

# Jeff O'Neil Residence 2551 Wallace Avenue

Presented by:  
Susan F. Petrovich

 Brownstein Hyatt  
Farber Schreck

# PURPOSE OF THIS HEARING

- Staff refused to deem complete Jeff O'Neil's application to reconstruct his home. He appealed. The Permit Streamlining Act clock ran out. Jeff O'Neil applied to replace the dilapidated house (circa 1890) on his property.
- Staff refused to process his application because of the REC zoning, contending that private residences aren't an allowable use in this zone district.
- Staff instructed Jeff to apply for a rezone, LCP amendment, and variance (setbacks), then a later CDP.

# FOUR ISSUES RAISED IN STAFF REPORT

- Lack of legal access to the house site
- Lack of public services, specifically, sewer
- Geologic constraints
- Inconsistency with County policies – sewer and visual resources

# LACK OF SEWER ACCESS

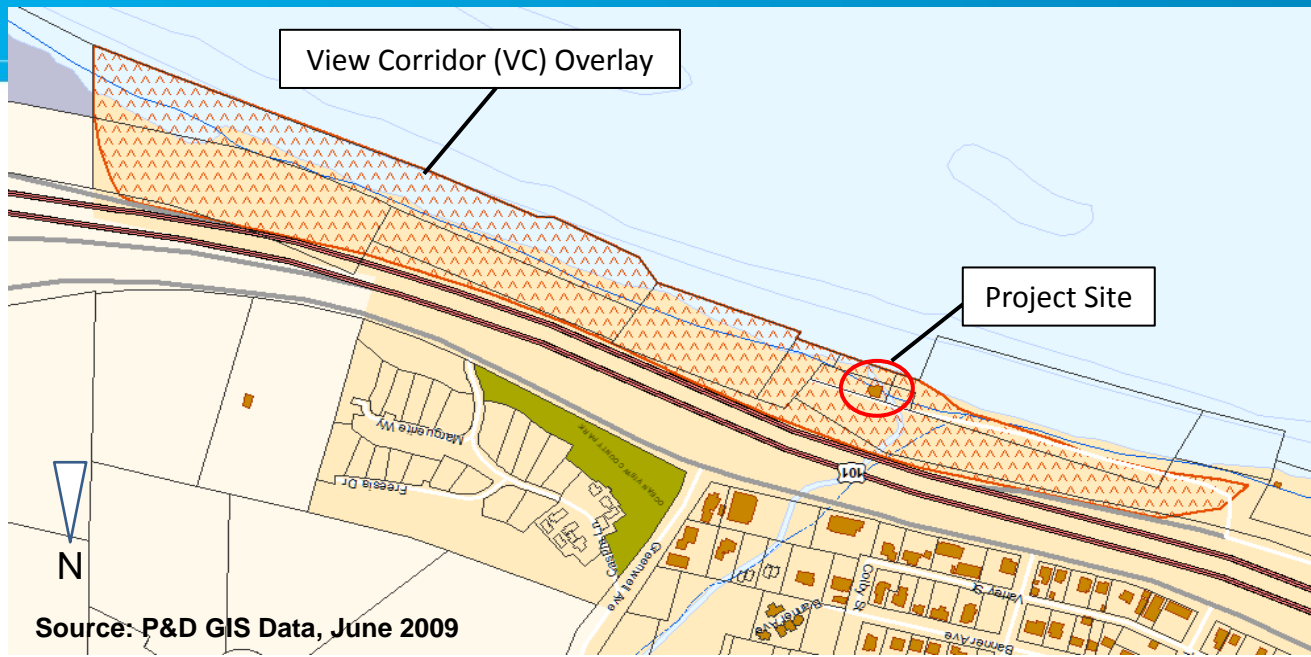
- The “Can and Will Serve” letter from Summerland Sanitary District demonstrates the sewer service availability.
- The only issue regarding public service appears to be access and this issue is a fiction – it has no evidentiary basis other than a 2005 memorandum written by an employee of the County Surveyor’s Department, based upon an incomplete review of Ord. 247.

# GEOLOGIC CONSTRAINTS

- No substantial evidence in the record to support a summary denial on these grounds.
- Applicant has spent tens of thousands of dollars on successive geologic reports, none of which support the finding urged by staff.
- Latest peer review raised issues that could have been resolved by the peer reviewer calling the engineer or the geologist.
- The current reports from the engineer and geologist respond entirely to the peer reviewer's concerns.
- There is no geological constraint justifying denial.

# VIEW CORRIDOR OVERLAY

- Purpose of VC Overlay “is to protect significant coastal view corridors from U.S. 101 to the ocean in areas where such view corridors currently exist.” (CZO §35-96.1)
- Views from U.S. 101 to the ocean near Project Site have been obstructed by a house since approximately 1890.
- A stand of mature eucalyptus trees has also obstructed views through and around the Project Site for several decades.
- No policy basis for denying the project.



# Field Verified Correction to Staff Report Attachment H

Approx. height to ridge of 1890 residence (18')

Approx. 15' residence height

Staff Approximate 15 foot residence height

Staff Approximate edge of property

Applicant measurements taken from project plans and field verified using windows as reference point. Per project plans, bottom of windows are 13'6" high and windows are 4' high (17'6" total to top of windows).



# LEGAL ACCESS

- Series of slides will show an unpaved road running along the frontage of the O'Neil property.
- Call it Unnamed Access or Wallace Avenue, it has provided access to this house for over 120 years, and it's still there today.
- By denying Jeff O'Neil's right of access, the County is denying him the right to due process and equal protection of the laws of this State.
- He already has been denied the right to have a proper home on his property for 8 years.

# U.S. CONSTITUTION AMENDMENT XIV

“ . . . nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”

# CASE LAW

- **Breidert v. So.Pac. Co.** (1964) 61 Cal.2d 659 (Calif. Supreme Ct.) -- Closing crossing over railroad tracks constituted a taking. landowner whose property abuts a public roadway has a private property right to access the public roadway.

Statute of limitation defense – damage was not sustained until the grade actually changed, not when the ordinance fixing the grade was adopted. Until the physical condition of the street changed, there was no actual damage, so no statute of limitation began running.

