisi’s to Jerry J. Albus and Alice Rogers.
3 The 1986 Option was recorded on May 14, 1986, and viable for “50 years next following the date
4 of execution of this deed.” (Exh. 2, ¶2a.) The 1986 Option has been assigned since the date of
5 recordation, as will be discussed below.

6 31. The developer (initially Charles F. Boudreau, and after his death, his son, Brian
7 Boudreau) and the Alisis discussed plans to build a drainage basin at some location on the
8 Property, but no formal agreement was ever reached.

9 32. As the development process progressed, Boudreau took on investors and created
10 Spectrum Development, Inc., with Boudreau acting as the principal. At some point, the Alisis
11 Property was placed into a trust. Mary predeceased Arthur in 2013, and Arthur became the sole
12 trustee of “The Arthur A. Alisi Family Survivor’s Trust dated December 21, 1995” (the “Trust”).
13 Upon Arthur’s death in February 2020, Ed and Nancy Broder succeeded as co-trustees. After
14 Nancy suffered a catastrophic accident, the Broders resigned as trustees. In March 2020, they
15 were succeeded by Arthur and Mary’s grandchildren, Justin Freer and Jaime Varley (the
16 “Trustees”). The Trustees received a notebook with the will and trust documents, but received no
17 historical documents reflecting prior transactions affecting the property.

18 33. Ed Broder (“Broder”) remained in control of the Trust’s finances and continued to
19 actively assist the Trustees in the management and sale of the Property. Broder originally met the
20 Alisis through their son and remained friends with them for 40 years. As time passed, he helped
21 them with their finances and appears to have served as a business advisor, in addition to acting as
22 one of the original Trustees. Broder, a licensed real estate broker, negotiated directly with Brian
23 Boudreau (“Boudreau”) regarding easements on both the Alisi and adjacent properties. (See, Exh.
24 13.) After Broder resigned as trustee, he continued to handle all the finances for the Trust, and
25 communicated directly with Brian Boudreau and Beth Palmer about the Property and the sale of
26 the property. (See, Exhs. 17, 18, 20, 44, 56.)

27 34. Acting in accordance with the wishes of the other beneficiaries of the Trust, the
28 Trustees decided to sell the Property. Freer is a musician who testified that he is unsophisticated

1 in the sale of property. Varley is currently a full-time mother of five but was previously employed
2 as a legal assistant in Utah. Ostensibly because of her legal experience, she handled many of the
3 details of the sale. Both Trustees relied extensively on advice from Broder, Boudreau and Palmer
4 for the drafting of documents and advice throughout the sale process.

5 35. Pursuant to the Trustees decision to sell the Property, Bill and Daniel Moss were
6 retained as the agents to sell the property. The Property, advertised with an estimated lot size of
7 3.47 acres, generated no buyer interest at the \$3,695,000 or \$3,595,00 list price. Even when the
8 price was reduced to \$3,295,000, there were no buyers. The contract with the Moss agents was
9 terminated.

10 36. In early May 2021, John Herkenrath (“Herkenrath”), with Compass, was retained
11 to sell the property. It is clear from the numerous emails and testimony of the witnesses that
12 Boudreau and Palmer recommended that the Trustees hire Herkenrath to act as their agent.
13 Herekenrath advertised the Property with the Multiple Listing Service for the reduced sale price of
14 \$3,195,000 with a lot size of 3.47 acres, as it had been previously listed. (Exh. 115.)

15 37. Jennifer Chrisman (“Jennifer”), an agent with Compass, had been looking for a
16 property in the Calabasas area with a larger home and lot than her current family home. She
17 arranged to see the property on May 6, 2021, and arrived at the showing with her husband Carey
18 and their two children.

19 38. She and her family loved the property and she immediately requested to see the
20 Preliminary Title Report (“PTR”), and CCRs. (Exh. 204, 205, 201.) Prior to placing an offer,
21 Jennifer called Herkenrath to see if there were any issues she should know about before preparing
22 the offer. Herkenrath told her that the Sellers would not accept anything less than \$3,099,000
23 based on a previously negotiated offer with another buyer. He also believed a quick escrow would
24 be appreciated.

25
26
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1 39. Herkenrath and Trustees were well aware there was an issue concerning the use and
2 transfer of a “proposed pad,” which was part of the 3.47 acre property listed for sale. Herkenrath
3 did not disclose this to the Chrismans at the May 6, 2021 showing.¹

4 **B. The Real Estate Purchase Agreement**

5 40. On May 6, 2021, the Chrismans placed a full price offer on the property. (Exh.
6 207.)

7 41. On May 7, 2021, Herkenrath sent Jennifer the Preliminary Title Report (PTR)
8 which had been prepared on March 18, 2021. (Exh. 205.)

9 42. Later, on May 7, 2021, the Trustees/Sellers responded with Counter Offer #1 (Exh.
10 210), which the Chrismans accepted on the same day (Exh. 31). Escrow was scheduled to close on
11 June 21, 2021.

12 43. After the conclusion of negotiations, Herkenrath told Jennifer that she needed to be
13 aware that the prior owner asked to move a drainage basin to another side of the house so it would
14 be less obtrusive, and this needed to be discussed with the “developer.” A meeting was set for
15 May 11, 2011, at the developer’s office. No materials were provided to the Chrisman’s prior to
16 the meeting.

17 44. On May 11, 2021, the Chrisman’s met Boudreau and Palmer (now Spectrum’s
18 General Counsel and Vice -President) and were provided with a map (Exh. 118) and a brochure of
19 the proposed development. Boudreau explained that the county required a drainage basin for
20 flood water, tentatively located in the shaded in light red on the map, which would be placed on
21 the east side of the property. When the county completes its work, the basin will be concrete, but
22 Boudreau assured them that Spectrum would paint and landscape the area, which is otherwise
23 “useless land.” The Chrismans were not told that Boudreau, Palmer or Broder were in
24 negotiations with the Trustees for what would become the Grant of Rights, which included a lot
25

26 ¹ After meeting the Chrismans, Herkenrath texted Freer: “One great showing this morning, it’s a Malibu Agent she
27 want the house for herself and her family....” Freer responded: “How is this thing listed again? With the other parcel
28 or no. Hopefully no.” Herkenrath replied: “No the proposed pad is not part of the deal I’m not mentioning that it’s
not part of the listing that’s between you and Brian.” (Exh. 26.)

1 line adjustment and ultimate conveyance of a portion of the Property.

2 45. The Chrisman’s recall Herkenrath and Boudreau taking them on a tour of the
3 property after the 5/11/21 meeting to explain where the basin would be located. Jennifer said such
4 a basin would interfere with the view of the valley and asked if it could be built where originally
5 planned. Herkenrath told them that perhaps they were not the right buyers for the property.

6 46. After the May 11th meeting, Jennifer checked to see if the PTR provided for a
7 basin to be constructed at the location Boudreau and Palmer proposed, and found nothing.
8 Jennifer asked Herkenrath about an old permit regarding something another structure on the
9 Property (Exh. 37, 5/11/21, 9:56 PM). After Herkenrath conferred with Palmer and Boudreau, he
10 learned it was unrelated to the Property (Exh. 37, 5/12/21, 10:54 AM) and conveyed the same to
11 Jennifer (Exh. 213). No further mention was made of the drainage basin.

12 47. On May 12, 2021, the Chrismans deposited \$95,850.00 into escrow with Chartwell
13 Escrow.² Inspections were scheduled, contact with bank appraiser had been made and Herkenrath
14 reported to Boudreau and Palmer: “Seemingly moving full steam ahead” (Exh 37, 5/12/21, 12:22
15 PM). No further reference was made regarding the drainage basin.

16 48. On May 13, 2021, the Trustees submitted their Exempt Seller Disclosure, which
17 they were entitled to do having never lived at the property for any extended period. The Trustees
18 denied knowledge of any “[m]atters affecting title of the Property.”³ (Exh. 217.) This disclosure
19 is false. During that time, the Trustees, Broder, Boudreau and Palmer were actively engaged in
20 discussions to sell nearly one-third of the property to Spectrum. (See, Exh. 43,44.)

21 49. On May 13, 2022, the Chrismans and Herkerath were proceeding with inspections.
22 At the same time, Boudreau, Palmer, Broder and the Trustees were preparing to sign a new Grants
23 of Rights. Pursuant to an explanatory email from Palmer to Varley, Broder and Freer (although to
24 an incorrect email address) and copied to Boudreau, the Trustees agreed to “convey the portion of
25

26
27 ² Chartwell is an entity associated with Beth Palmer. It is unclear if this relationship was disclosed to the Buyers.

