

Jeff O'Neil Residence
2551 Wallace Avenue
February 27, 2018

Presented by:
Susan F. Petrovich

 Brownstein Hyatt
Farber Schreck

FOUR ISSUES ALLEGED IN STAFF REPORT

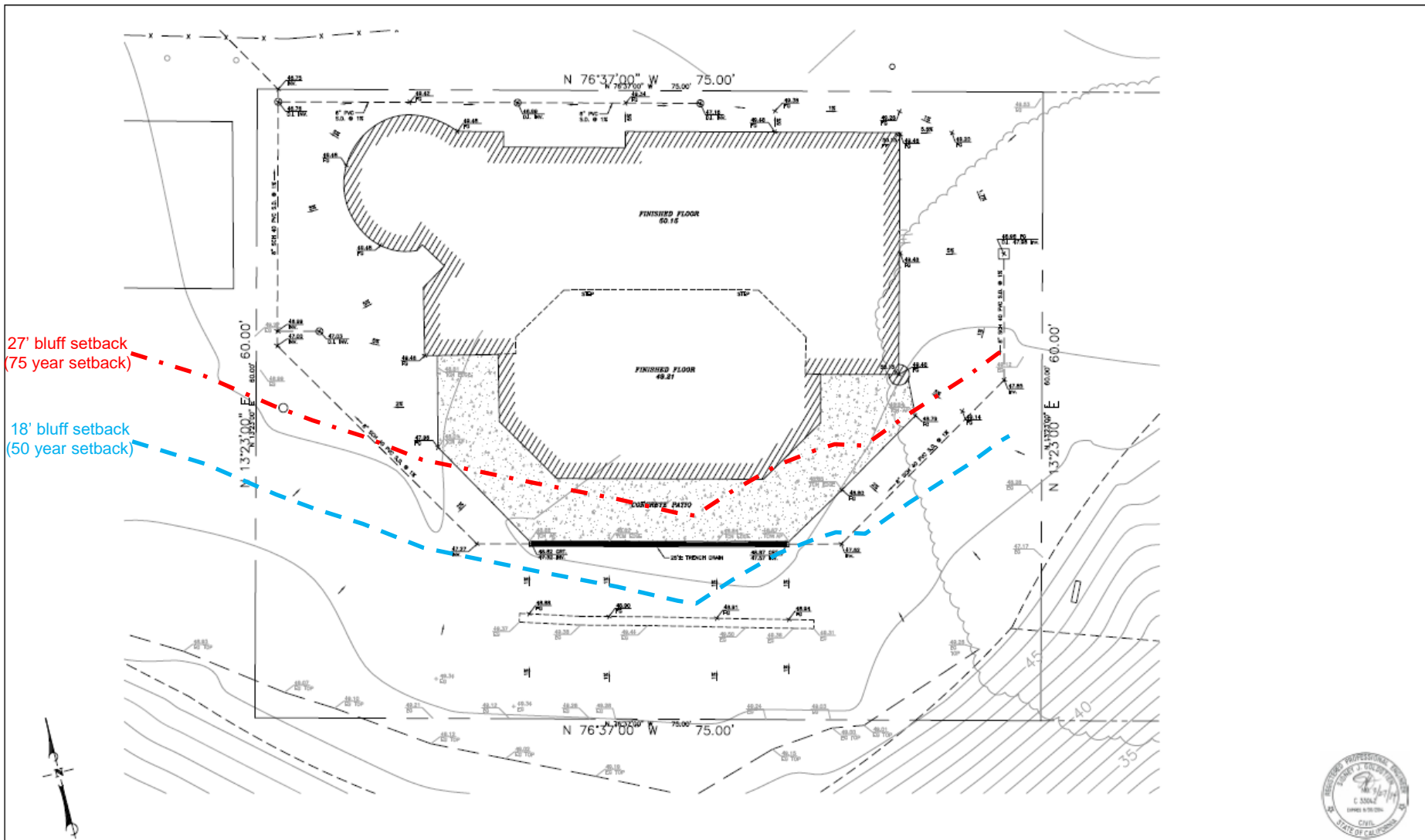
- No legal access to the house site
- Inadequate bluff setback
- No sewer easement
- No grounds for variance

NO ACCESS

- Key issue – let's address the others first

BLUFF SETBACK

- Policy 3-4 applies only to “new development areas”
- This is replacement of an existing structure
- Apply 75-year setback “unless such standard will make a lot unbuildable, in which case the standard of 50 years **shall** be used.”
- The O’Neil house setback meets and exceeds the 50-year setback (18 ‘) and is just a tad over the 75-year setback (27’) in one corner of the porch
- Our next slide shows that clearly



27' bluff setback
(75 year setback)

18' bluff setback
(50 year setback)



PRELIMINARY GRADING PLAN

CAUTION:
UNDERGROUND UTILITIES EXIST. CONTACT UNDERGROUND SERVICE ALERT (U.S.A.) 1-800-422-1133 TWO (2) WORKING DAYS PRIOR TO BEGINNING ANY EXCAVATION OR CONSTRUCTION.

DATE:	REVISIONS

REVIEWED BY:	REVIEWED BY:

SID GOLDSTIEN—CIVIL ENGINEER, INC.
 PLANNING • DESIGN • STUDIES • RESIDENTIAL/COMMERCIAL DEVELOPMENT
 635 ALAMO PARKWAY ROAD (925) 888-1026
 SUITE 302 www.sgoldstien.com FAX: (925) 888-1885
 SUITE 100 (925) 888-1885
 SUITE 100 (925) 888-1885
 SUITE 100 (925) 888-1885

DRAWN BY: AMP
 DATE: 3/27/14
 DESIGNED BY: SJG
 SID GOLDSTIEN
 M.C.E. 3153, C-4-22
 (expired 8-30-14)

SCALE:
 1" = 4'

O'NEIL RESIDENCE
 2551 WALLACE AVE.
 SUMMERLAND, CA 93067
 A.P.N. 005-250-001

SHEET NO. C-2
 FILE NO. 14-03-100
 SHEET 2 OF 2

SEWER ACCESS

- The “Can and Will Serve” letter from Summerland Sanitary District demonstrates the sewer service availability.
- The sewer line will follow the same route as the existing waterline serving the structure – in the public road known as Wallace Avenue – the same road that provides access to the sewer plant.

VARIANCE

- Section 35-173.2.2 provides for a variance in unusual circumstances such as size, shape and topography.
- There is no way that Jeff O'Neil can meet the standard requirements, both because of the small lot size and because of the bluff setback.
- But neither does the historic house comply; it encroaches on Wallace Avenue.
- Yes, denying the variance sought will deprive this lot of buildability.
- There are no immediate neighbors. No one is injured or annoyed by granting the variance.

LEGAL AND PHYSICAL ACCESS

- Despite all of the evidence we have provided, staff continues to contend that there is no access to the O'Neil lot.
- Legal access – complex history but the evidence is overwhelming that the O'Neil lot has legal access
- Physical access – Unnamed Access (now called or Wallace Avenue/Finney Street) provided physical access to this house in 1890 and, as you will see below, provides it today.