- **People v. City of Los Angeles** (1923) 62 Cal.App. 781 – City may not “barter away streets and alleys.”

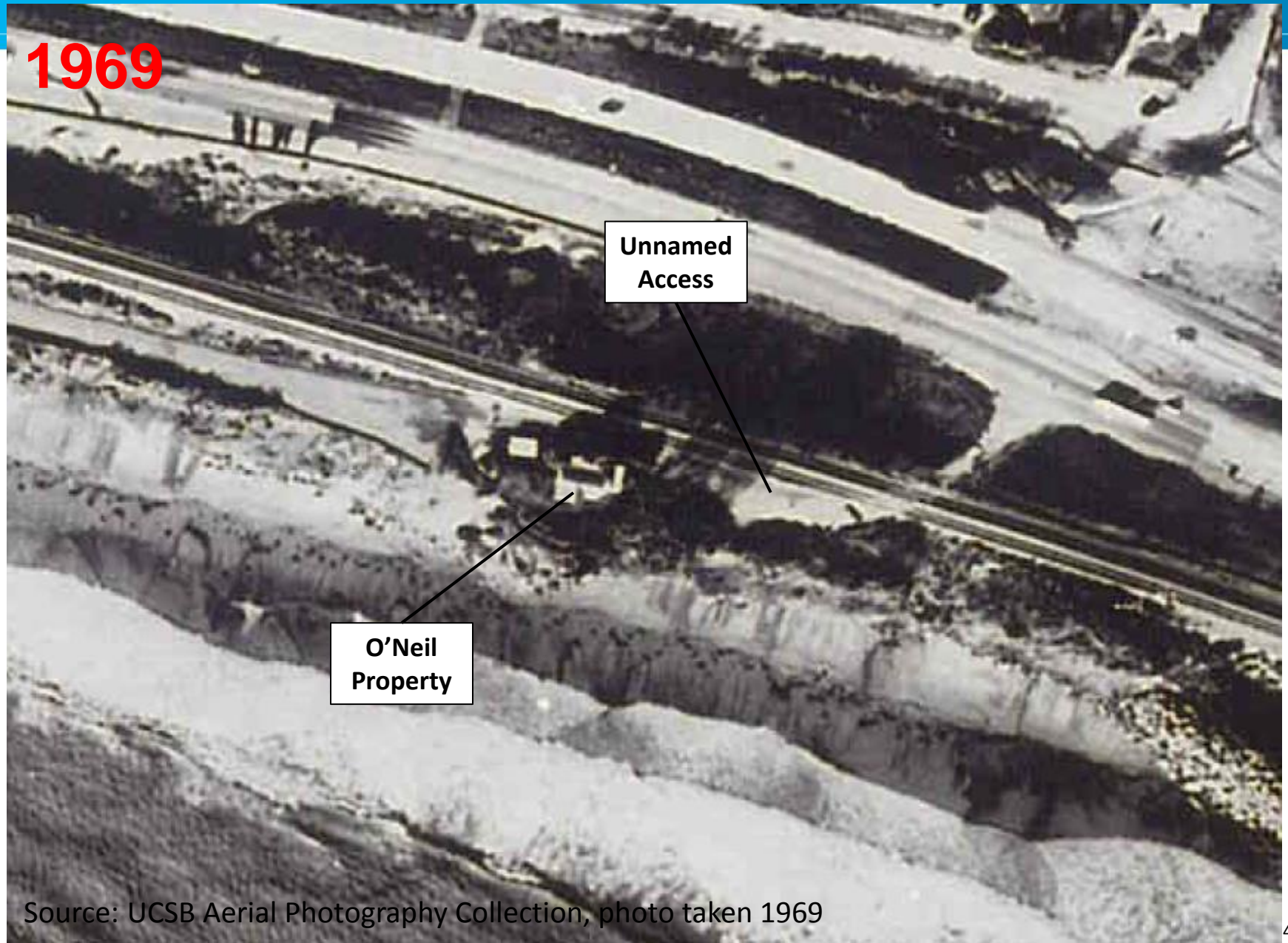


1947



Source: UCSB Aerial Photography Collection, photo taken 1947

**1969**



**O'Neil  
Property**

**Unnamed  
Access**

Source: UCSB Aerial Photography Collection, photo taken 1969

1972



O'Neil  
Property

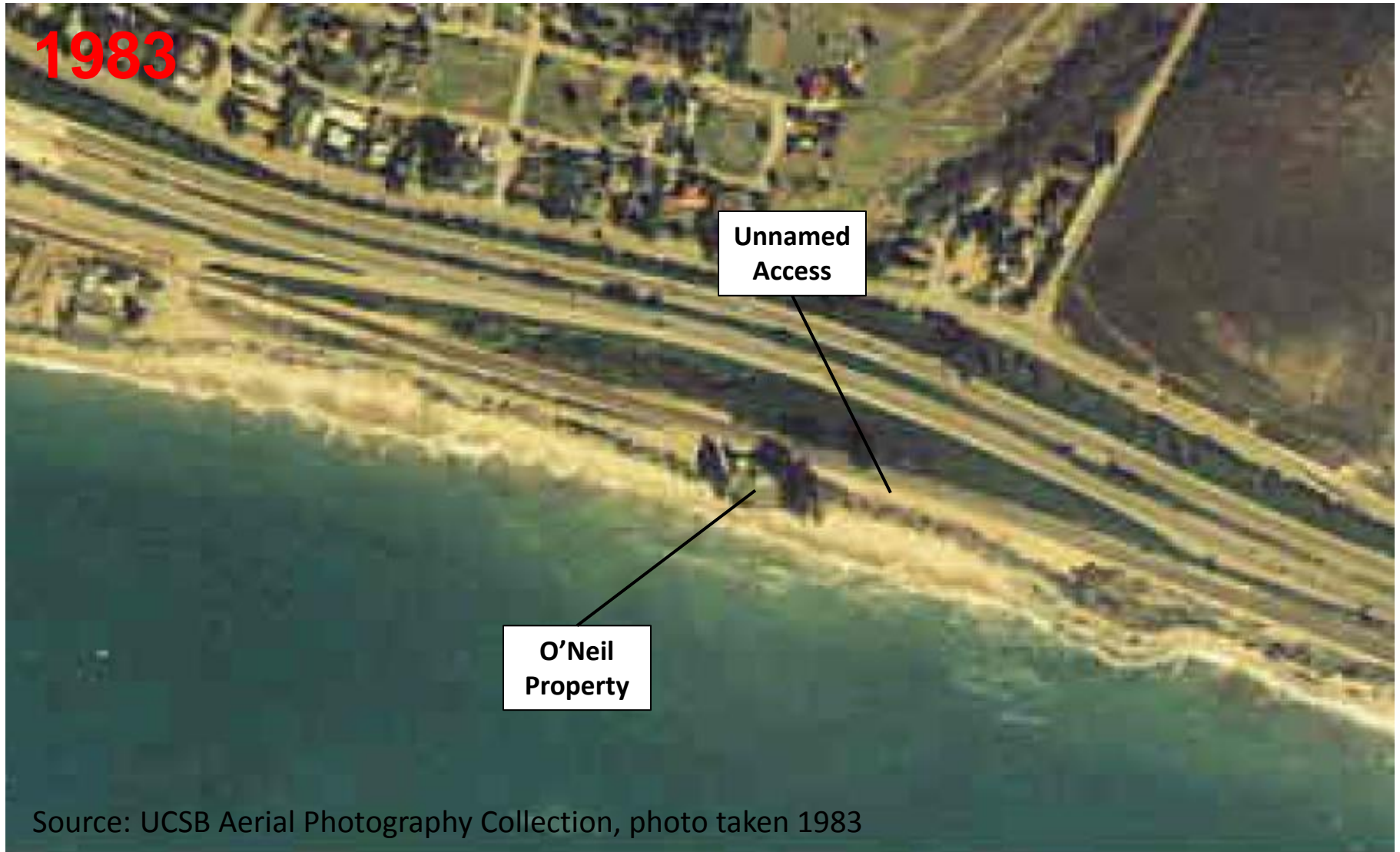
Source: California Coastal Records Project, photo taken 1972



Source: California Coastal Records Project, photo taken 1972



**1983**



**O'Neil  
Property**

**Unnamed  
Access**

Source: UCSB Aerial Photography Collection, photo taken 1983

1987



Source: California Coastal Records Project, photo taken 1987

2002

O'Neil  
Property

Source: California Coastal Records Project, photo taken 2002

2013

O'Neil  
Property

Source: California Coastal Records Project, photo taken 2013

# WILLIAMS DEED

- Staff is misreading the Williams 1890 deed – it created a trust, naming Balch, Barton, and Meginness as trustees.
- Yes, it included the grant of a Temple site.
- Right after the Temple grant, it grants to these men the streets, parks, squares, alleys, etc.: “To have and to hold thereafter for the use and benefit of the public and the citizens, residents and inhabitants of said City of Summerland . . .”
- Williams reserved the right to enter into those areas to extract minerals – a key indicator of a fee simple grant.

# ORDINANCE 125

- 1890 – County accepts Williams’ offer of dedication.
- County fails to include Unnamed Access that runs along north side of O’Neil parcels.
- Called Wallace Avenue now, but Wallace Avenue in 1890 ran parallel to railroad tracks and north of East End Park, not south of it. Hwy. 101 lies in its place now.
- Ordinance clean-up language excludes Unnamed Access.
- County had no ownership in Unnamed Access and no authority to deed it to RR.