28 ³ Exempt Seller Disclosure, ¶4: “Are you (Seller) aware of any of the following? ... (I) Matter affecting title of the property..... No.” (Exh. 217.) Both Trustees had signed away approximately one acre of the Property in the Grant of Rights prior to 5/19/21.

1 the property to Spectrum Development through a lot line adjustment” for the sum of \$100,000. ⁴
2 (Exh. 44, 5/13/21, 1:59 PM email.) The Grant of Rights effectively conveys away approximately
3 one acre of the Property currently under contract with the Chrismans.⁵ Freer signed the Grant of
4 Rights that day. (Exh. 65.) Without any knowledge of the Grant of Rights, the Chrismans
5 proceeded with their due diligence and finalizing the financing process.

6 50. On May 14, 2021, the Property is appraised as a 3.48-acre lot, with a market value
7 of \$3,195,000. On May 17, 2021, the Chrismans receive an updated PTR with Plotted Easements.
8 On May 20, 2021, the Property is appraised as a 3.47-acre lot with a market value of \$3,275,000.
9 Based on those appraisals, the financing is approved on May 25, 2021.

10 51. On May 25, 2021, the Chrismans submit a Request for Repair No. 1, requesting a
11 price reduction of \$157,126 for issues raised in the pest control report. (Exh. 227.) The next day,
12 the Trustees respond to the request, agreeing to a \$50,0000 price reduction. (Exh. 231.)

13 **C. Grant of Rights**

14 52. The Grant of Rights is recorded on May 26, 2021 at 8:00 a.m., (Exh. 230) but is not
15 served on the Chrismans. Later in the day, a meeting is held with Herkenrath, Palmer and
16 Boudreau, where the Chrismans are informed, for the first time, about the signed and recorded
17 Grant of Rights. Extremely upset, they leave the meeting and receive a copy of the document the
18 next day from the title company.

19 53. On May 28, 2021, Herkenrath delivered the recorded Grant of Rights and a second
20 updated PTR with Plotted Easements to the Chrismans. (Exh. 233.)

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25 ⁴ In addition, the email explains that the lot line adjustment would require L.A. County approval, so while that
26 paperwork was being completed, the Grant of Rights “provides an easement over the land for the work should (sic)
27 that occur before the lot line adjustment is finalized.” “Ed [Broder] has agreed to hold the \$100,000 check until
28 everything is back and recorded.” (Exh. 44, 5/13/21, 1:59 PM email.)

⁵ The Grant of Rights defines the Lower Portion of the Property as the “Conveyance Property” and provides that the
owner of the property must convey the entire Lower Portion to Spectrum upon the completion of the lot line
adjustment. (Exh. 65.)

1 54. The Chrismans, believing that the Trustees were “double popping the property”
2 they consulted counsel. On May 31, 2021, attorney Marty Rudoy sent a letter to the Trustees
3 demanding full disclosure and mediation, pursuant to the RPA.⁶ (Exh. 234.)

4 55. On June 2, 2021, the Trustees sent “Addendum No 1 to the Exempt Seller
5 Disclosure” officially disclosing, for the first time, the Grant of Rights. (Exh. 238.) On the same
6 day, counsel from Mayer Brown sent a letter to Mr. Rudoy denying that the Trustees breached the
7 RPA and stated that the disclosures in paragraph 10(A) of the RPA were statutorily sufficient as
8 the Trustees were “exempt sellers.” Further, he asserted that the Buyers were aware that the
9 “Easement and Intent to Convey” was in the process of being recorded.⁷

10 56. On June 2, 2021, the Chrisman’s sign Contingency Removal No. 1 releasing all
11 contingencies, including the loan, but exudes all matters affecting title from the release. (Exh.
12 239.) On June 5, 2021, the Trustees sends the Chrismans Notice to Perform No. 2 by waiving all
13 contingencies. (Exh. 243.) On Jun 7, 2021, the Chrismans send Trustees Notice to Perform No. 1,
14 by conveying clear title and rescinding the Grant of Rights or else they may cancel or “delay
15 removing an applicable contingency. (Exh. 244.)

16 57. On June 8, 2021, Freer submits a fully executed Grant Deed to escrow, but does not
17 rescind the Grant of Rights.

18 58. Pursuant to a request by the Chrisman’s lender, Union Bank, they sign a lease and
19 receive a \$6800 deposit from their friend, who they represent will lease their current home when
20 they vacate.⁸ (Exh. 82, 83, 84.)

21
22
23 ⁶ Mr. Rudoy makes the following saliant points: 1. “The property conveyed [in the Grant of Rights] is considerably
24 closer to the home purchased and its later use will negatively affect the Purchasers’ use and enjoyment....” 2. “This is
25 a breach of the RPA on behalf of the Sellers.” 3. The Grant of Rights document was purportedly dated May 12, 2021
but was not signed or notarized until the following week. This was all done in secrecy, without disclosure or notice
to, or the consent of, the Purchasers....” (Exh. 234-2)

26 ⁷ Mr. Nadolenco of Mayer Brown correctly notes that the Trustees are “exempt” under Civil Code §1102.2(d). (Exh.
27 240-1.) However, he is incorrect in concluding that the Trustees “had no obligation to disclose” that the Grant of
Rights had already been signed by both Trustees although they denied “knowledge of any matter affecting title” in the
original disclosure, DocuSigned and dated on May 19, 2021. (Exh. 240-2.)

28 ⁸ The Trustees believe the lease is a sham to preserve financing.

1 59. On June 18, 2021, the parties exchange Notices to Perform: The Trustees demand
2 a waiver of contingencies, and the Chrismans demand mediation and deliver clear title as it existed
3 at the time of the RPA. (Exh. 251, 85.)

4 60. On June 21, 2021, the Trustees seek to cancel the contract, release the deposit and
5 cancel escrow. (Exh. 252.) The cancellation is ineffective. Two days later, Union Bank emailed
6 escrow stating that it can fund on June 24, 2021, if all escrow documents are signed. (Exh. 254.)

7 61. On August 23, 2021, this action is filed in Los Angeles Superior Court after an
8 unsuccessful mediation on August 9, 2021. On August 27, 2023, the Chrismans record their Lis
9 Pendens on the Property.

10 **D. The Quitclaim Deed/Exercise of the 1986 Option**

11 62. On September 3, 2021, rather than rescind the Grant of Rights, as requested by the
12 Chrismans, Spectrum prepared a Quitclaim Deed (“Quitclaim”) in favor of the Trustees. The
13 Quitclaim was deposited into escrow, with instruction to escrow to record the quitclaim at the
14 close of escrow, immediately prior to recording of the Grant Deed.⁹ (Exh. 263.) The Trustees
15 considered the deposit of the Quit Claim into escrow, with the accompanying instructions, to be a
16 rescission of the Grant of Rights.¹⁰

17 63. Simultaneous with the deposit of the Quitclaim into escrow with instructions,
18 Spectrum, through Boudreau, signed a Notice to Exercise and an Exercise of the 1986 Option.
19 (Exh. 264.) The 1986 Option was in the chain of title and noted in the PTR the Chrismans
20 received at the time the RPA was created. However, the Chrismans did not believe the 1986
21 Option would be exercised because their due diligence revealed that it belonged to Jerry Albus and
22
23

24 _____
25 ⁹ The Trustees instructions are as follows: “You are hereby instructed to hold this Quitclaim Deed **in trust** and not
26 record it at this time. You are further instructed to cause this Quitclaim Deed to be recorded if, and only if, all of the
27 conditions of RPA, as it may have been modified or amended, as well as any escrow instructions provided by
28 Chartwell or any other party, have been met and escrow is set to close. Then and only the, you may cause this
Quitclaim Deed to be recorded the same day as, but immediately prior to, the Grant Deed from Seller to Buyer being
recorded so that the Property is transferred to buyer without the Quitclaim Deed (sic) [Grant of Rights] on title.” (Exh.
263.)

¹⁰ As of the date of the arbitration, the Grant of Rights had still not been rescinded.

1 Alice Rogers, a now elderly couple living in Santa Monica with no apparent ties to Malibu Valley
2 or Spectrum.

3 64. On September 3, 2021, the Chrismans received a letter informing them that a
4 Quitclaim Deed had been deposited into escrow, with instructions to record immediately before
5 recording the Grant Deed. In the same letter from the Trustees attorney, Glenn Vazura (Exh.
6 259)¹¹, they were informed that Spectrum exercised the 1986 Option.

7 65. On September 10, 2021, the Chrisman’s received a second letter from Mr. Vazura,
8 advising them to dismiss their lawsuit and remove the Lis Pendens because the Quitclaim rendered
9 their complaint moot. Before this, the Chrisman’s were not aware that the 1986 Option had been
10 assigned to Boudreau’s father, Charles F. Boudreau, until they reviewed Exhibit D to
11 Mr. Vantura’s September 10, 2021 letter. (Exh. 95.)¹²

12 66. September 13, 2021, the Chrismans sent a Notice to Seller to Perform No. 3,
13 requesting rescission of the Grant of Rights and of the Exercise of the 1986 Option.(Exh. 271).