1947

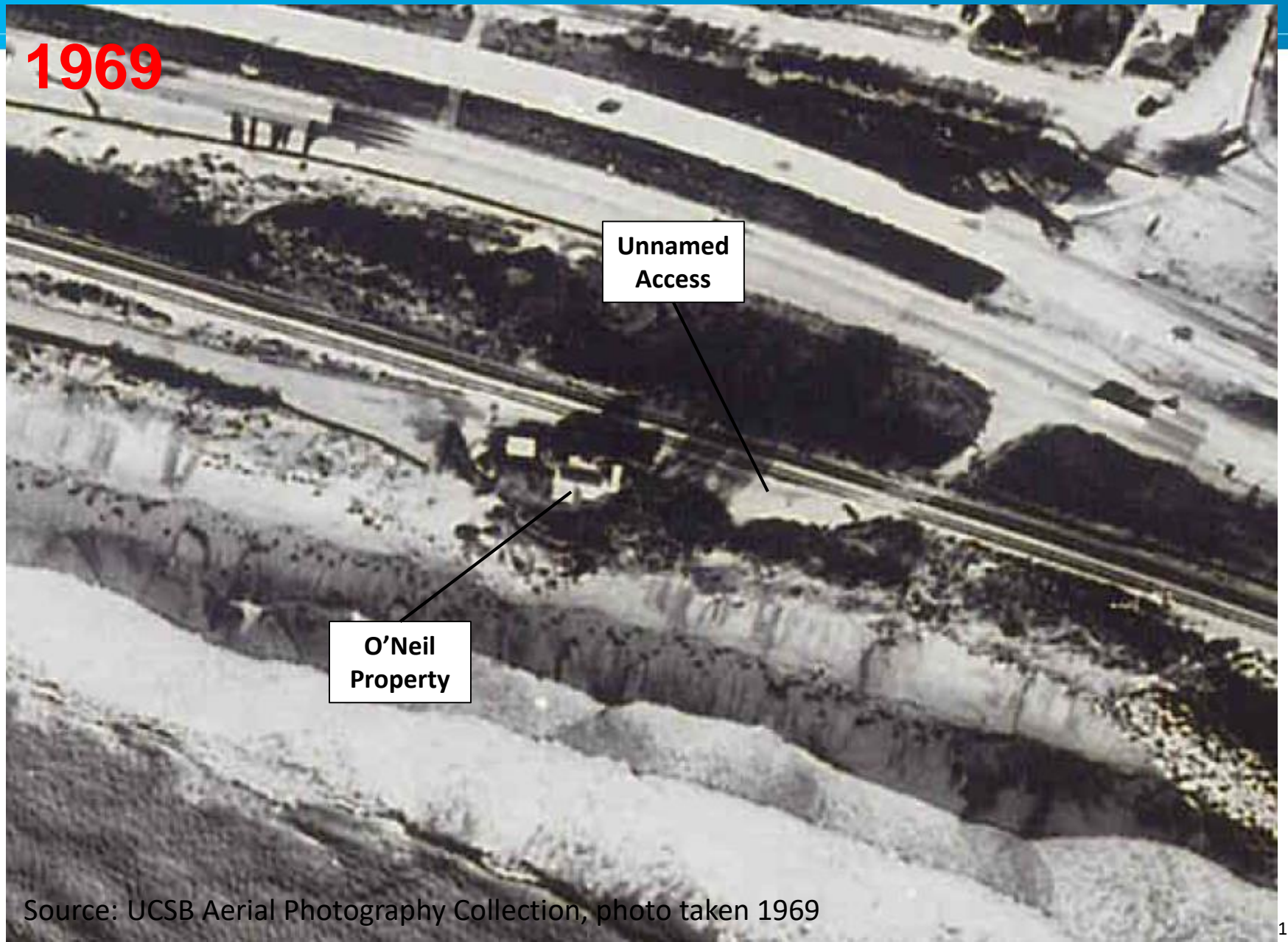


O'Neil
Property

Unnamed
Access

Source: UCSB Aerial Photography Collection, photo taken 1947

1969



**Unnamed
Access**

**O'Neil
Property**

Source: UCSB Aerial Photography Collection, photo taken 1969

1972



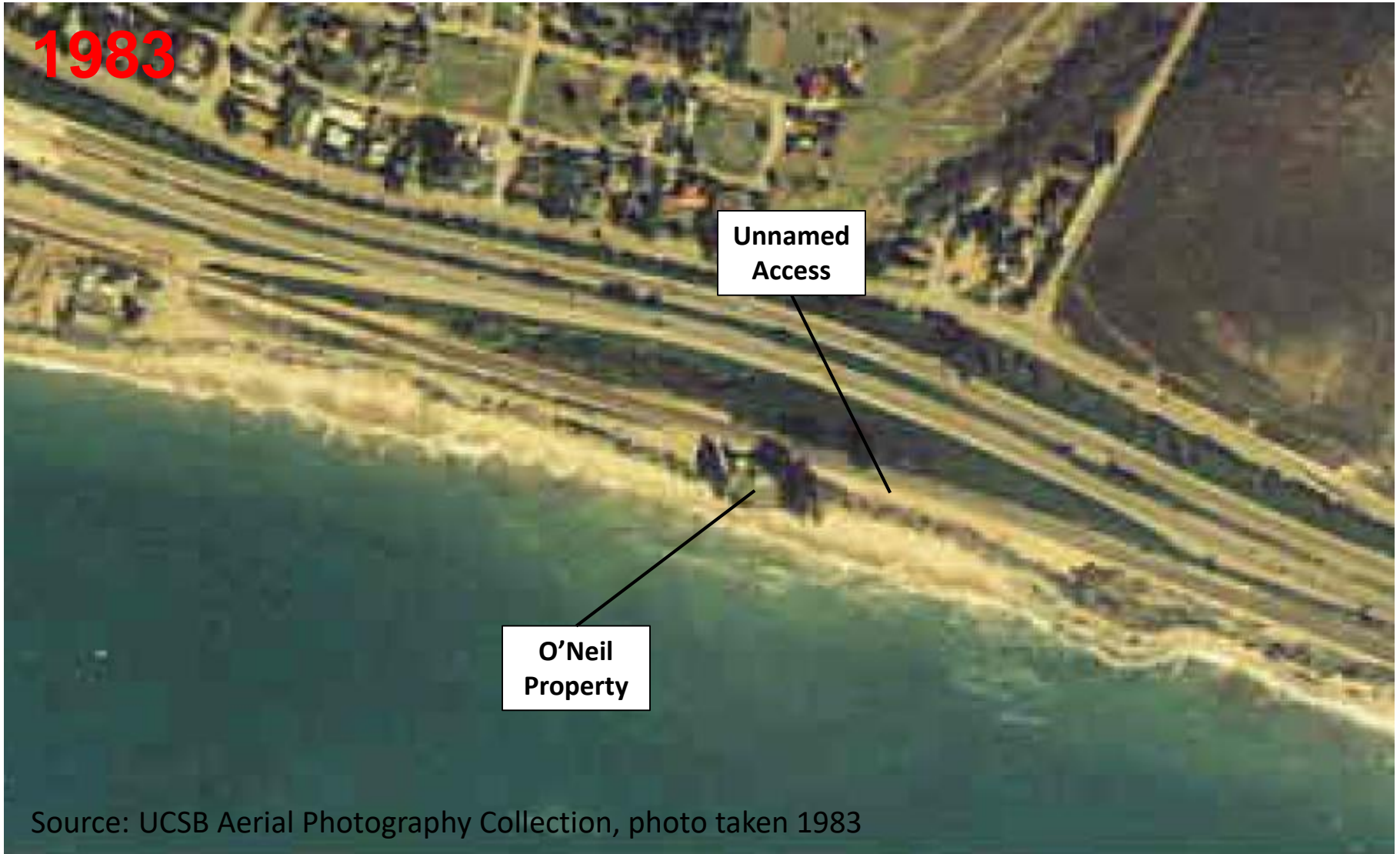
O'Neil
Property

Source: California Coastal Records Project, photo taken 1972



Source: California Coastal Records Project, photo taken 1972

1983



Source: UCSB Aerial Photography Collection, photo taken 1983

2002

O'Neil
Property

Source: California Coastal Records Project, photo taken 2002

2013

O'Neil
Property

Source: California Coastal Records Project, photo taken 2013





LEGAL ACCESS

- 8/8/1890 – Williams conveyed to Trust – “all those portions of said real property as surveyed upon the ground and marked and laid out on the Map of said survey hereunto attached, as appears marked, designated and laid out thereon as and for parks, streets, squares, avenues, places, lanes and alleys. 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”

ORDINANCES 125 & 247

9/25/1890 – Williams offers to dedicate certain streets for public access but list of dedicated streets does NOT include Unnamed Access directly or indirectly and the ordinance says the Board accepted the following **named** avenues, streets, etc. has been accepted by the Board.