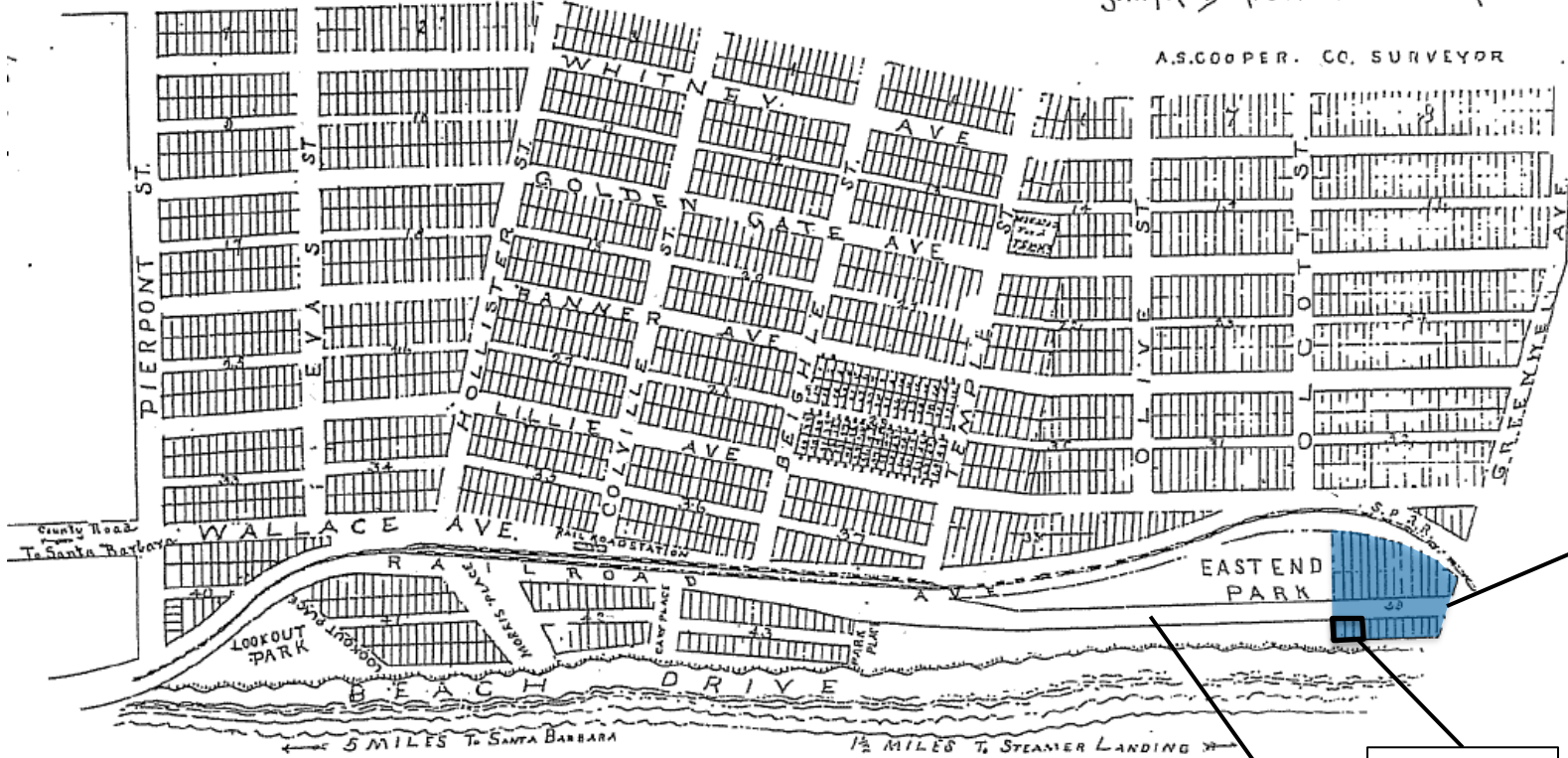
Williams Map of Summerland, 1888

CITY OF SUMMERLAND

SANTA BARBARA Co. CALIFORNIA 1888

A.S. COOPER. CO. SURVEYOR

CITY RESERVOIR



Block 39

Unnamed Access

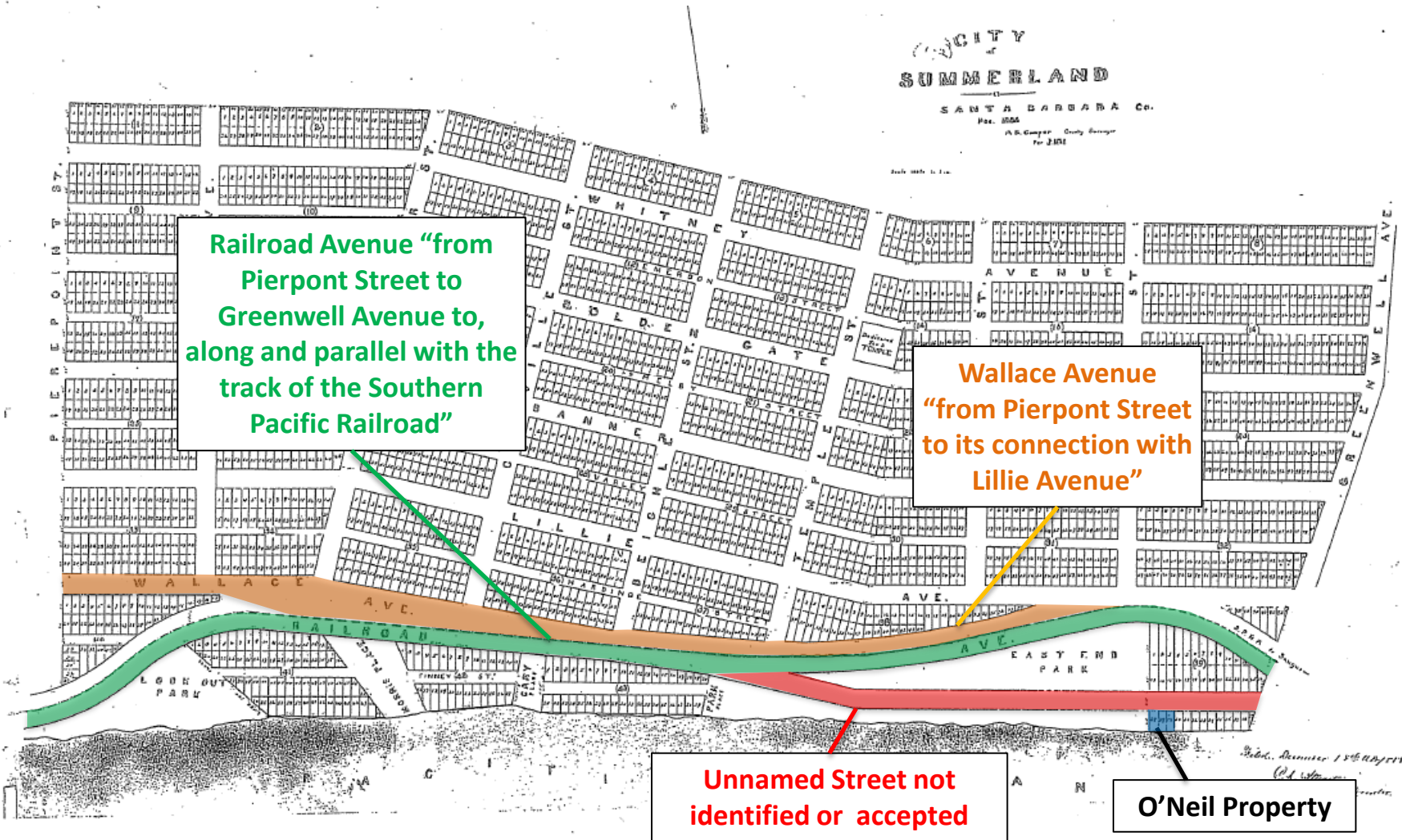
O'Neil Property

PACIFIC OCEAN

MAIN STREETS AND AVENUES 60 FEET WIDE. STREETS BETWEEN BLOCKS 30 FEET WIDE. LOTS 25 BY 60 FEET

**County Accepted Street Dedications  
Per Ordinance No. 125, Sept. 1890**

County accepted specified “named avenues, streets, places, parks and alleys and lanes”