14 67. On September 15, 2021, the Trustees again submit a Cancellation of the Contract,
15 Release of Deposit and Cancellation of Escrow. The Trustees position from the onset has been that
16 pursuant to ¶10A(7) and ¶14B(3) of the RPA, the Chrisman’s only remedy upon learning of the
17 Grant of Rights, is to cancel the contract within 5 days of receipt of the disclosures or waive all
18 contingencies. Because the Chrismans refused to waive all contingencies, pursuant to ¶14D(1),
19 the Trustees conclude that can unilaterally cancel the contract. (See, Exh. 252, 273.)
20
21
22

23 ¹¹ Mr. Venzura outlined a series of potentially unsightly and inconvenient obstructions to the Property resulting from
24 the exercise of the 1986 Option. The subtext to this recital is that the Chrisman’s would be better off agreeing to the
Grant of Rights.

25 ¹²It is unclear from the documents provided whether the 1986 Option assignment to Charles F. Boudreau was ever
26 recorded, but Ms. Lefebvre from Old Republic suspects it did not make it into the chain of title because it did not have
27 an APN. Only the September 3, 2021 assignment of the Option from “Brian Boudreau, Executor of the Estate of
Charles Boudreau” to “Brian Boudreau, Trustee” of “The Boudreau Trust of 1990” is recorded, on September 9,
2021.(See, Exh. 95, exh. D.)

28)

1 **V. CLAIMS MADE AND RELIEF SOUGHT**

2 **E. By Claimant**

3 68. Claimant set forth the following claims in its Verified Complaint that are relevant
4 to this arbitration:

5 a. First Cause of Action for Breach of the RPA

6 Claimants asserted that by entering into a separate agreement with a third-party
7 purchaser, Spectrum, for the sale and transfer of the Rights in the Property, the
8 Respondents violated Chrisman’s rights under the RPA. Upon demand to rescind the
9 Grant of Rights, knowingly entered into by the Trustees, the Respondents failed to
10 convey clear title to the property under the terms of the RPA and Escrow Instructions.
11 The Claimants remain ready, willing and able to perform the remaining obligations
12 under the RPA.

13 b. Second Cause of Action for Specific Performance

14 Claimants alleged that the Property is unique, and the Respondents have unjustifiably
15 refused to proceed with their obligations under the RPA to remove the clouds on title
16 despite the Claimants’ full compliance with their contractual obligations. Claimants
17 claim that they have no adequate remedy at law because it is presumed that the breach
18 of an agreement to transfer real property cannot be adequately relieved by money
19 damages, citing Civil Code §3387.

20 c. Third Cause of Action for Negligent Misrepresentation

21 Claimants alleged that the individual Trustees, Freer and Varley, represented that they
22 would convey title in the condition as of May 7, 2021, the date of the finalized RPA.
23 However, on May 13, 2021, Freer represented that the Trust was not aware of any
24 matters affecting title of the Property and that it had disclosed all material facts of which
25 it was aware regarding the Property. On Supplemental Sale Escrow Instruction dated
26 May 24, 2021, both Freer and Varley stated that the only encumbrances on the Property,
27 including easements, were those on record of that date. Respondents made those
28 representations without reasonable ground for believing them to be true because during

1 the same period they were in active negotiations with Boudreau to transfer the
2 easements and associated rights to Spectrum. Claimants further allege that the Trustees
3 were not exempt sellers within the meaning of Civil Code §1102.2(d). The Claimants
4 justifiably relied on the misrepresentations, in addition to their own due diligence, in
5 proceeding with their obligations under the RPA. As a result, the Claimants are entitled
6 to compensatory and punitive damages attorneys' fees and costs.

7 **F. By Respondent**

8 69. Respondents denied all allegations and claims in Claimant's Complaint and
9 asserted affirmative defenses to Breach of Contract, Specific Performance and Negligent
10 Misrepresentation. Generally, the Respondents claim that the preparation lodging of the
11 Spectrum's Quitclaim Deed is tantamount to a rescission of the 2021 Grants of Rights. The
12 Claimants failure to waive all contingencies within the time proscribed in the RPA, and pursuant
13 to five Notices to Perform, is a defense to Claimants' Breach of Contract claim. If the Claimants
14 were not satisfied with status of title after the lodging of the Quitclaim with escrow, their options
15 were: (1) to close, notwithstanding; or (2) walk away from the deal and take back their deposit.

16 70. In Respondents' Response to Claimants' Demand for Arbitration, Respondent filed
17 three Cross-Claims against the Chrismans:

18 a. First Cross-Claim for the Breach of Contract

19 Respondents allege that the Chrismans failed and refused to perform their obligations
20 under the RPA by failing to remove all contingencies despite the Respondents
21 submitting five demands to do so (Notice to Buyer to Perform No. 1 (June 1, 2021),
22 No. 2 (June 5, 2021), No.3 (June 18, 2021), No. 4 (September 10, 2021) and September
23 25, 2021. Because the Cross-Claimants had performed all obligations under the RPA,
24 yet the Cross-Respondents still have not performed, the Cross-Claimants have incurred
25 significant carrying costs, interest on the selling price of \$3,195,000, and an award of
26 attorneys' fees and costs.

27 b. Respondents filed three additional torts that fall outside of the contract and are
28 therefore not arbitrable: Slander of Title, Intentional Interference with Prospective

1 Economic Advantage and Breach of Fiduciary Duty against Jennifer Chrisman only.
2 These claims may be heard in the Superior Court Action.

3 **V. ANALYSIS**

4 **A. Claimants' Claims**

5 **1. Formation and Disclosure of the Grant of Rights**

6 71. It is undisputed that the Trustees conveyed the lower portion of the Property to
7 Spectrum after the Property was under contract with the Chrismans. The Grant of Rights provides
8 that the owner of the Property *must* convey the entire Lower Portion to Spectrum upon the completion
9 of a lot line adjustment.

10 Owner *shall* cooperate with Developer in all respects in accomplishing (i) the
11 conveyance of the Conveyance Property to Developer by quitclaim deed (the
12 'Conveyance') and (ii) a lot line adjustment (the 'Lot Line Adjustment') in
13 connection with the Conveyance, including, without limitation, Owner shall
14 execute any documents Developer requests to be executed to accomplish the Lot
15 Line Adjustment and/or the Conveyance. Such conveyance to Developer shall
16 occur concurrently with or as soon as practicable after the Lot Line Adjustment.
17 The Grant of Rights grants temporary easements to Spectrum so that Spectrum can
18 begin construction on the Lower Portion while it works on getting the lot line
19 adjustment approved by Los Angeles County. (Exh. 65, § 3.1.)

20 The purpose of the Grant of Rights was to ensure that the Property's new owner would be legally
21 obligated to convey the Lower Portion to Spectrum.

22 72. Discussions concerning placement of a drainage basin on the Property dated back
23 to the Alisi's 34-year ownership of the Property. The discussions were such that Broder, Freer
24 and Varley remember the Alisis' wishes many years later. Although the Alisi's and Boudreau
25 signed other easements to assist further development, discussed different locations for the basin,
26 contemplated development of a pad for a tennis court independent of the drainage basin (square
27 footage that was part of the Grant of Rights), and even loaned Boudreau \$100,000, no formal
28 written or oral agreement was memorialized in writing. Even when the Trustees took control over
the property, first Ed and Nancy Broder and then Varley and Freer, no written agreement was
reached and recorded prior to putting the Property up for sale.

73. The Trustees listed the Property twice because the original asking price did not
generate a sale. Each time the property was listed as a 3.47-acre lot. Old Republic, a reputable title

1 company, was retained to prepare a PTR for the purpose of providing complete title information
2 with the general understanding that it would be reviewed and relied upon by both prospective
3 buyers.

4 74. Herkenrath admitted being advised that a significant portion of the Property would
5 effectively be conveyed to Spectrum, but did not mention it to the Chrismans when they initially
6 viewed the property; nor when he presented Jennifer with the PTR; nor when Jennifer called him
7 to ask if there is anything else she should know about the property before she presented the offer;
8 nor when he presented Counter Offer No.1; nor when the RPA became binding.