1/9/1901 – Board lists areas of Summerland that RR needs to relocate but states that the lines change is shown on Exhibit A, which shows the actual future RR line orientation.

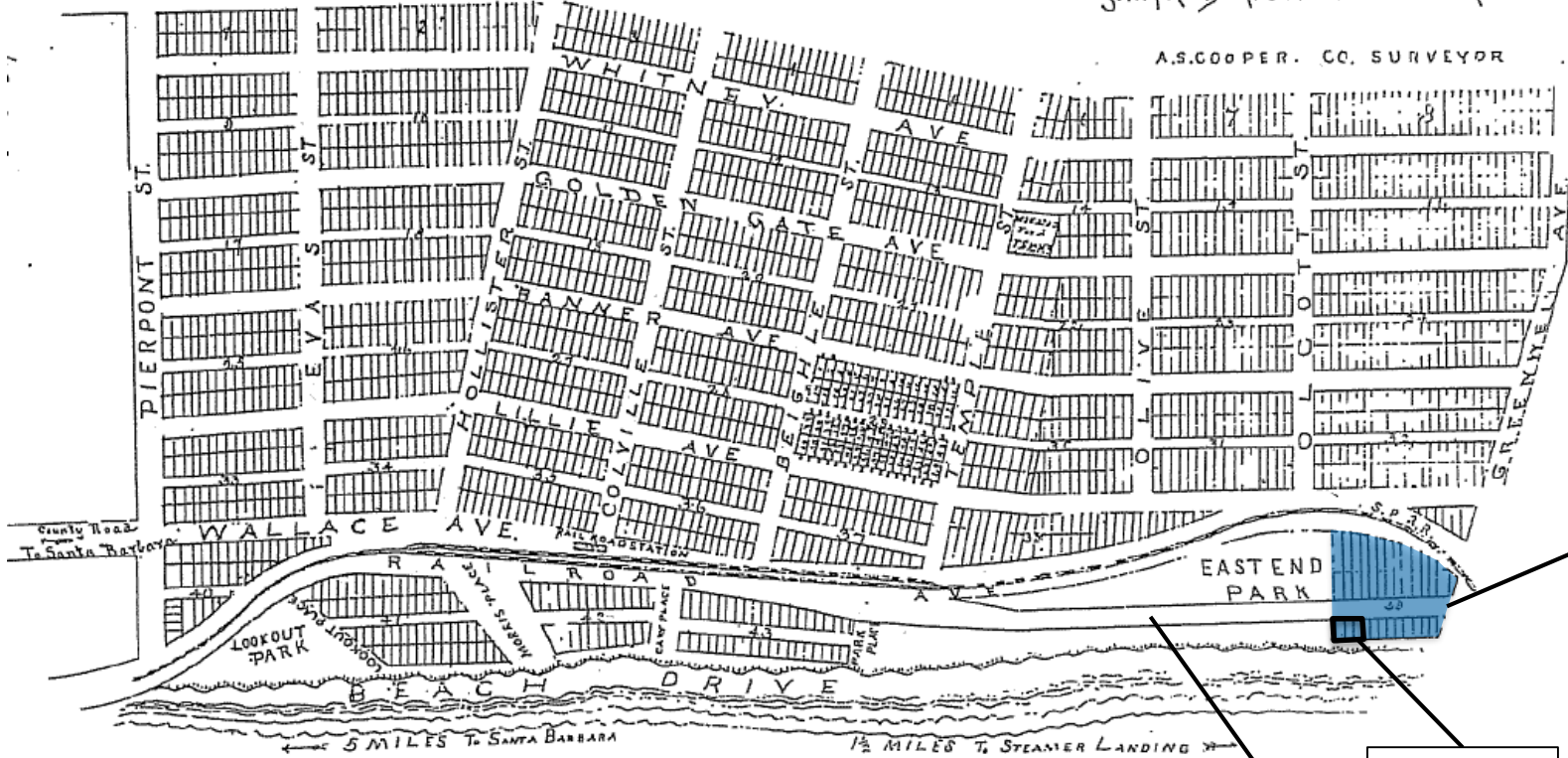
Williams Map of Summerland, 1888

CITY OF SUMMERLAND

SANTA BARBARA Co. CALIFORNIA 1888

A.S. COOPER. CO. SURVEYOR

CITY RESERVOIR



Block 39

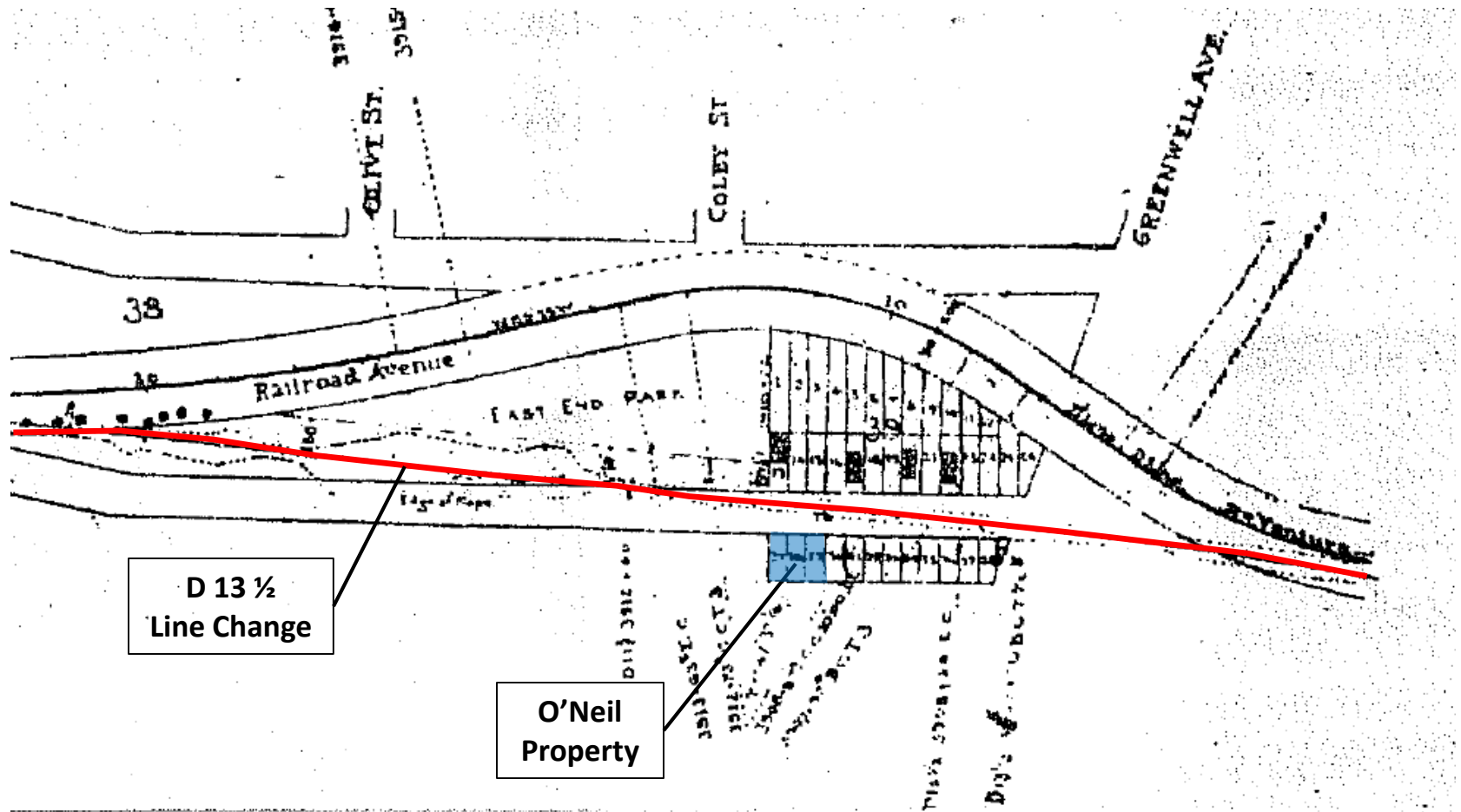
Unnamed Access

O'Neil Property

PACIFIC OCEAN

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

Excerpt from
Ordinance No. 247 – Exhibit A,
January 9, 1901

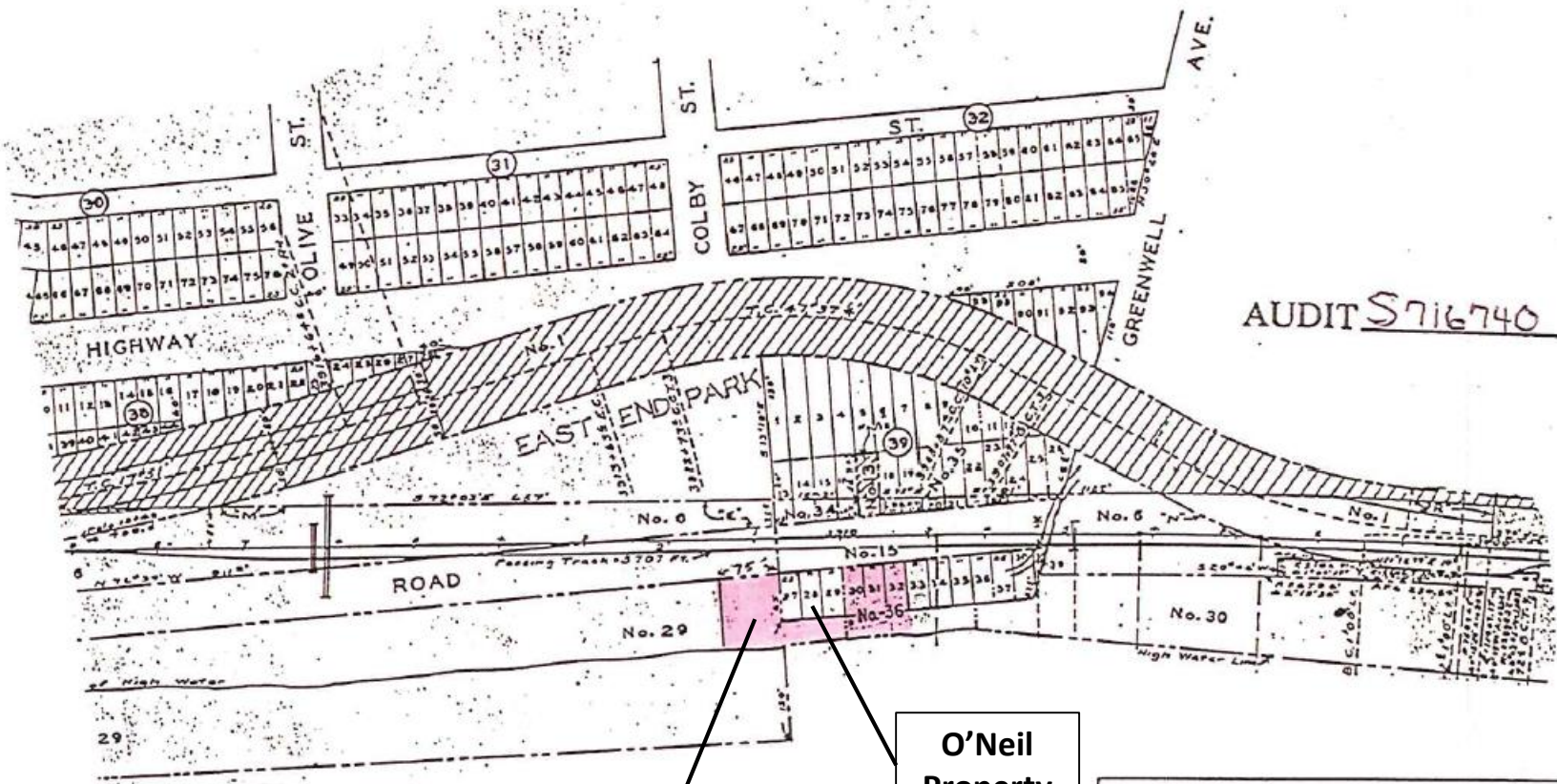


D 13 1/2
Line Change

O'Neil
Property

O'Neil Lease of Railroad Land Adjacent to Subject Property

AUDIT 5716740