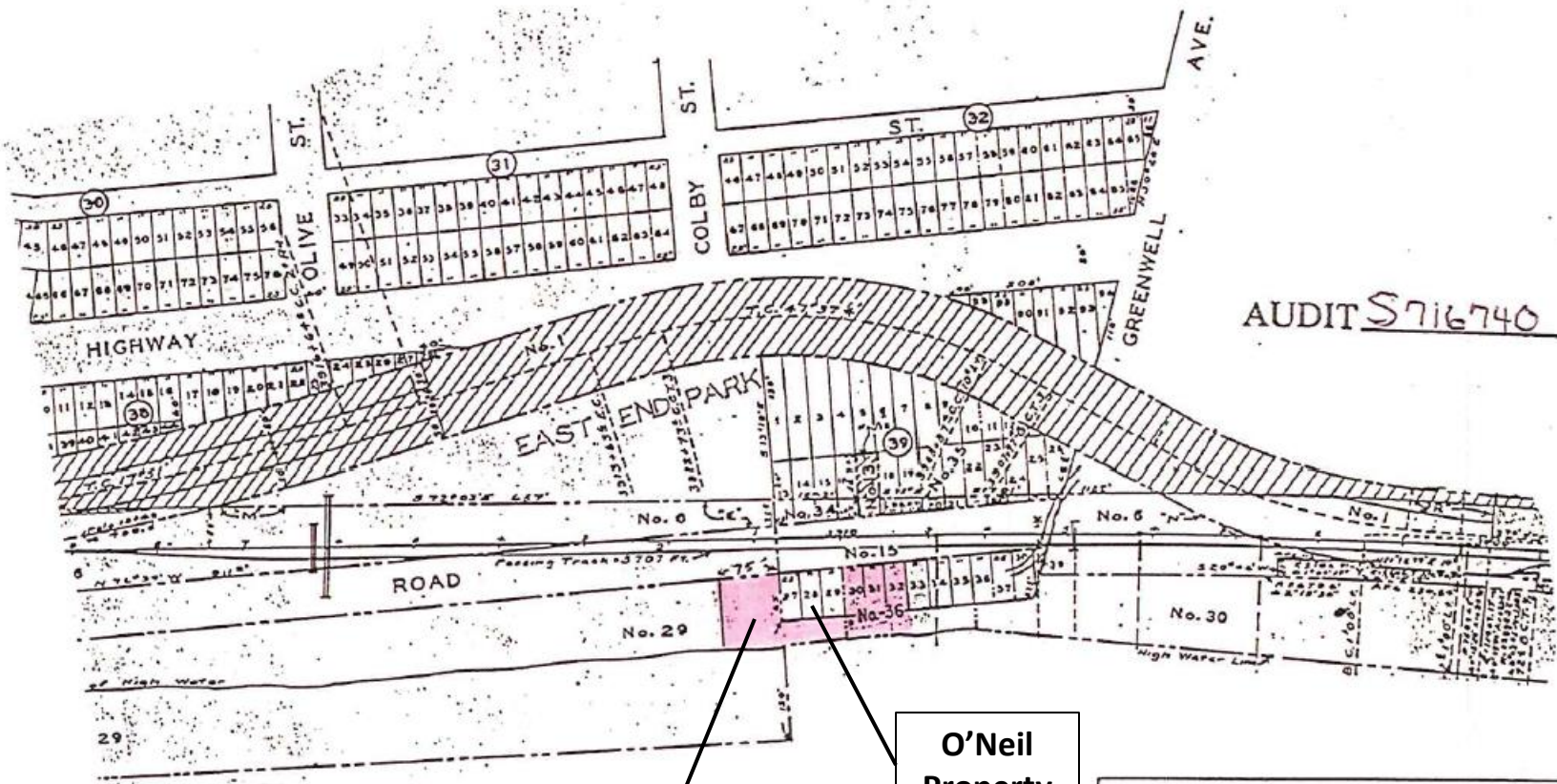




# ORDINANCE 247

- 1901 – County purports to convey to the railroad various parts of the public areas dedicated by Williams.
- Map attached to Ord. 247 depicts the area conveyed.
- It does NOT include the half-width of street that borders the O'Neil property. That half-width remains today.