9 75. Whether Boudreau and Palmer presented the plan to create a Grant of Rights as a
10 *fait accompli* at the May 11, 2021 meeting is disputed. The Chrismans admit there was a
11 discussion about the placement of the drainage basin, but they believed they would have input in
12 the negotiation process. Boudreau and Palmer testified that the conversation was more definite.
13 Regardless, there is no evidence that anyone advised the Chrismans, orally or in writing that a
14 document was being prepared for recording whereby control over a significant portion of the
15 Property was effectively being conveyed by the Trustees to Spectrum. Putting aside the Trustees'
16 failure to disclose the agreement in their Exempt Sellers Disclosure, the Chrismans did not receive
17 a single email, text or note advising them of the terms or the scope of the Grant of Rights before it
18 was recorded, which occurred over two weeks after the contract for sale had been fully executed.
19 Herkenrath knew that the Chrisman's were complying with their contractual obligations complete
20 the transaction.¹³ It seems somewhat deceitful to allow the Chrismans to blindly proceed with
21 inspections and bank appraisals of the entire lot knowing a significant land transfer was in the
22 works. If Boudreau and Palmer believed they had thoroughly explained their intentions to convey
23 away nearly one third of the lot at the May 11th meeting, something more than a color map would
24 have been provided.¹⁴

25 _____
26 ¹³ Herkenrath assisted with the scheduling of inspections and two bank appraisals on which both Union Bank and the
Claimants would rely. He also knew the Claimants were actively flushing out entries on the PTR. Claimants also
consulted land use expert Don Schmitz to evaluate entries in the PTR. (See, Exhs. 220, 221.)

27 ¹⁴ Several times in the testimony Boudreau, Herkenrath and Palmer implied that a thorough presentation was prepared
28 on Palmer's computer, but she could not get it to work. The *intent* to convey critical information is not a substitute for
actually providing the information. No follow-up meeting was immediately scheduled to make such a presentation,
nor was the information sent electronically to the Chrisman's any time after the meeting.

1 76. The Statute of Frauds, codified in Civil Code §1624(a) states that agreements
2 conveying interest in real property is not valid unless memorialized in writing and signed by the
3 parties. Similarly, Civil Code §1091 and §1971 specify that real property can be transferred only
4 by operation of law or an instrument in writing.

5 77. The arbitrator does not find that Boudreau, Palmer or Herkenrath advised the
6 Chrismans that the lower portion of the property would be transferred by the Trustees to Spectrum
7 at the May 11th meeting.¹⁵ The issue of the drainage basin was undoubtedly discussed, but other
8 than a single map showing a proposed location preferred by Mary Alisi, which included property
9 beyond that needed just for the drainage basin, there is insufficient corroborating evidence that
10 anyone disclosed that an agreement to purchase the “proposed pad” had been reached with
11 Trustees.¹⁶ The Chrismans had a right to rely on the absence of any such conveyance in the PTR.
12 As stated in the Chrismans’ closing brief, “as a matter of California law, the Grant of Rights did not
13 exist until May 24, 2021 when it was a fully executed, legally binding and enforceable agreement.”
14 (Cl. Closing Br., 14:11-13.)

15 78. On June 18, 2021, competing Notices to Perform are exchanged: Respondents file
16 Notice to Buyer to Perform No. 3 (waive contingencies, Exh. 251); Claimants send Notice to Seller to
17 Perform No 2 (mediate, deliver title in the condition called for in the RPA and escrow instructions,
18 Exh. 85.) Neither party complies. The property is scheduled to close on June 21, 2021. The Grant of
19 Rights remains as a recorded encumbrance on title. Respondents unilaterally send a Cancellation of
20 Contract, Release of Deposit and Cancellation of Escrow.¹⁷ (Exh. 252.)

21 _____
22 ¹⁵ Jennifer’s concerns about easements on the Property were legitimate given the early stages of the development. The
23 PTR and CCRs were the first thing Jennifer requested from Herkenrath. She followed up on an entry about an old
24 building permit, requested the plot map with easements from Old Republic, and researched details on the owners of
25 the 1986 easement, the Rogers/Albus couple, to assess their likelihood of exercising the option. The Chrismans’
26 obsessive attention to detail lends credibility to their testimony.

27 ¹⁶ In contrast, the testimony of Herkenrath, Boudreau and Palmer lacks any corroborating documentation other than a
28 single map. Given the numerous emails among the Seller, and those Herkenrath had with Jennifer, it seems unlikely
that a critical issue such as the Grant of Rights would be unintentionally overlooked. Broder, who was an integral
player in the negotiation of the Grant of Rights on behalf of the Trustees, claimed a complete inability to recall any
detail at the arbitration. The arbitrator finds Broder’s testimony to have been willfully evasive. Finally, the subsequent
conduct of the Trustees in the Exempt Seller Disclosure is consistent with an intent to knowingly deprive the
Chrismans of information critical to their purchase.

¹⁷ Respondents are not entitled to unilaterally cancel the RPA. *See Ninety-Nine Investments v. Overseas Courier Service*
(Singapore) Private (2003) 113 Cal.App.4th 1118, 1131-32 (holding that the defendant seller was not entitled to

1 **2. Consequences of the Grant of Rights**

2 79. The elements of a cause of action for breach of contract are (1) the existence of the
3 contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4)
4 the resulting damages to the plaintiff.

5 80. The Chrismans repeatedly stated throughout the arbitration that the RPA became
6 binding on May 7, 2021 and is an enforceable contract. The Trustees breached that contract on
7 May 26, 2021, by conveying nearly one-third of the Property to Spectrum through the recording of
8 the Grant of Rights.

9 81. The Trustees argued that the terms of the RPA provide remedies for issues
10 affecting title that may arise during the escrow period. Specifically, if the Chrismans objected to
11 the late recording of the Grant of Rights, then the RPA gave them two rights: (1) to close
12 notwithstanding the new encumbrance, or (2) to walk away from the deal.

13 82. At this juncture, the Chrismans are correct. They bargained for a 3.47- acre lot on
14 May 7, 2021, justifiably relying on the disclosures in the PTR. The bank agreed to provide funding
15 based on appraisals relying on the RPA and PTR. Two weeks before the Property was to close,
16 June 21, 2021, the Trustees disclosed that they had secretly been working on a sale of a portion of
17 the Property for \$100,000.¹⁸

18 83. Respondents takes the following position:

19 This [the RPA] includes that time is of the essence (¶29), that they have a deadline
20 to review all disclosures and approve them (¶¶14B(1)(i) and 14B(3)), that they can
21 cancel within 5 days of receipt of any disclosures (¶¶10(A)(7) and 14B(3)), that
22 they will deliver the purchase price by 45 days after Acceptance or June 21,
2021(Counter-Offer ¶1C), and that the seller can cancel the contract if the
Chrismans do not timely waive their contingencies. (Emphasis removed.)
(¶14D(1)). (Resp.Cl.Br. 13:20-25.)

23 In essence, the Respondents attempt to limit the Claimants’ remedies to either “(i) remove the
24 remaining contingencies, or (ii) or cancel the agreement based on a remaining contingency.”
25 (RPA, ¶14(4).)

26 84. The Grant of Rights is not merely a “remaining contingency” that preexisted the

27 _____
28 unilaterally cancel escrow when its own failure to comply with the underlying contract prevented the plaintiff buyer
from performing its obligations).

¹⁸ They received \$100,000 that they chose not to credit against the purchase price.

1 RPA and was unexpectedly discovered during the escrow process. The Trustees intentionally and
2 materially altered the title and control of the Property they represented to sell in the RPA. Their
3 conduct was an act of bad faith and material breach of contract.¹⁹ They failed to cure their breach
4 when requested to do so in the June 18, 2021 “Buyers Notice to Seller to perform No. 2, removal
5 of the contingency.” Had they done so, the Chrismans would have been required to close on June
6 21, 2021, or else they would have been in breach.

7 85. The Chrismans failure to remove all contingencies is excused due to the Trustees
8 bad faith and material breach of the RPA.

9 **3. The Conditional Quit Claim Deed**

10 86. Between June 21, 2021 and September 3, 2021, the parties engage in an
11 unsuccessful mediation (August 9, 2021), the Chrismans file the lawsuit (August 23, 2021) and the
12 *lis pendens* is recorded (August 27, 2021). During that period, no action is taken by the Trustees
13 and Spectrum with respect to the Grant of Rights.

14 87. On September 3, 2021, Spectrum signed a Quitclaim Deed of the Grant of Rights.
15 The Chrismans were notified of the signing (but not recording) via Boudreau and Spectrum’s
16 lawyer, Mr. Vanzura to Chrisman’s lawyers, on the same day. In the same letter, Vanzura advises
17 that the 1986 Option had been assigned to Charles Boudreau in 1989²⁰, and exercised by his son,
18 Brian Boudreau as Executor of his father’s estate as of the date of the letter.²¹ Prior to this time,
19 the Chrismans did not expect the 1986 Option to be in play.²²

20 88. Five days later, the Trust sent Supplemental Escrow instructions to Escrow
21 advising it to hold (i.e. not record) the Quitclaim until closing.