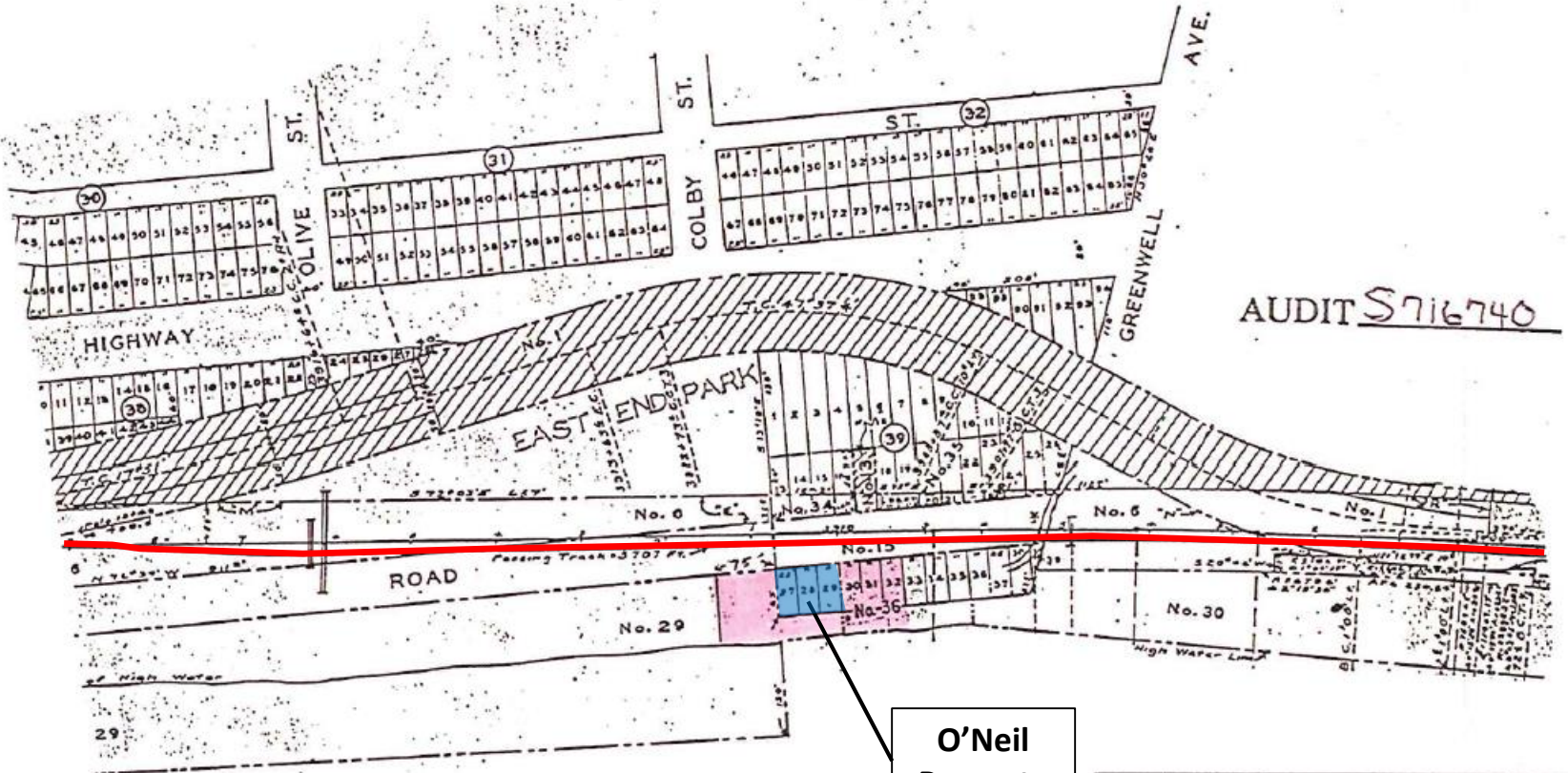


— LEASE AREA

O'Neil
Property

Southern Pacific Lines	
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	

O'Neil Lease of Railroad Land Adjacent to Subject Property



— LEASE AREA

O'Neil
Property

Southern Pacific Lines	
REAL ESTATE DEPT. - WESTERN REGION (SOUTH)	
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SHEET NO.	1
FILE DRAWER	

DEEDS, PLANS AND RECORDS OF SURVEY

- The following demonstrate that Southern Pacific, County, Caltrans, and licensed surveyors concur that Wallace Avenue was not entirely consumed by the RR and that the historic access to the O'Neil property remains intact.

Record of Survey of
Williams Estate Beach Front
April 1920

TOWN OF SUMMERLAND

GREENWELL AVE

MAP