# O'Neil Lease of Railroad Land Adjacent to Subject Property



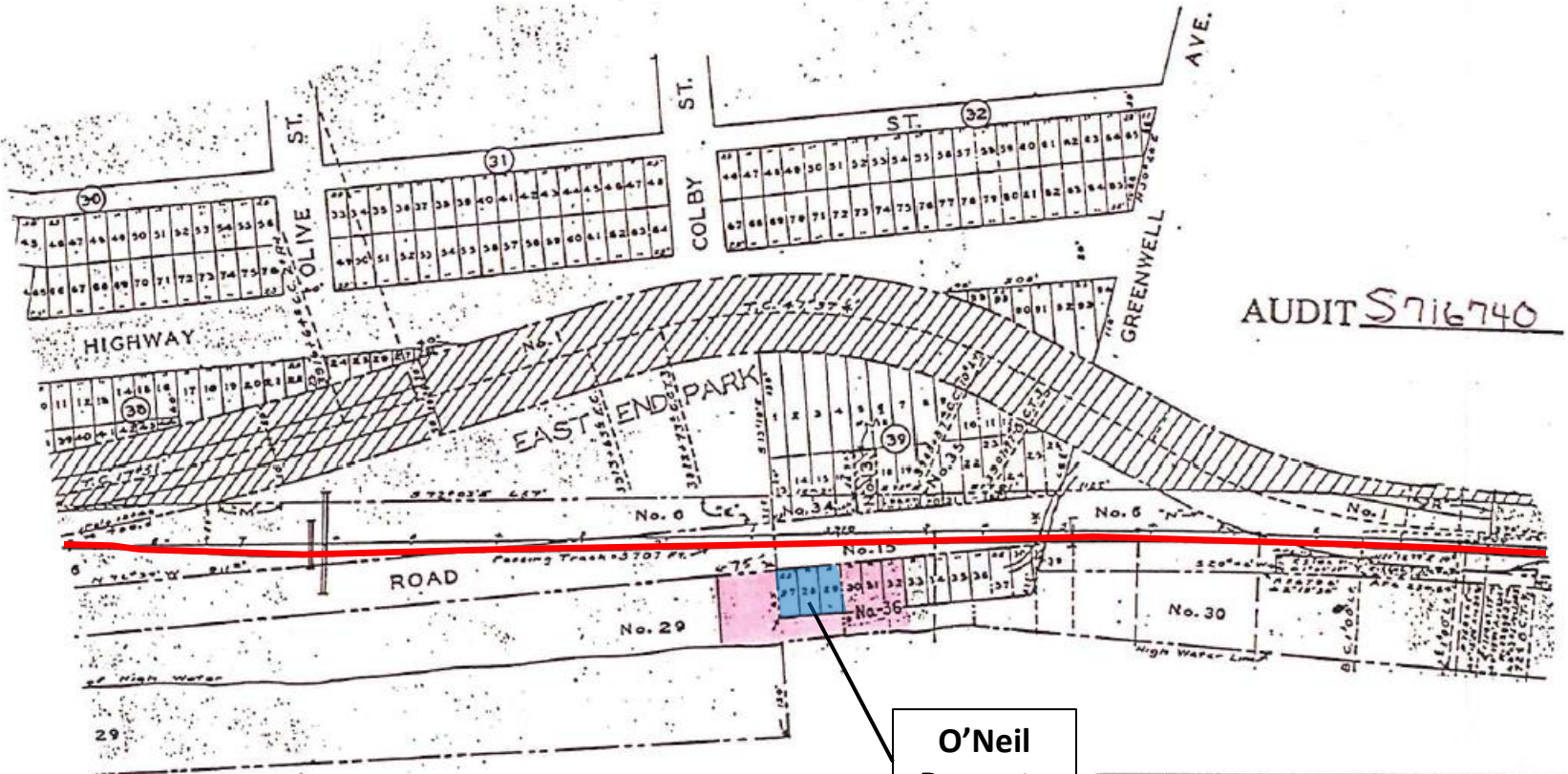
AUDIT 5716740

— LEASE AREA

O'Neil  
Property

<b>Southern Pacific Lines</b>	
REAL ESTATE DEPT. - WESTERN REGION (SOUTH)	
Summerland Lease To JEFFREY O'Neil	
SCALE	1" = 200'
VAL. DEC.	47 SHEET 4
ROUTE NO.	E M.R. 376.4
DATE	12-12-95
REVISED TO	
DRAWN BY	MJC CHECKED BY
DRAWING NO.	951212
SHEET NO.	1
FILE DRAWER	

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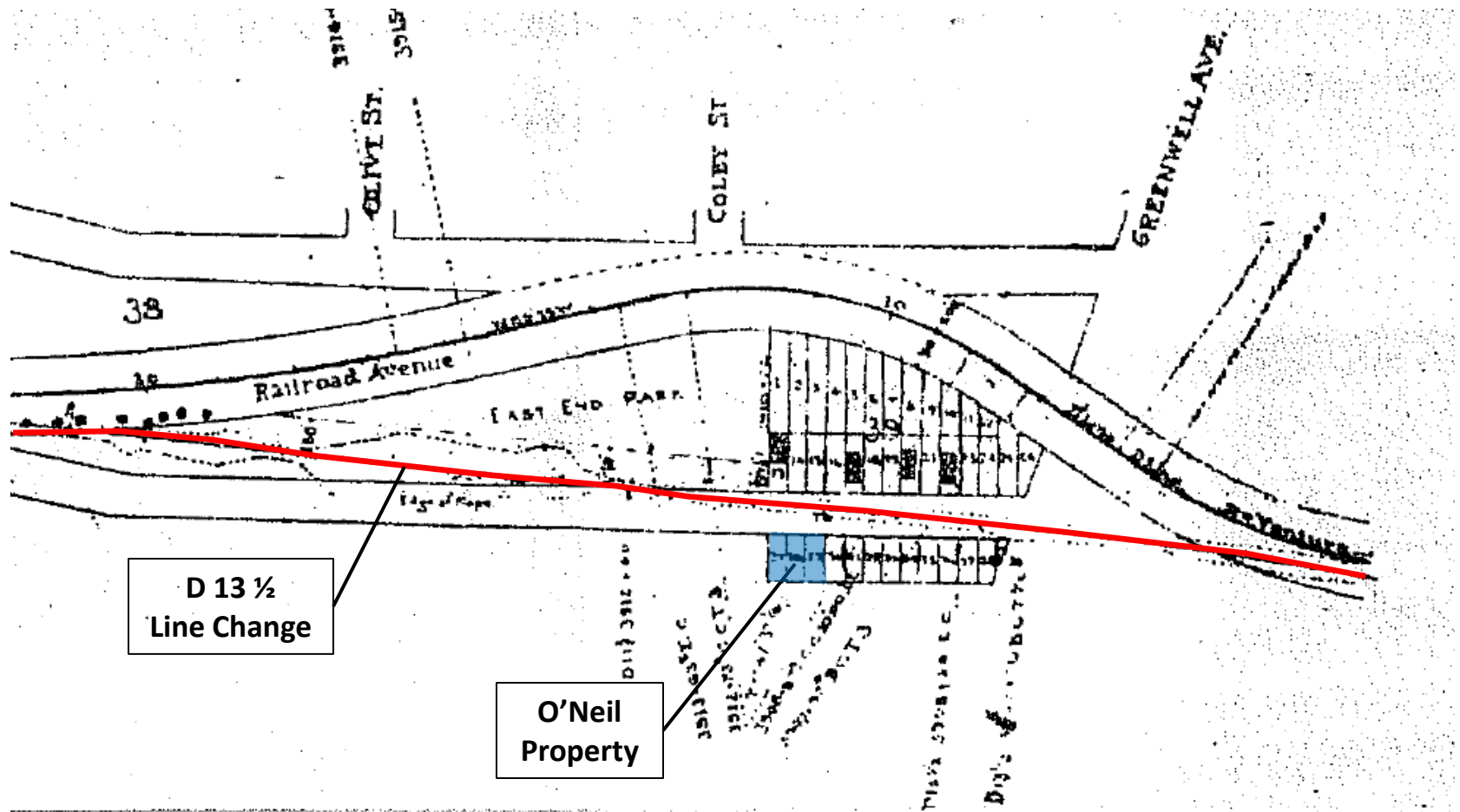


— LEASE AREA

O'Neil  
Property

<b>Southern Pacific Lines</b>	
REAL ESTATE DEPT. - WESTERN REGION (SOUTH)	
Summer Road Lease To JEFFREY O'NEIL	
SCALE	1" = 200'
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Excerpt from  
Ordinance No. 247 – Exhibit A,  
January 9, 1901