22

23

24 ¹⁹ See, CC §1102.1 under Article 1.5, DISCLOSURES UPON TRANSFER OF RESIDENTIAL PROPERTY: The
25 Legislature did not intend to affect the existing obligations of the parties to a real estate contract or their agents, to
disclose any fact materially affecting the value and desirability of the property, including but not limited to, the
physical conditions of the property and previously received report of physical inspections....”

26 ²⁰ This assignment was not in the PTR, probably because it did not bear an APN.

27 ²¹ The 1986 Option is particularly problematic for both Boudreau and the Chrismans. It improvidently cuts the fringes
of the property in a way that is inconvenient for both the dominant and servient tenement. Whether is accomplishes
anything for Boudreau and the development is questionable. If fully exercised, it intrudes on the use of the Property.

28 ²²It appears that the threat to exercise the 1986 Option, which all parties agree is an unsuitable location for the
drainage basin, was used as a weapon to motivate settlement.

1 89. On September 10, 2021, Old Republic issued and updated an amended PTR,
2 showing the lis pendens, the Grant of Rights, and the Exercise of the 1986 Option (to be discussed
3 below). Old Republic also issued a supplemental report stating that it will issues a policy that
4 does not include the Grant of Rights *after* closing.

5 90. The Trustees assert in their brief that the Grant of Rights was “rescinded” because
6 they were, “ready, willing and able to transfer title to the Chrismans on September 10, 2021
7 without any encumbrance at all resulting from the Grant of Right. The Chrismans chose not to
8 take title at all, but if they had closed escrow at that time, they would not have taken title subject to
9 an encumbrance from the Grant of Rights.” (Resp.Cl.Br. 15:12-15.)

10 91. The Chrismans asserted that Spectrum’s act of placing the Quitclaim Deed into
11 escrow but not to be recorded until immediately before the Trust Deed was recorded did not
12 effectively rescind the Grant of Rights for two reasons:

13 First, the Quitclaim Deed has not taken effect. But [second] more importantly, even if
14 it were to be recorded, it would not effectively rescind the rights of all beneficiaries to
15 the Grant of Rights. A quitclaim deed “only transfers whatever interest the grantor had
16 in the described property at the time the conveyance was made,” and it cannot rescind
17 rights that are acquired after the quitclaim deed is conveyed. *In re Marriage of Gioia*
18 (2004) 119 Cal.App.4th 272, 281. Therefore, through the quitclaim deed, Spectrum
19 could only quitclaim its present rights under the Grant of Rights, but it could not
20 quitclaim the rights of others. This is crucial because the Grant of Rights has a
21 provision which grants Spectrum, the Community’s Homeowners’ Association, and the
22 Community’s other property owners, the right to enforce all of its terms. (*See* Ex. 65
23 [the Quitclaim], § 7; *see also Id.* at §§ 1.2(c); 1.3(c).) In order for the Quitclaim Deed
24 to be effective, the Community’s HOA and the other owners would also need to
25 quitclaim their rights under the Grant of Rights. In addition, the Grant of Rights
26 includes contractual obligations that are beyond the scope of a traditional deed. [*See*
27 *e.g., Id.* at § 3.1.]

28 92. A Quitclaim transfers all the right, title and interest the grantor holds in the
property at the time of the transfer. There is no evidence that Spectrum conveyed any interest it
had in the Grant of Rights to any other person or entity between May 27, 2021 and September 3,
2021. Assuming Spectrum had not made any transfers within that period of time, a Quitclaim
recorded September 3, 2021, would have transferred all the interests in the Grant of Rights back to
the Trustees. But that is not what Spectrum did. Instead, it lodged the Quitclaim into escrow with
instructions that the Quitclaim it is not to be recorded until a moment before the Grant Deed is
recorded.

1 93. The Trustees chosen method of resolving the title issue created by the imprudent
2 recording of the Grant of Rights does not excuse their June 21, 2021 breach of contract. The
3 history of discord between the parties between June 21, 2021 and September 3, 2021 cannot be
4 ignored. It is the seller’s obligation to provide marketable title. By materially altering title during
5 escrow, Spectrum and the Trustees acted in bad faith.²³ Spectrum and the Trustees did not accept
6 that their conduct precipitated the confluence of events that subsequently took place, including a
7 lawsuit and a lis pendens. Had the Trustee’s “rescinded” the Grant of Rights (as their counsel
8 repeatedly suggests is the practical equivalent of what they did) then they should have recorded a
9 rescission, or at least recorded the Quitclaim, on September 3, 2021. By failing to do so, they
10 perpetuated legitimate uncertainty and distrust in the transaction.

11 **4. Failure to Disclose Assignment of the 1986 Option**

12 94. The 1986 Option was shown on the PTR. The 1989 Assignment of the Option to
13 Charles F. Boudreau was not.²⁴ On September 3, 2021, several months after the PTR, Brian
14 Boudreau acting as executor of his father’s estate, assigned the Option to himself and exercised the
15 1986 Option.

16 95. The Chrismans claim that the failure of the Trustees to disclose the fact that the
17 1986 Option was assigned and/or under the control of Boudreau is a breach of the RPA. Further,
18 because Boudreau has now exercised this Option, they contend that they will no longer have
19 access to the Property’s sole driveway. As such, the Trustees can no longer convey the Property
20 to the Chrismans in the condition specified in the RPA, so they are in breach. The Chrismans
21 demand that the Boudreau’s *exercise* of the Option be rescinded. (Cl. Closing Br. 15:1-15.)

22 96. It is undisputed that the PTR put the Chrismans on actual notice of the 1986
23 Easement. The 1986 Easement and Option was an encumbrance of record for 35 years, disclosed
24 to the Chrismans a day before the “date of Acceptance” of the Contract. Pursuant to the express

25
26 ²³ It is important to note that the Trustee failed to disclose the intention to record a Grant of Rights in their initial
disclosure statement, to be discussed in section VI.A.(5,) below.

27 ²⁴ It is questionable whether the 1989 Assignment of the Option, although recorded, ever made it into the chain of
28 title. Michelle Lefebvre suggests it did not show up in the chain because it is missing an APN.

1 language of RPA ¶13B, the Chrismans agreed to take title subject to it, and all the property rights
2 that derive from it, past, present and future. (*Stevenson v. Baum* (1989) 65 Cal.App.4th 159, 166 (a
3 buyer takes title subject to encumbrances of record and is deemed to have notice that those
4 encumbrances might be exercised.)) (Resp. Cl. Br. 18:6-11.)

5 97. The Trustees argue that the Chrismans are bound by the knowledge they had of the
6 1986 Option and the possibility that it could be exercised by the original grantees, or their
7 assignee, at any time through the year 2036. An option is an “irrevocable offer” to sell (*C. Robert*
8 *Nattress & Assoc. v. Cidco* (1986)184 Cal.App.3d 55,66) and the Chrismans agreed to take title
9 subject to that irrevocable offer. (Resp. Cl. Br. 17:17-21.) The Chrismans took the chance that an
10 assignment or exercise of the Option could happen during escrow, or long after they took
11 possession of the property according to the Trustees.

12 98. The Trustees are correct for several reasons:

- 13 a. The Chrismans have not proven that the Trustees were aware of the 1989
14 Assignment of the Option to Boudreau’s father such that their duty to disclose was
15 triggered;
- 16 b. The Chrismans were on actual notice of the Option at the time they entered into the
17 RPA, and further, that it could be exercised at anytime until its expiration in 2036;
- 18 c. The Chrismans took a “calculated risk”²⁵ in contracting to purchase the Property
19 knowing it was encumbered by the Option hoping it would not be exercised after
20 learning that the holders of the Option were older and not living in the development;
- 21 d. The Chrismans have not proven that the Trustees cannot convey marketable title
22 because the driveway may need to be relocated;
- 23 e. Rescission of the Exercise of the Option at this juncture would be a futile act
24 because it could be exercised at any time in the future.

25
26 _____
27 ²⁵ “The Chrismans both admitted under oath that they had reviewed the 1986 Option and knew that it was assignable
28 (Arbitration Transcript (“Tr.”) 2/22 at 9: 7-23) but did not inquire into whether it had been assigned. Mr. Chrisman
testified that they took a ‘calculated risk’ that it would not be exercised. (Tr. 3/9 at 147:2-11).” (Resp.Cl.Br.,
18:16019.)

1 **5. Negligent Representation**

2 99. The elements of negligent misrepresentation are (1) the misrepresentation of past or
3 existing material fact, (2) without reasonable grounds for believing it to be true, (3) with the intent
4 to induce another’s reliance on the fact misrepresented, (4) justifiable reliance on the
5 misrepresentation, and (5) resulting damage.