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

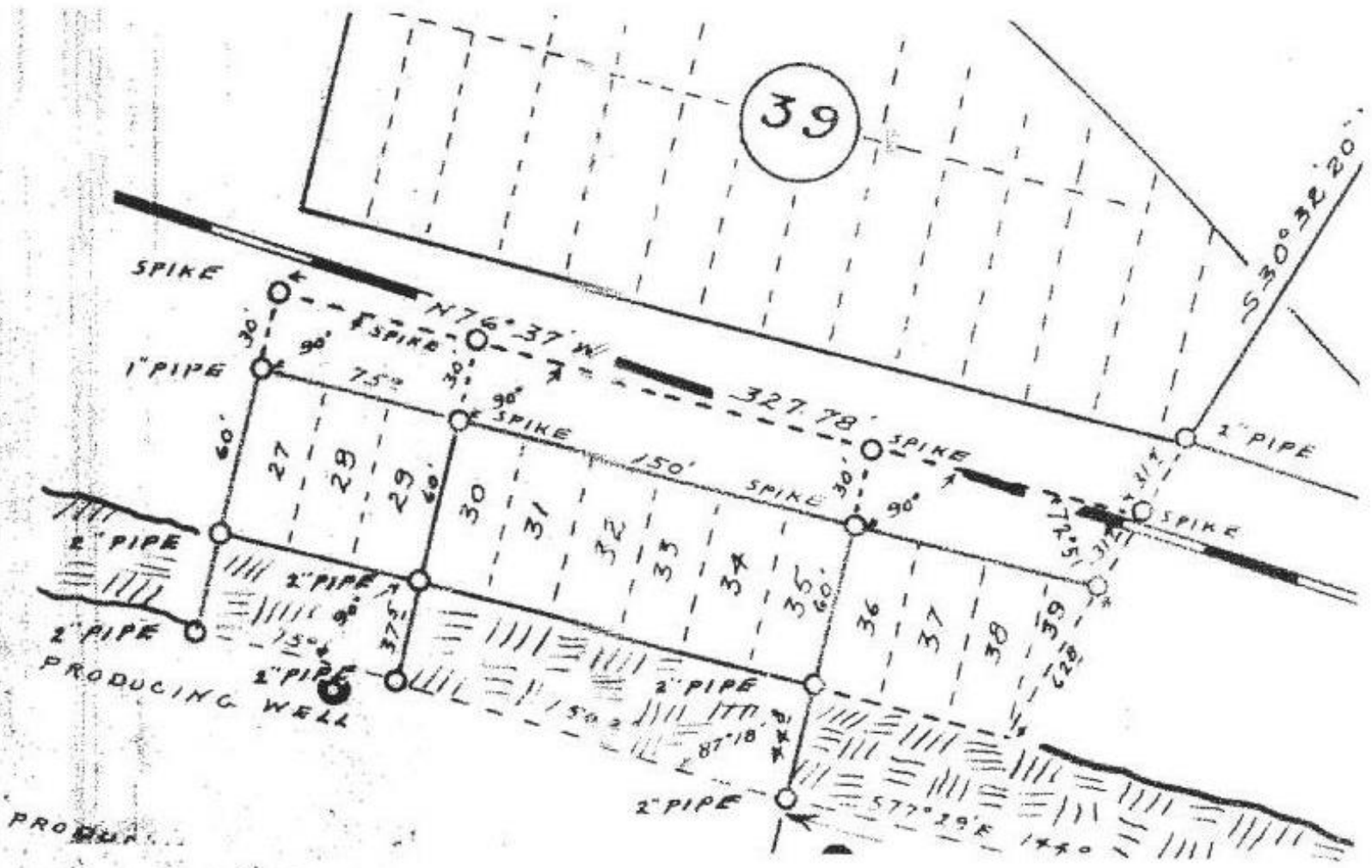
SCALE ONE INCH = 100 FEET



O'Neil
Property

2511
AT
THE REQUEST OF
H. L. WILLIAMS ESTATE
APR 19 1920
RECORDED
DECEMBER

59



RECORD OF SURVEY
 BLOCK 39
 LOTS 30 TO 39
 TOWN OF SUMMERLAND
 SANTA BARBARA COUNTY, CALIFORNIA

RAY MARTIN & ASSOCIATES
 SANTA BARBARA, CALIFORNIA

OCTOBER 1981 - SCALE 1"=40'

NOTE: CURVES DRAWN BY L.P. END AND TYPICAL P.C.C. ROAD

STATE HIGHWAY U.S. 101



Pacific Ocean

SUBSEVEROR'S CERTIFICATE

This map represents a survey made by me or under my direction in accordance with the requirements of Chapter 16, Division 2, of the Statutes and Regulations Code of the request of Glenn P. Schreiber on October 1981.