D 13 1/2  
Line Change

O'Neil  
Property

Record of Survey of  
Williams Estate Beach Front  
April 1920

TOWN OF SUMMERLAND

GREEN HILL AVE

MAP

OF  
SURVEY MADE BY REFLOURNOY  
OF THE BEACH FRONT  
OWNED BY  
H. L. WILLIAMS ESTATE  
SUMMERLAND  
SANTA BARBARA CO., CAL.  
APRIL 1920

SCALE ONE INCH = 100 FEET



O'Neil  
Property

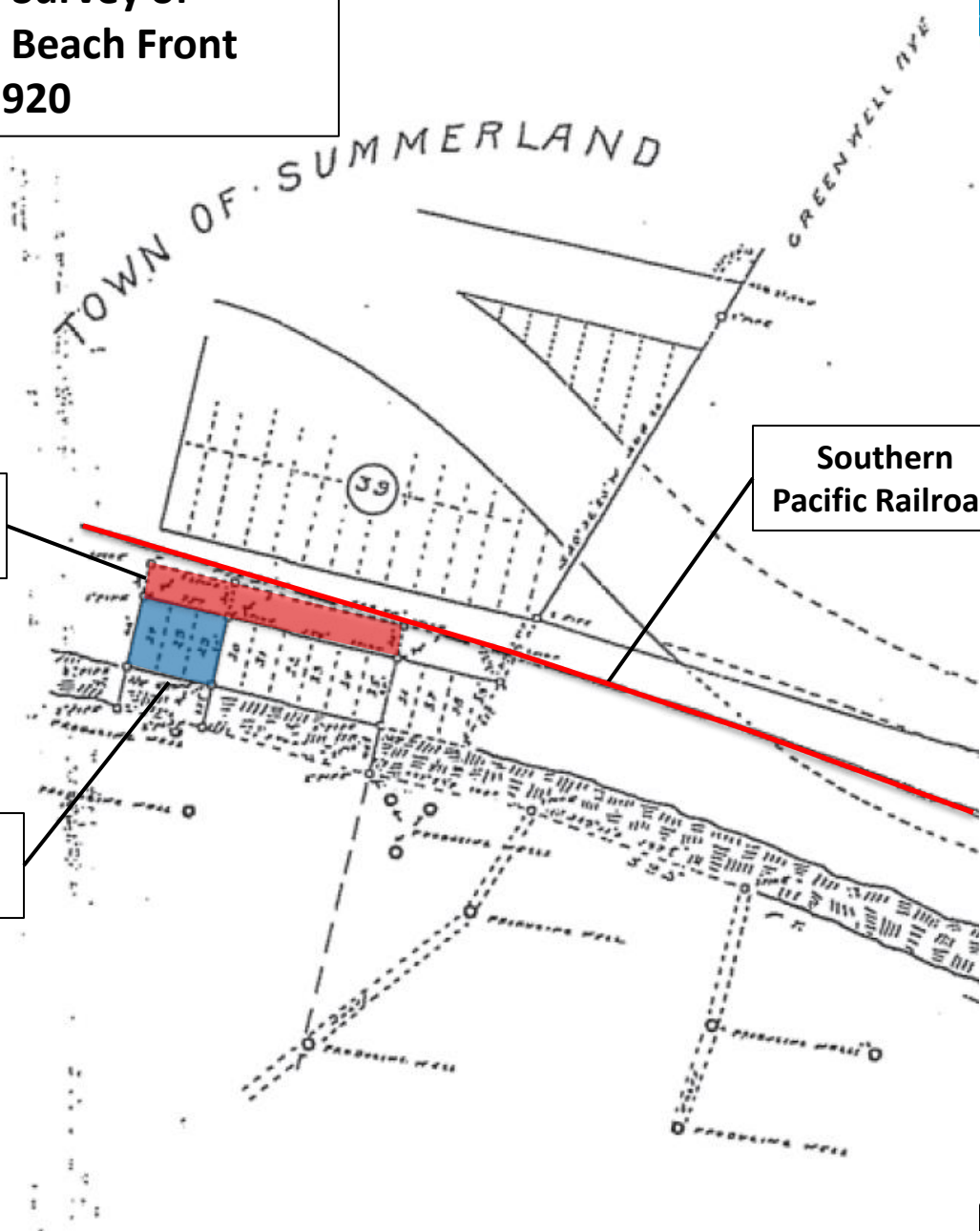
25111  
AT  
THE REQUEST OF  
H. L. WILLIAMS ESTATE  
APR 19 1920  
A. D. 1920  
RECORDED  
INDEXED

Excerpt from Survey of  
Williams Estate Beach Front  
April 1920

Survey depicts  
30' wide ROW

O'Neil  
Property

Southern  
Pacific Railroad



# COUNTY'S HISTORIC POSITION

- 1965 – Road Commissioner Leland Steward – written to the owner of property in Block 39 – cites Ord. 247, but states that “subsequent to that action, the County has maintained a County road north of lots 27-39 in Block 39. . . . It is possible that the County now holds only a prescriptive road right of way in Block 39.”
- 1988 – Staff Report for O’Neil parcel, fee waiver proposal for rezone and Planning Director letter:
  - 1968 -- Zoning changed from SFR (7-R-1-D) to REC (Recreation) “inadvertently assigned to this developed parcel.”
  - Staff supports fee waiver for required LCP amendment/rezone.
  - Incorporate into pending Coastal Special Use Permit process.

# COUNTY'S HISTORIC POSITION (cont'd)

- 1997 – Coastal Development Permit for O'Neil Property – waterline repair/replacement (same route as proposed new sewer line for new O'Neil residence):
  - Project completed using emergency permit – from SSD meter under Finney to NE portion of O'Neil property.
  - Action letter – application approved “based upon the project’s consistency with the Comprehensive Plan including the Coastal Land Use Plan.
  - Findings – 1968 Coastal rezone “inadvertently rezoned the parcel to REC.” “As historical documents indicate, it was not the intent or purpose of the rezoning to zone the parcel as REC.”
  - “The waterline is in the road right-of-way along Finney Street.”