6 100. The Chrisman’s allege the Trustees, through Herkenrath, made misrepresentations
7 on the RPA by stating that the property consisted of 3.47 acres, and continued to perpetuate that
8 misrepresentation in their Exempt Seller Disclosure up until the recording of the Grant of Rights.
9 (Claim.Cl.Br. 24:10-17.)

10 101. It is uncontroverted that the RPA represented that the Property included 3.47 Acres.
11 As stated above, it is clear that the conveyance of some portion of the property for a drainage
12 basin was known to the Respondents and their agents as early as May 6, 2021, when Herkenrath
13 showed the property. The Chrismans have proven that Herkenrath did not disclose the anticipated
14 conveyance. They have also proven that whatever was discussed at the May 11, 2021 meeting, it
15 was not disclosed that a conveyance of nearly one-third of the property was a *fait accompli*.

16 102. The most blatant misrepresentation falls squarely on the feet of the Trustees false
17 disclosure in the Exempt Seller Disclosure, item 4i. (Exh. 217, 4i: “Matters affecting title of the
18 Property.”)

19 RPA ¶13B and C state:

20 B. Title is taken in its present condition subject to all encumbrances, easements,
21 covenants, conditions, restrictions, right and other matters, whether of record or
22 not, as of the date of acceptance....

21 C. Within the time specified in paragraph 14A [7days from May 7, 2021], Seller
22 has a duty to disclose to Buyer all matters known to Seller affecting title, ***whether
of record or not.*** (Exh. 207-5.) (Emphasis added.)

23 103. CC 1102.7 mandates: “Each disclosure required by this article and each act which
24 may be performed in making the disclosure, shall be made in good faith. For the purposes of this
25 article, ‘good faith’ means honesty in fact in the conduct of the transaction.”

26 104. The Trustees knew the Trust was to receive \$100,000 to sell the rights to the lower
27 portion of the Property to Spectrum, a stranger to the RPA, prior to the first showing to the
28 Chrismans. In the Exempt Seller Disclosure dated May 13, 2021, the Trustees denied knowledge

1 of any matter affecting title, yet they both testified that they knew a formal agreement with
2 Spectrum had been reached and was in the final drafting stage with the intent to record. The
3 Trustees representation in the Exempt Seller Disclosure was not in good faith.

4 105. By hiding the drafting of the Grant of Rights from the Chrismans, they perpetuated
5 the misrepresentation. The Chrismans were justified in relying on the representations in the RPA
6 and in the Sellers Exempt Disclosure irrespective of what Boudreau and Palmer may have said at
7 the May 11, 2021 meeting. First, the duty to disclose belongs to the Trustees, not third parties such
8 as Boudreau or Spectrum. Second, the Trustees were represented by a qualified real estate agent.
9 Third, Herkenrath allowed the Chrismans to engage inspectors and appraisers to act in furtherance
10 of their contractual obligations as buyers knowing that they were relying on false information.

11 106. Perhaps more significantly, the Trustees breached their contractual duty to disclose
12 the as-yet-unrecorded Grant of Rights in their Disclosure. The Trustees disclosure statement was
13 false, and is further evidence of their breach of the RPA.

14 **B. The Trustees Counter Claims/Defenses**

15 **1. Breach of Contract**

16 107. The Trustees claim that they performed all their obligation under the RPA, but the
17 Chrismans did not. “They [the Chrismans] chose not to remove all contingencies, not to close
18 escrow in the time allowed by the RPA, and not to take the Property with title in its condition as of
19 the date of Acceptance. Thus, on or about September 15, 2021, as the Chrismans had not
20 performed under the RPA...the Trust sent escrow and the Chrismans a final Cancellation of
21 Contract.” (Resp.Cl.Br. 30:30-31:4.) As a result, the Trustees claim that they are entitled to
22 their carrying costs, interest it would have earned on the successful sale of the property and
23 compensatory damages.

24 108. The Trustees’ Counter-Claim fails for several reasons. First, they claim that the
25 Chrismans chose not to remove all contingencies in the time allowed by the RPA. The Trustees
26 assert throughout their brief that June 21, 2021 was the official closing date per the RPA. (See,
27 Resp.Cl.Br. 8:10; 8:28; 9:17-18; 13:23; 14:22-23; 19:13-14; 19:17-20:123:26-27.) Had the
28 Chrismans waived all contingencies on that date, they would have purchased the Property with the

1 Grant of Rights on record. As previously discussed, the Chrismans are excused from waiving
2 contingencies and closing on June 21, 2021, because of the Trustees’ material breach. Second,
3 although the Trustees sent a cancellation of the Contract on September 15, 2021 (Exh. 273) there
4 is no factual or legal basis to assume that September 15th is somehow a new “official closing date”
5 by which the Chrismans must accept.

6 109. The Trustees did not sign the Quitclaim deed until September 3, 2021, and did not
7 provide the escrow instruction re: holding and recording the Quitclaim until September 8, 2021.
8 All this occurred after a mediation and meeting with parties and counsel in August 2021, and after
9 the Chrismans filed suit on August 23, 2021.²⁶

10 110. The Trustees have not proven that the Chrismans have breached the RPA.

11 2. Defense Standing

12 111. On June 21, 2021, the Chrismans signed an Amendment to Escrow Instruction that
13 the title to the property was to vest with “Cary Lee Chrisman and Jennifer Lynn Chrisman,
14 Trustees of the The Carey and Jennifer Chrisman 2015 Family Trust.” (See, Exh. 253.) As a result,
15 the Trustees conclude that the Chrismans, as individuals, have no interest in the property and
16 therefore have no standing to sue for Specific Performance. (Resp.Cl.Br. 13:7-17.)

17 112. The Chrismans correctly explain that the Amendment to Escrow filed on June 21,
18 2021 are vesting instructions only, not an assignment. “Its simply provides that the Chrisman
19 Trust would hold legal title to the Property after it was conveyed by Respondents which never
20 happened.” (Claim.Cl.Br. 9:24-25.)

21 3. Defense: Not Ready, Willing and Able Buyers

22 113. The Trustees claim that the Chrismans were not ready, willing and able buyers²⁷ by

23 ²⁶ Trustees claim that on September 13, 2021, the Chrismans added unreasonable demands in order to close, including
24 rescission of the 1986 Option, rescission of the 2021 Exercise of the Option, and rescission of the Grant of Rights signed
25 by six categories of persons or entities. (Exh. 271.) These are inadmissible settlement discussions.

26 ²⁷ “[A] purchaser is ... ‘able’ when he has the legal capacity and the financial ability to purchase the property.
27 ‘Financial ability’ means that he has sufficient resources available to him to consummate the transaction when the
28 time comes for him to do so. Although the purchaser is not required to have the ready cash at the time he makes his
offer, he must have sufficient property, credit or other assets at that time which will reasonably enable him to obtain
the requisite funds at the prescribed time.” *Steve Schmidt & Co. v. Berry* (1986) 183 Cal.App.3d 1299, 1307 (1 Miller
& Starr, Current Law of Cal. Real Estate (1975) § 2:18, p. 202, fns. omitted; *Laack v. Dimmick* (1928) 95 Cal.App.
456, 470, 273 P. 50.)

1 June 21, 2021, the extended closing deadline. This defense has several problems:

2 a. Respondent deems June 21, 2021 as the closing date based on their June 18, 2021
3 Notice to perform (waive contingencies, Exh.251). However, Claimants also sent a
4 June 18, 2021 Notice to Perform to Seller No. 2 (demand mediation, deliver title as
5 recited in RPA, Exh. 85). Neither party complied with the other’s Notice to Perform.

6 b. Union Bank was ready to fund as soon as the parties signed off on the escrow
7 documents.^{28,29} Had the Trustees complied with the Chrisman’s June 18, 2021 Notice
8 to Perform by delivering title “in the condition called for in the RPA,” accompanied by
9 a compliant PTR removing the Grant of Rights, this transaction would have timely
10 closed.

11 114. The Trustees further claim the Chrismans were not ready, willing and able buyers
12 on September 28, 2021, the date the Chrismans sent the last Notice to Seller to Perform No. 4
13 (Exh.279). On September 27, 2021, Chrisman’s counsel, Martin Rudoy, sent a letter to Old
14 Republic demanding that 10 entries on the PTR “that guarantees merchantable title and marketable
15 title without exception and which is not illusory.” (Exh. 277-2.) On September 29, 2021, Old
16 Republic withdrew its offer to insure the Property, which the Trustees blame on Rudoy’s letter. In
17 the absence of title insurance, the Chrismans would not have been able to obtain funding.³⁰ The
18 Trustees conclude, “The Chrismans presented no evidence that they have obtained substitute title
19 insurance.” (Resp.Cl.Br. 24:9-10.) In response, the Chrismans correctly assert that the RPA
20 assigns the responsibility to the Seller to obtain title insurance. (RPA ¶9(C)(2), ¶13(E).)