James G. Eggleston
 Surveyor

RECORDER'S CERTIFICATE

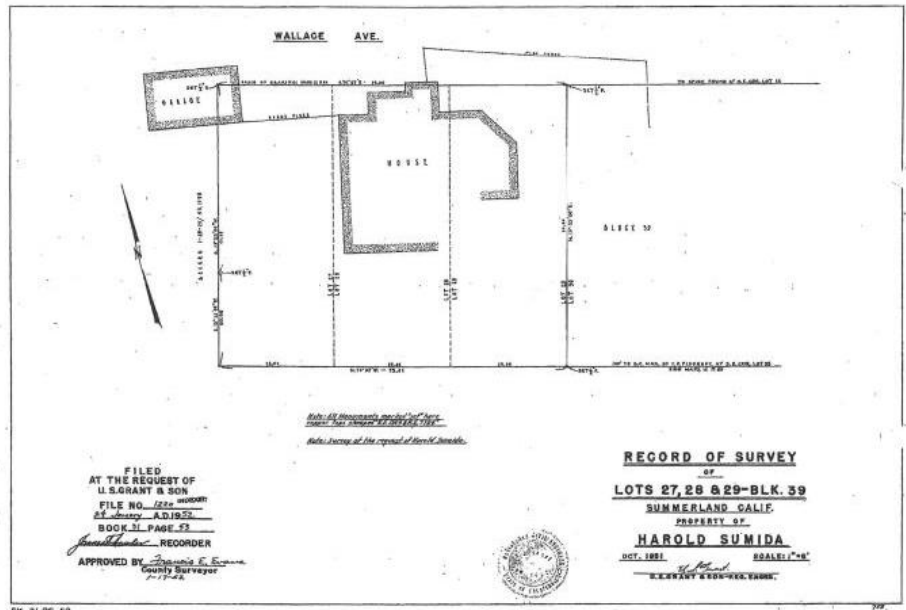
Under the 21st day of November 1981 of 12:28 in Book 63 of Page 4 of Record of Surveys of the request of Glenn P. Schreiber and Engineer.

FILE NO 52761 REC 63-4
James G. Eggleston
 Young Engineer
 by Peter Papadimitriou, Assistant

COUNTY SUBSEVEROR'S CERTIFICATE

This map has been examined by me in accordance with the requirements of Chapter 16, Division 2, of the Statutes and Regulations Code on the 21st day of November 1981.

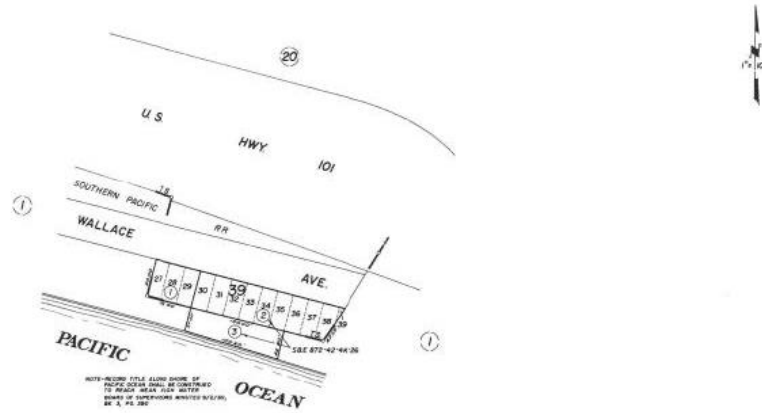
James G. Eggleston
 Young Engineer



BK. 31 PG. 23

PUEBLO LANDS

5 - 25



NOTE: PLANS WILL BEING DRAWN UP TO SHOW THE LOCATION OF THE ROAD TO BE BUILT BY THE BOARD OF SUPERVISORS UNDER THE ACT OF MARCH 10, 1907.

Town of Summerland

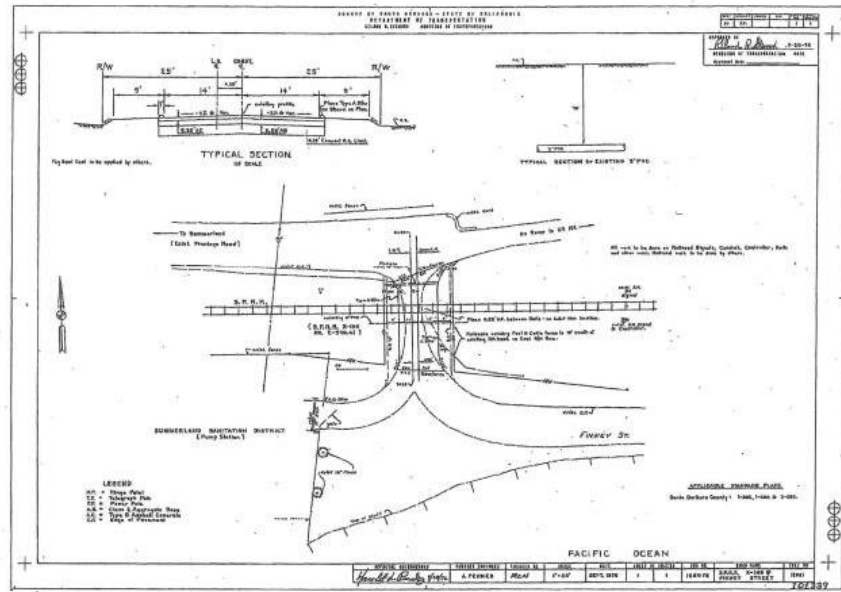
Assessor's Map Bk. 5 - Pg. 25
County of Santa Barbara, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

568 1 1/2 x 1/2"