# COUNTY'S HISTORIC POSITION (cont'd)

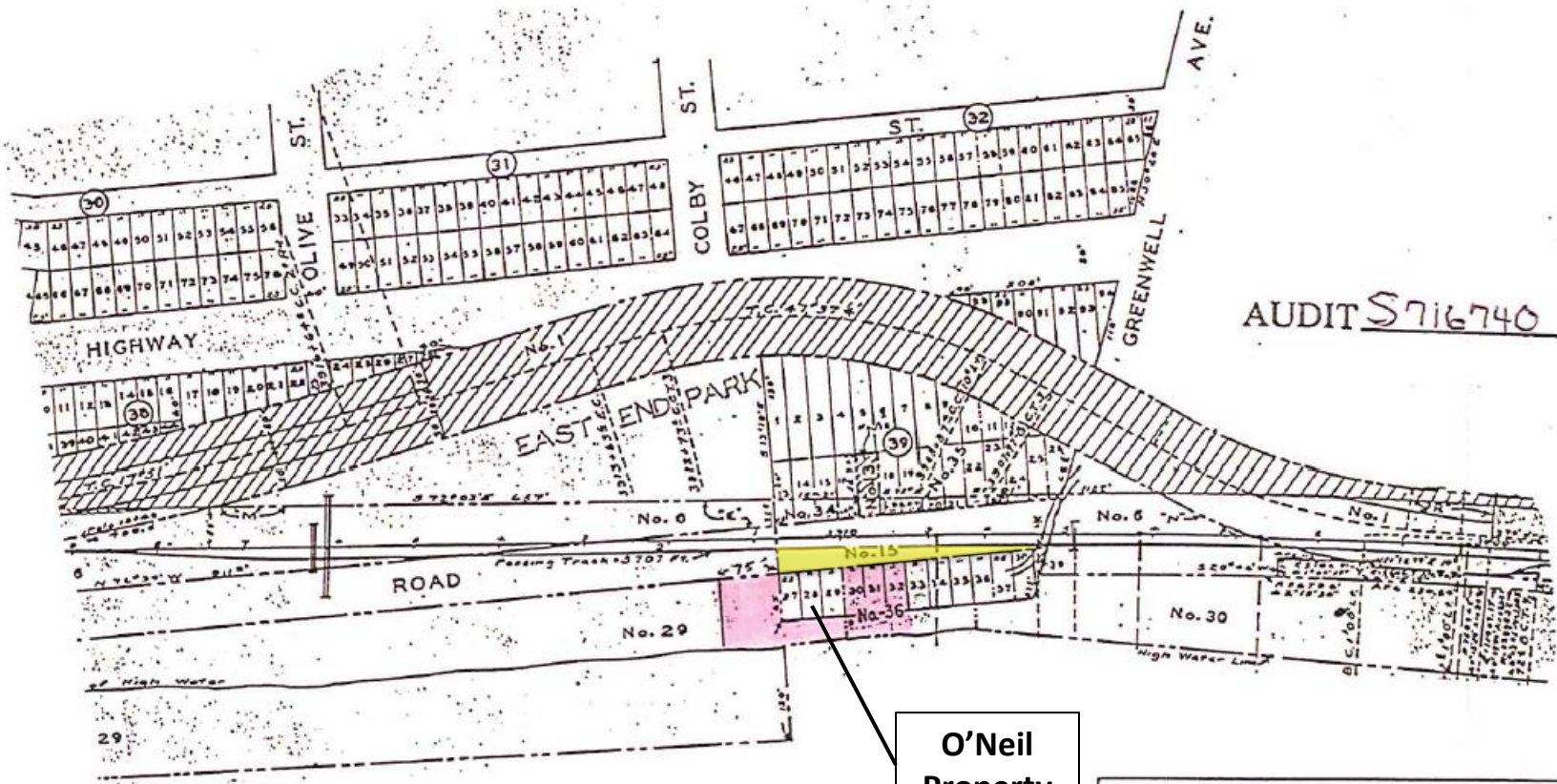
- 2007 – Deputy Director Ward letter re O'Neil property:
  - “Taking the history of this specific property and all of the site constraints into consideration, it seems unlikely that there is a significant potential for a viable recreation use on this small lot.”
  - “[T]he consensus at the meeting [between County and Coastal Commission staff on 11/27/2007] was that a rezone and Local Coastal Plan amendment, to change the designated use of this parcel from Recreation to Residential, is feasible. Coastal Commission staff indicated initial support of a potential rezone and LCP amendment for this unique parcel and situation.”

# CONCLUSION

- Jeff O'Neil relied in good faith on the many assurances and promises from County staff over the years.
- REC zoning for this property makes no sense – the house predates all County policies now being cited against him.
- The Ward letter was the final such assurance. Jeff has spent 8 years y processing the application for this rezone and LCP amendment so the road will be clear for getting a Coastal Development Permit for his house.
- He has spent enormous sums on consultants – surveyors, architect, engineers, geologist, County fees, and attorneys.

# RAILROAD NOT CLAIMING ROAD OWNERSHIP

- Recall the slide showing the line angling from SE toward the NW.
- It demarcates the RR's holding and excludes the access road to Jeff O'Neil's property.
- It isn't included in the land the RR leased to Jeff because they don't own what is called "Road" on this exhibit.



AUDIT S716740

 LEASE AREA

O'Neil  
Property

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# CONCLUSION

- We have provided overwhelming evidence that the County did not “give away” the public roadway that runs across the entire frontage of Jeff O’Neil’s property.
- Even if you think that the trust didn’t own this land in fee, even if you don’t agree that Ord. 125 didn’t include Unnamed Access, aka Finney, aka Wallace Avenue, you can’t deny the history:
  - Map attached to Ord. 247.
  - Survey map of the Williams Estate property dated 1920, 19 years after Ord. 247.
  - The railroad’s own map, showing the same line that is on the Ord. 247 map and the 1920 survey map – the County Road remains.
  - The aerial photos showing this road in use – 1928 to present.

# CONCLUSION

- We request a decision today.
- If you agree that we have made a sufficient showing to merit final action to approve the rezone, LCP amendment and variance, please direct staff accordingly, including that there be no further delays in processing.
- If your Board disagrees with our position, we ask for a final decision so Jeff O'Neil can seek a remedy in court.
- 8 years is a very long time to wait for correction of a zoning error made in 1968 and acknowledged by the County in 1988.
- The evidence in Jeff's favor is irrefutable and staff has none to support its position.