21 115. Old Republic’s decision to withdraw title insurance cannot be attributed
22 exclusively to Rudoy’s September 27th letter. Although temporally related, the conduct of the
23

24 _____
25 ²⁸ (See, Exh. 254, 6/23/21 Union Bank email to escrow: “Please proceed with scheduling the signing.... To be ready
to fund tomorrow...please coordinate a notary for this evening....)

26 ²⁹ On June 7, 2021, Union Bank told the Chrismans that they were conditionally approved, but needed to submit a
lease for the home they were currently residing in, but not selling. (Exh. 245.) On June 14, 2021, the Chrismans
submitted a lease entered into with a friend, accompanied by a check for the security deposit. (Exhs. 82-84.) The
27 Trustees claim this was a sham transaction to satisfy the lender.

28 ³⁰ The Claimants would not have been able to obtain financing either, for that matter, based on the consequences of
the Grant of Rights on title. All bank appraisals were completed before the Grant of Rights was recorded.

1 Trustees intentionally and materially interfering with title cannot be ignored.

2 **VI. REMEDIES**

3 **A. Breach of Contract/Specific Performance**

4 116. The Chrismans seek Specific Performance of the RPA. “Specific performance of a
5 contract can be decreed whenever: (1) the terms are sufficiently definite; (2) consideration is
6 adequate; (3) there is substantial similarity of the requested performance to the contractual terms;
7 (4) there is mutuality of remedies; and (5) plaintiff’s legal remedy is inadequate.” *Blackburn v.*
8 *Charnley* (2004) 117 Cal.App.4th 758, 766.

9 a. Terms and Consideration: Neither Party has disputed that the RPA’s terms are
10 definite or that the consideration for the Property is adequate.

11 b. Adequacy of Consideration: There is no dispute that the purchase price agreed
12 upon in the RPA was mutually agreed upon and supported by the bank appraisals. (See,
13 Exhs.223, 228.) The Chrismans deposited the request funds into escrow and were
14 prepared to fund the balance through a mortgage with Union Bank.

15 c. Mutuality of Remedy: Specific performance requires mutuality of remedy. See Civ.
16 Code, § 3386. Here, mutuality of remedy cannot be disputed, nor has it been disputed
17 at any point.

18 d. Inadequacy of Legal Remedy: Under California law, the legal remedy for the
19 breach of an agreement to transfer a single-family dwelling is conclusively presumed to
20 be inadequate in cases where the party seeking specific performance intends to occupy
21 the dwelling. Civ. Code, § 3387. Monetary damages are an inadequate substitute for
22 this unique property intended to be lived in by the Chrisman family.

23 117. Given the totality of the circumstances of this transaction, and for the reasons stated
24 above, the Chrismans are entitled to Specific Performance of the RPA. In the Chrismans’
25 Complaint, Prayer for Relief, they ask for: “An order compelling Defendant to fully perform the
26 agreement, rescind the Grant of Rights to Spectrum, clear the cloud on the Property’s title, and
27 covey the Property in the condition called for in the RPA and Escrow instruction,” and “For such
28 other and further relief as may be just and proper.” (Complaint, ¶¶135,136.)

1 118. In their closing briefs, the Chrismans did not explain how Specific Performance can
2 be awarded within this arbitration, nor did they discuss how the arbitrator is to evaluate the
3 opinions of the land use and valuation experts³¹ in terms of a monetary award based on costs
4 previously incurred and reasonably certain to be incurred in the future.

5 119. In fact, it is not possible to implement the remedy of Specific Performance, as
6 requested by the Chrismans, in this arbitration, for several reasons:

7 a. *The Chrismans request rescission of the Grant of Rights.* Rescission requires the consent
8 of all parties. (Civil Code §1689(a).) Spectrum is not a party to this arbitration. This
9 arbitrator cannot award rescission of the Grant of Rights.

10 b. *The Chrismans request to clear the cloud on the Property's title.* This arbitration does
11 not include all parties necessary to clear the cloud on title. Such matters are to be resolved
12 in the Superior Court action for Quiet Title, and Slander of Title.³²

13 c. *Additionally, the Chrismans request economic damages caused by the Trustees breach.*
14 During the hearing, witnesses were called to assess the value of Chrismans' additional
15 economic damage given certain assumptions, all of which are either uncertain or
16 speculative at this juncture. For example:

17 (1.) *Economic loss due to unfavorable changes in interest rates since the date of the*
18 *closing of the RPA.*³³ If/when a purchase of the Property occurs in the future, the
19 Chrismans will be entitled to compensation for unfavorable changes in the interest
20 rate. Interest rates are constantly changing, and it is impossible to predict future
21

22 ³¹ See, Testimony of Karl Shultze, 3/3/23 and Exhs. 155 (CV) and 124 (Report).

23 ³² Because the arbitrator cannot issue a final award for Specific Performance, given the status of the case, the
24 Claimants have technically failed to prove their case. However, the Chrismans opposed the Trustees request to
25 arbitrate and unsuccessfully moved the court to include all parties in the same action. As such, the Chrismans cannot
26 be punished for the consequences of circumstances beyond their control.

27 ³³ Respondents object to an award for an increased loan interest rate for two reasons: (1) the delay was caused by the
28 Claimants own actions; and (2) Claimants waived the loan contingency. The delay was not caused by the Claimants'
own actions, as discussed above. Claimants' waiver of the loan contingency arguably was made when they were
certain the loan would be funded. Whether waiver of the loan contingency is applicable under the facts here is
questionable. This issue may be reserved for a more thorough discussion of damages after the Court makes other
findings.

1 economic conditions. Monetary loss due to changes in the interest rates are
2 speculative until Specific Performance can be awarded.

3 (2.) *Diminution of value of the property if the Grant of Rights is not rescinded.* It is
4 unclear what will happen with the Grant of Rights, or if the Chrismans are even
5 interested in purchasing the property if the Grant of Rights is not rescinded.
6 Further, if the Chrismans do not choose to purchase the property at the conclusion
7 of this case, this issue is likely moot.

8 (3.) *Costs to make physical changes to the property.* If (or how) the Grant of Rights
9 or 1986 Option is exercised may require a relocation of the driveway or other
10 modifications to the property. If the Grant of Rights survives a future Quiet
11 Title action, will the 1986 Option be exercised? If the Grant of Rights is
12 rescinded, will other avenues be explored to place the debris basin in a
13 topographically practical location?³⁴ Will the 1986 Option survive Quiet Title?
14 These variables are fact-specific and dependent upon Court findings.

15 120. Respondents have reserved the right, in the event Specific Performance is ordered,
16 to seek compensation for interest on the purchase money the trust would have received had the
17 contract been performed.³⁵

18 **B. Negligent Representation/Damages**

19 121. Claimants are entitled to damages related to the Respondents' negligent
20 misrepresentations. Claimant requests economic damages of \$1,671,268, plus prejudgment interest
21 for the Respondents negligent misrepresentations, as discussed above. However, the damages
22 requested are duplicative of the Breach of Contract damages. Unfortunately, neither Claimants
23 Closing Brief nor closing arguments explained how the arbitrator is to allocate between the two
24

25 ³⁴ Although not at issue in this arbitration, it is undisputed that the portion of the Grant of Rights designated only for
26 the debris basin is the best spot for it given the topography of the area. It is in everyone's best interest to locate the
debris basin consistent with the topography of the area.

27 ³⁵ Relying on *BD Inns v. Pooley* (1990)218 Cal.App.3d 289, Respondent correctly concludes that in a Specific
28 Performance action, the court relates performance back to the date the contract should have been performed and the
seller is entitled to an offset for the interest on the money which would have been received had the contract been
performed. "The process is more like an accounting between the parties than an assessment of damages." (*Id.*, at
298.)

1 causes of action. The amount of those damages are inextricably related to a damages award for
2 Breach of Contract, which are unascertainable at this juncture of the litigation.

3 122. Fees and Costs Paragraph 25 of the RPA states, “In any action, proceeding, or
4 arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller
5 shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller,
6 except as provided in paragraph 22A.” Paragraph 22A of the RPA requires that any dispute or
7 claim arising from the RPA be first submitted to mediation. It is undisputed that the Claimants
8 demanded mediation as early as May 31, 2021. (See, Exh. 234.) The Respondents and the
9 Claimants unsuccessfully mediated the disputes on August 9, 2021.

10 123. The Claimants prevailed on the majority of their claims, including their core claim for
11 Breach of Contract. Respondent did not prevail on any of its counterclaims or affirmative defenses.
12 Claimants are therefore the prevailing party in this arbitration and are entitled to an award of fees and
13 costs, according to proof and a subsequent hearing.