1976 County/CatTrans Plan of
Finney/Wallace RR Crossing

1976



STATE BOARD OF EQUALIZATION
LAND IDENTIFICATION MAP

S.B.E. MAP No. 872-42-4E

RIGHT OF WAY AND TRACK MAP

MAIN LINE

SOUTHERN PACIFIC RAILROAD COMPANY

OPERATED BY

SOUTHERN PACIFIC COMPANY

LOS ANGELES DIVISION SANTA BARBARA COUNTY, CALIFORNIA

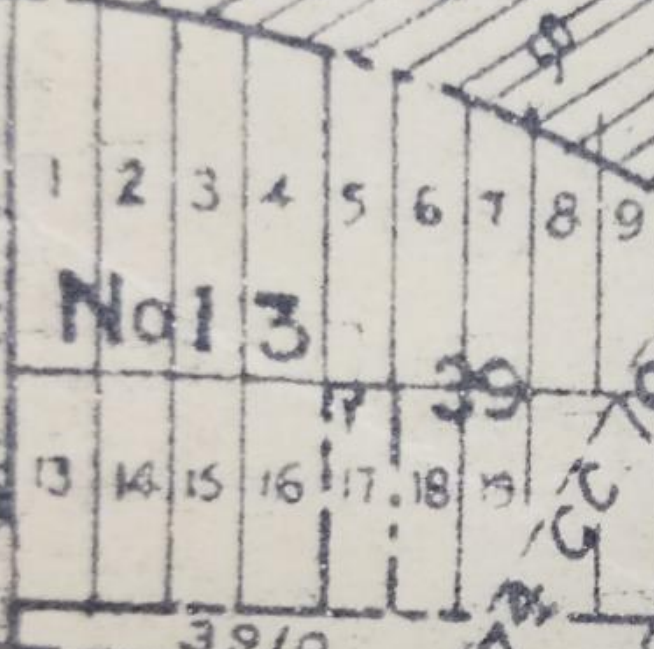
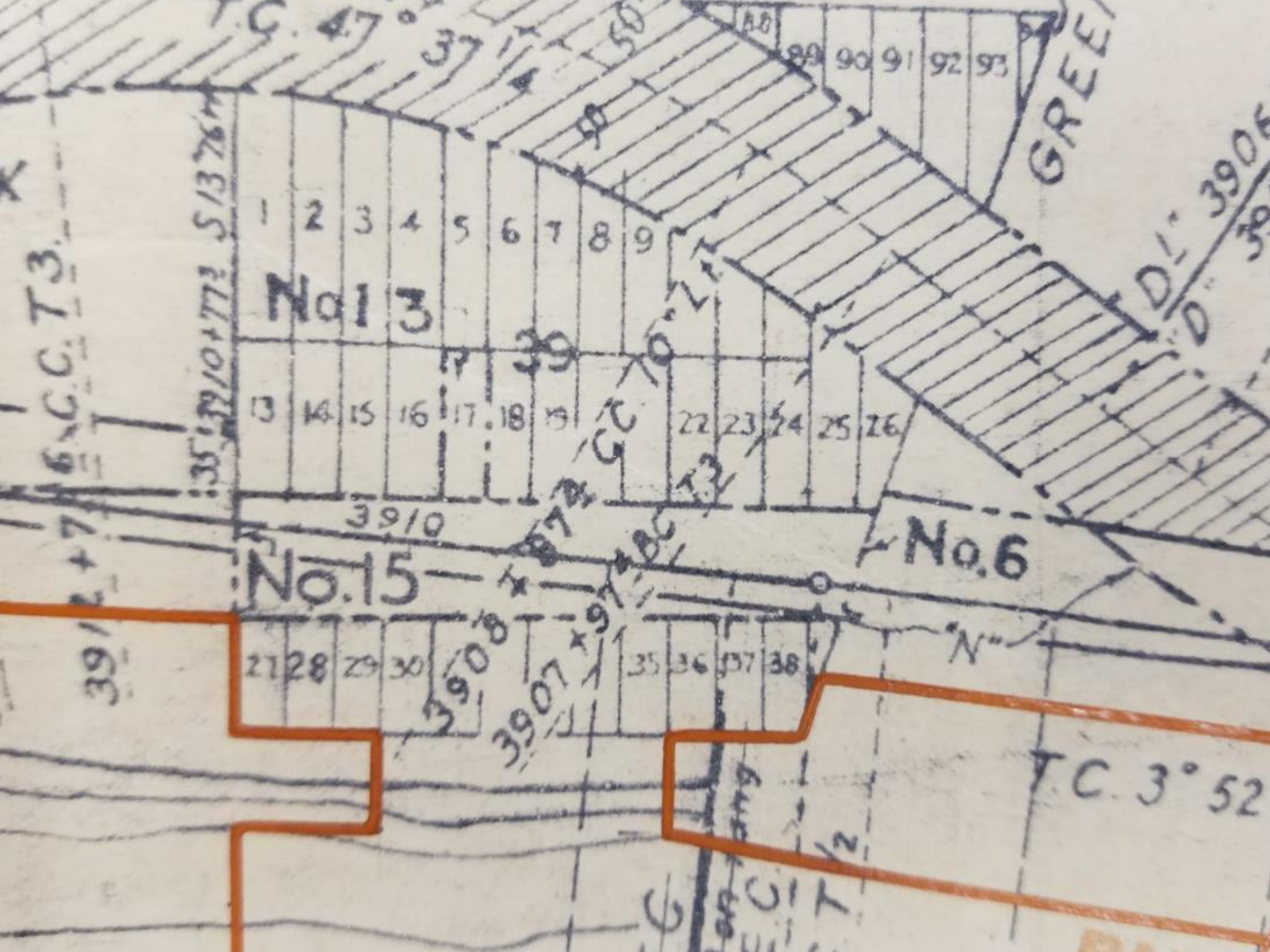
FROM STATION 3999+28 TO STATION 3900+00

Scale: 1 inch = 200 feet

VALUATION DEPARTMENT
SAN FRANCISCO, CALIFORNIA



(all)



No. 13

No. 15

No. 6

GREEN

C.C.T.3.

D.D.

35 39 10 + 77 2 S 13 76 4

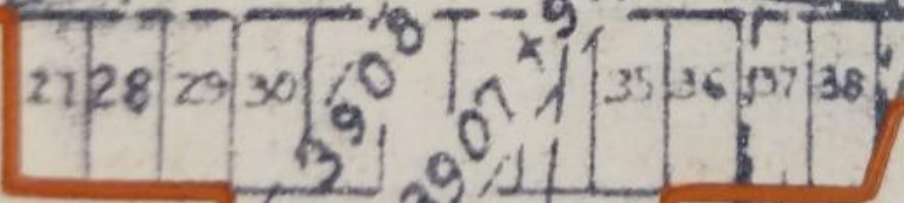
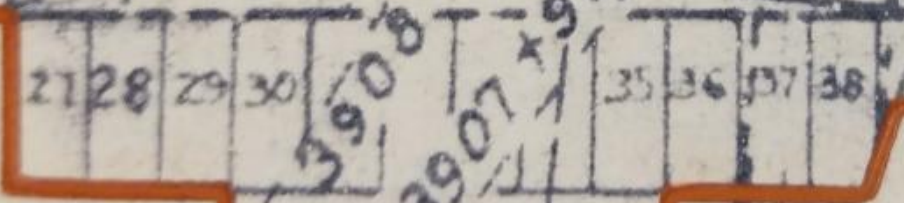
39 10 + 7 1 6

39 0 8

39 0 7

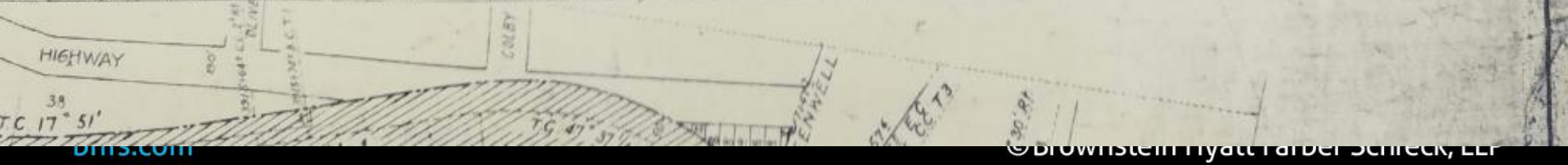
C. 3° 52'