14 VII. AWARD

15 The parties having been ordered to arbitration by the Court, these issues have been
16 submitted to the arbitrator for resolution. Having fully considered all evidence, legal authority and
17 arguments presented by the parties, the arbitrator orders as follows:

18 A. On Claims and Counter-Claims

19 124. *Breach of Contract:* The arbitrator finds in favor of the Claimant and against the
20 Respondent on the First Cause of Action for Breach of Contract based on the filing of the Grant of
21 Rights. The arbitrator finds that the Claimants have not proven that the Respondents breached the
22 contract by the Exercise of the 1986 Option. The Claimants are entitle to monetary damages
23 incurred in the past and reasonably certain to be incurred in the future.

24 125. *Specific Performance:* The Arbitrator finds the Claimants to be legally and
25 factually entitled to a finding in their favor as to the Second Cause of Action for Specific
26 Performance, but implementation is dependent on findings made by the Superior Court in the
27 Quiet Title action. Both Claimant and Respondent reserve their rights to pursue monetary
28 damages related to implementation of Specific Performance.

1 126. *Negligent Misrepresentation*: The Arbitrator finds in favor of the Claimant and
2 against the Respondent on the Third Cause of Action for Negligent Misrepresentations made in
3 the RPA by the filing of the Grant of Rights. The arbitrator does not find in favor of the Claimants
4 as to the exercise of the 1986 Option.

5 127. *Attorneys' Fees*: The Arbitrator finds the Claimants are entitled to attorney's fees
6 incurred in this arbitration, pursuant to the contract, according to proof. (RPA ¶25.)³⁶

7 **B. Attorney Fees and Costs**

8 128. Claimants are entitled to reasonable fees and costs as provided in the RPA.

9 129. The Claimants move for an award of attorney fees of \$1,053,037.80, including
10 billings by co-counsel, Rudoy, and costs of \$175,444.63.

11 130. Respondents contend that if an award is made, it should be for no more than
12 \$280,000 in fees and \$4,183 in costs.

13 131. Claimants sued in Superior Court against Respondents and other non-parties to the
14 RPA. Respondents successfully moved to compel arbitration against Claimants' opposition.
15 Claimants unsuccessfully sought to join the third parties to this arbitration. They prevailed in this
16 arbitration but could only achieve a sliver of the full relief they claimed.

17 132. The arbitration solely between parties to the RPA showed that Claimants' concerns
18 in opposing arbitration were well-founded. The interests of the third parties are far more
19 significant than the relief which could be awarded in this forum. An award of Specific
20 Performance or monetary damages were unavailable in this arbitration for the reasons stated
21 above.

22 133. Nevertheless, Claimants were forced to proceed in a piecemeal fashion, and the
23 limitations of their remedies in this forum does not reflect a lack of success. Their success entitled
24 them to reasonable fees and allowable costs. It does not entitle them to all the fees and costs
25 claimed.

26 134. The RPA, paragraph 22.B. states in part: "The parties shall have the right to
27

28 ³⁶ Claimants have requested attorneys' fees for the Quiet Title action. If they are the prevailing party in that action, they will be entitled to attorneys' fees pursuant to Civ.Code §880.360, to be awarded by the Court.

1 discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the
2 arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure.”

3 135. The September 14, 2022, Arbitration Management Conference Order issued by this
4 arbitrator, after conference with counsel, specifies: “The Rules applicable to this proceeding are
5 contemplated in the CCP.”

6 136. Claimants appear to contend in their reply that because the RPA states a prevailing
7 party is entitled to costs, that they may claim any cost incurred in this proceeding. The Arbitrator
8 does not accept this contention, which is not developed by any reference to legal authority. As in
9 most litigation, and pursuant to the Order for this arbitration, Claimants are entitled to reasonable
10 costs as allowed by CCP §1033.5.

11 137. In the absence of any legal basis pursuant to CCP §1033.5, the following costs are
12 ordered stricken:

- 13 a. *Expert fees and costs in the sum of \$67,796.* There is no legal basis to recover
14 this sum absent a rejected CCP §998 demand. CCP 1033.5(b)(1) expressly
15 prohibits costs for experts not ordered by the court.
- 16 b. *Arbitrator fees of \$48,250.* The parties agreed in the RPA to split the cost of
17 Arbitration.
- 18 c. *Deposition transcript and video costs of \$24,338.92.* The RPA expressly
19 invokes CCP ¶1283.05 as a basis for discovery. 1283.05(e) states "Depositions
20 for discovery shall not be taken unless leave to do so is first granted by the
21 arbitrator or arbitrators." No such leave was sought or granted. Claimants must
22 bear their own costs for the depositions conducted without leave.

23 138. Costs in the sum of \$10,369.31 are awarded.

24 139. "Under the lodestar adjustment methodology, the trial court must initially
25 determine the actual time expended and then “ascertain whether under all the circumstances of the
26 case the amount of actual time expended, and the monetary charge being made for the time
27 expended are reasonable.” (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99,
28 104.) Factors to be considered include, but are not limited to, the complexity of the case and

1 procedural demands, the attorney skill exhibited, and the results achieved. (Ibid.) The prevailing
2 party and fee applicant bears “the burden of showing that the fees incurred were ... ‘reasonably
3 necessary to the conduct of the litigation,’ and were ‘reasonable in amount.’” (*Levy v. Toyota*
4 *Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807) *Mikhaeilpoor v. BMW of North America, LLC*
5 (2020) 48 Cal.App.5th 240, 247

6 140. Claimants’ counsel prepared a detailed presentation of fees, but it is nearly
7 impossible to structure a straightforward lodestar calculation. There are many attorneys on this
8 case charged at multiple rates over the course of litigation. In addition, two paralegals and an
9 assistant paralegal billed on this case without providing a breakdown of who did what at which
10 rate. Mr. Gregory provided a \$143,285.50 discount, which the arbitrator will accept as true in the
11 absence of evidence to the contrary.

12 141. Claimants made some significant concessions which are not reflected in the
13 numbers provided in the reply. Claimants initial request for attorney fees is reduced to
14 \$999,171.80, based on Claimants agreement to deduct the following:

- 15 a. \$37,000 for fees and costs related to Spectrum's County Approval Hearings.
- 16 b. \$3,200 for duplication error in Mr. Rudoy's billing.
- 17 c. \$11,525.50 for researching and preparing materials for injunctive relief which
18 were not filed.
- 19 d. \$2,140 for unfiled supplemental complaint.

20 142. The arbitrator accepts the stated attorney rates as reasonable in the legal
21 community. The Arbitrator assumes the base figure of \$999,171.80 (after discounts and
22 concessions) represents the hours expended by each member of the legal team multiplied by the
23 applicable rate at the time services were rendered.

24 143. In considering the amount of reasonable attorney fees, the following factors are to
25 be considered: complexity of the case, attorney skill, results achieved, and excess billing.

26 144. Stripped down to the basic issue, this arbitration was unusual, but not overly
27 complex. Concern about available remedies was identified prior to the commencement of the
28 hearing and proved to be the most difficult issue to untangle from other immaterial factors

1 raised.³⁷ Regardless, the Claimants reach as good a result as possible given the limitations.

2 145. It is questionable that the services of at five attorneys and three paralegals were
3 necessary. Some of the discovery efforts were focused on the future litigation of the underlying
4 case. Neither side sought to have the deposition approved by the Arbitrator to receive
5 compensation for that time, perhaps because of the blurred line between the arbitration and the
6 underlying litigation. For these reasons a discount to the lodestar is appropriate.

7 146. After balancing the above factors and starting with a base figure of \$999,171.80,
8 the Arbitrator adjusts the figure downward by 30% to account for the lack of legal complexity, the
9 ordinary skill involved, and excessive billings consisting of over-staffing and billings directed
10 towards the underlying litigation.

11 147. The Claimants are awarded \$699,420.26 as reasonable and necessary attorney fees
12 incurred in this arbitration.

13 **C. On Other Matters**

14 This Partial Final Award resolves the liability portion of the Breach of Contract and
15 Negligent Misrepresentation causes of action in the underlying Complaint. The remaining issues
16 of remedies and damages related to these claims, along with the other non-arbitrable claims, are to
17 be decided in the Superior Court proceedings. The attorney fees and costs awarded herein are
18 applicable to the arbitration only.

19

20 DATED: November 28, 2023

21

22

By:



23 Hon. Lisa Hart Cole (Ret.), Arbitrator

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27 ³⁷ Respondents MIL #1 precluded a ruling on the exercise and validity of the 1986 Option. Yet, significant time was
28 spent on the consequences of exercising that option on the Property, including two experts who offered little, if any,
relevant information.