C.C.T. 1/2



SCHEDULE OF PROPERTY

No	GRANTOR	GRANTEE	INSTRUMENT	DATE	RECORD	CUST.Nº	Area SqFt Acres	REMARKS
5	JF Miller et al.	SPRR Co.	Q.C. Deed	May 27, 1901	DB 77-259 May 31, 1901	2434	305	
6	AS Becker, Admrx. HL Williams Estate Santa Barbara Co et al HL Williams Jr. et al The Commercial Bank HL Williams Estate Wm McMeekin et al American Beet Sugar Co		B&S Decree Judgement Rel. of Mort Decree Q.C. Deed	Aug 27, 1907 Jul 29, 1907 May 9, 1910 Nov 6, 1909 Aug 27, 1908 Aug 19, 1907 Nov 22, 1904 Apr 22, 1904	118 107 Sep 23, 1907 118 70 Jul 30, 1907 127 43 May 11, 1910 125 96 Nov 9, 1909 511 307 Sep 2, 1908 119 144 Aug 23, 1907 105 127 Nov 26, 1904 99 126 May 16, 1904	9745 With 9745 10473 11499 With 11499 11499 30622 10436	2459	3109 ac acq 0650 ac shown as Par 2 on Map 5 Confirms next above Confirms deed 30622 below Same tract as deed 9745 above Releases next above Confirms 2 nd above See Note N ^o 3 " " N ^o 4
7	HH Hawley		G&C	Mar 28, 1901	76 541 Apr 3, 1901	2444	5140	0.157 ac acq 0.029 ac incl in Par 4 shown by D
8	J Phaeese	Southern Pacific Co	B&S	Nov 3, 1903	97 90 Nov 18, 1903	15223	3006	(Transferred to SPRR Co by deed 36874 below)
9	DC McGarvin			Jun 23, 1903	97 89 Nov 18, 1903	15585	6055	" " " " " " " "
10	HL Williams	SPRR Co.		Jun 21, 1897	59 590 Jun 24, 1897	2307	3659	
11								For area see schedule SP Co Cal(a) below
12								
13	FLambert	SPRR Co	G&C Deed	Mar 19, 1901	DB 76 471 Mar 19, 1901	2443	2004	
14	HL Williams	SP Branch Ry Co	Easement	Jul 1, 1887	15 118 Jul 2, 1887	2231		See Note No 16.
15	Co of Santa Barbara	SPRR Co	PERPETUAL and FRANCHISE 247	Jan 9, 1901		Fr 791	19765	See Note N ^o 5
16	J Etchas et al	SP Branch Ry Co	G&C Deed	Apr 2, 1887	13 142 Apr 7, 1887	2213	3447	" " 18.
17	C Fernald SPRR Co	BRodgers	B&S	Oct 26, 1901	15 250 Apr 13, 1887 79 760 Oct 29, 1901	2224 30611	3398	See Note N ^o 6 2.025 ac disposed of
18	JL de Etchas et al.	SP Branch Ry Co	B&S	Jul 2, 1887	16 106 Jul 19, 1887	2232	300	0.118 ac acq 0.024 ac incl in Par 16 (letter "H") See Note 19.
19	AM Ruiz Admrx. LPRodriguez et al	SPRR Co	G&C	Dec 21, 1900	75 357 Dec 21, 1900	2427		See Note N ^o 7
20	JG Smith	SP Branch Ry Co	B&S	Mar 25, 1902	83 519 Jul 28, 1902	2467		Remaining 1/2 interest in next above
21	EN Wheelan	SPRR Co	B&S	May 6, 1902	83 128 Jun 6, 1902	11508		Same tract as Par 19
22	HH Fernald et al.		G&C	Jul 2, 1887	16 2 Jul 2, 1887	2233	506	0.008 ac acq 0.000 ac incl in Par 16 (letter "F") See Note 20
23	F N Gutierrez		B&S	Apr 8, 1901	76 592 Apr 10, 1901	2446	440	See Note 21.
24	Jerome C. Wilson	SP Co	B&S	Oct 11, 1901	79 263 Oct 23, 1901	2463	41861	1.624 ac acq 0.412 ac shown as Par 1 on Map 3 See Note 22.
25	JC Wilson		Q.C.	Sept 24, 1902	84 251 Sept 24, 1902	2476		Same tract as Par 19. See Note No 10.
26	Board of Directors of the Montecito County Wat Dist	SP Co & SPRR Co.	Release	June 1, 1901	77 326 June 17, 1901	15182		" " " " 11
27	Southern Pacific Co.	Southern Pacific R.R. Co.	Resolution	July 27, 1901	81 of Leases 97 July 27, 1901	15186		
28	County of Santa Barbara	S.P. Co	Franchise	June 12, 1922	Misc Q - P 383 July 14, 1922	32679		See Note No 12. See Note No 13.
29	SPRR Co. and S.P. Co.	State of California	B. & S. deed	July 14, 1927	DR 126-P 433 July 27, 1927	36824	510	Transfers Parcels 8 & 9 above and Par. 16 Map 3 No record at hand. Omitted from 1916 maps.
30	State of California	County of Santa Barbara	Agreement	June 22, 1917		Fr 1235		Grants right to constr Wharf at Summerland Exp. 1937. See Note No. 17.
31	Submarine Oil Co et al (Def)	SPRR Co (Plff)	Agreement	Dec. 3, 1928		37495		Grants use of 6000 sq ft for Highway King Sta. 39354363.
32			Abandonment	July 23, 1929		19604		Portion of this grant was relinquished by Ord 839 below Remains a part of land of E.S. 39954 shown by letter "X"
33			Decree of Court	May 18, 1929	DR 180 433 Jan 7, 1930	Ord 839		Confirms S.P.R.R. Co's ownership of 6960 sq ft. shown
34				Aug 21, 1933	287 350 Aug 22, 1933	39594		



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.”

COUNTY'S HISTORIC POSITION

- 1965 – Road Commissioner Leland Steward – written to the owner of property in Block 39 – notes 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):
 - 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)

- Coastal Plan Policy 7-9 – County shall acquire the beach and bluff south of Wallace Avenue -- 1981
- 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.”

CONDITIONS

- Condition #5 – delete – restricts construction hours
- Condition #12 & 13 – potential for ambiguity when separate them; combine as shown on our redline
- Condition #15 (error in letter says #20) – says that CDP expires one year from Board action but should be one year from the effective date of the permit.
- Condition #23 – delete -- requires UPRR approval!

FINDINGS

- Attachment # 5:
 - Add recognition that this is a replacement house
 - Add to reasons why not suitable for recreation -- the site high above sandy beach, no trail or staircase connecting, access road used for public use for access & parking and Summerland Beach is adjacent.
 - Add to Coastal Zone Findings the long history of residential use of the property, the zone change from residential to REC, the unsuitability for residential use, public road serves the residence but not wide enough for public traffic, historic address as 2551 Wallace Avenue, residence on legally created lot, and County road (not RR) immediately north of site.

FINDINGS, cont'd

- Attachment # 10:
 - Add acknowledgment that the sewer line will be in existing County road, Wallace Avenue, change easement requirement for sewer line to encroachment permit, and note County-assigned address on Wallace Avenue.
 - Note that property was zoned residential before REC, valid geologic reason for adjusting bluff setback and include reference to Policy 3-4 with 50-year and 75-year setbacks.
 - Add reference to applicant having consented to conditions, explain why Policy 7-9 doesn't preclude this zoning change, and that the property isn't suitable for public or private recreation.

FINDINGS, cont'd

- Attachment # 11:
 - Add acknowledgment that the property historically was zoned residential and has been privately owned, occupied and used as a residence and has been served by a waterline in the County roadway.
 - Add that the existing house encroaches into the County road but the proposed house will not.

CONCLUSION

- We have provided overwhelming evidence that the County Road now known as Wallace Avenue exists and has been continuously in existence, although narrowed by the RR line relocation.
- Even the RR lease uses the very exhibit that we used, from Ord. 247, that demonstrates that a good half-width of Wallace Avenue remains in place.
- 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 included in the various plans and survey maps we have provided, particularly the exhibit map to Ord. 247

CONCLUSION

- Jeff O'Neil has been in process to replace his dilapidated home for far too many years.
- None of the grounds stated by staff for denial are valid.
- We ask that you approve his project and that you modify the conditions so they are appropriate for the project.
- We also ask that you beef up the staff-proposed findings so they better describe the nexus between the facts and the approval. Staff has been urging denial so their findings for approval should be beefed up