



January 29, 2021

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VIA EMAIL (clerk@carlsbadca.gov) AND U.S. MAIL

Mayor Hall and City Council
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

**Re: Information Addressing January 26, 2021 City Council Agenda Item No. 12
(Report on Planning Area F of the Poinsettia Shores Master Plan - Ponto
Property)**

Dear Mayor Hall and Honorable City Council Members:

This letter is submitted on behalf of the owner of the land north of Avenida Encinas along Ponto Drive known as the "Ponto Property" (APN 216-140-4300) to correct misrepresentations made at the above referenced City Council meeting.

There have been no discussions between the Ponto Property owner and People for Ponto or any other resident group about the purchase and sale of the Ponto Property. Public testimony at the January 26, 2021 City Council meeting about discussions with the landowner to purchase the Ponto Property was in error. (Reference public testimony starting at video timer 18:34 of Agenda Item 12, posted at [January 26, 2021 City Council Meeting - Carlsbad, CA \(swagit.com\)](http://www.swagit.com).) The public testimony left the City Council, staff and interested public with the incorrect impression that the Ponto Property owner is potentially interested in selling the Ponto Property for as little as \$15 million for park and open space use. The effect of the incorrect public testimony was to urge City Council action, based on conjectures, to move forward with acquisition of the Ponto Property for park or open space use or to "reserve" the Ponto Property for relocation of the campground facilities to mitigate potential future sea level rise impacts to the campground. To the extent that the City was misled by the public testimony, this letter will confirm that the Property Owner has not engaged in any discussions with the People for Ponto or other resident group for the purchase and sale of the Ponto Property, and has no intention of doing so. The \$40 million value is based on actual purchase offers received by the Ponto Property owner, excluding additional revenue value. Discussions of opinions of value of the Ponto Property in a public forum made by or asserted by City Council representatives influences market perception of value. Further, discussions in contemplation of using eminent domain powers to condemn the Ponto Property, downzoning, and references to the property as "Ponto Park" all contribute to a heightened perception of development uncertainty specific to the Ponto Property which interferes with marketability and value.

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The Ponto Property owner has taken all commercially reasonable steps to further the development application on file with the City. The City is engaged in amending several of the primary policy documents affecting development of the Ponto Property, including updating the Housing Element of the General Plan (“Housing Element Update”) and the Local Coastal Program’s Land Use Plan and Master Plan (“LCP Update”). The Ponto Property owner has been actively engaged in public meetings before the Housing Element Advisory Committee, Housing Commission and Planning Commission to ensure that the documents being developed by the City accurately describe the existing development regulations affecting the Ponto Property as necessary to enable the orderly and timely processing of the development application once the policy documents are approved. The Ponto Property owner’s efforts to date have resulted in important corrections being made to both the draft LCP Update and Housing Element Update, namely:

- An Errata was approved as part of the draft LCP Update correcting inaccurate information that wetland-related requirements apply to the Ponto Property, which obligations actually apply to the adjoining property (see December 2, 2020 Errata Sheet for Planning Commission Agenda Item #4, pp. 2, 5 and 6); and
- A new Objective was approved as part of the draft Housing Element Update to track compliance with Planning Commission Resolution 7114 (approved by City Council Resolution 2015-243) that establishes affordable housing requirements for the Ponto Property and six other properties. The Objective is necessary to track and report compliance with the requirement, but had been omitted from the previous draft Housing Element (see December 2020 draft Housing Element, p. 10-224).

The City has now embarked on a third policy process affecting the Ponto Property with the City Council’s January 26, 2021 direction for staff to provide a report within 6 months discussing viable options with respect to the Ponto Property and other coastal properties.

Under these circumstances, the commercially reasonable course is for the Ponto Property owner to continue to participate in the City’s proceedings on the LCP Update, Housing Element Update and upcoming coastal properties review, so that the pending development application can be processed and considered in light of those policies. The City cannot properly justify deeming the Ponto Property development application withdrawn when the Ponto Property owner has been in constant communication with the City to advance development of the Ponto Property. The City’s own policy amendment proceedings are justifiable cause to wait to bring the application forward for consideration. On the record here, dismissing the application could expose the City to liability for undertaking activities to pressure the Ponto Property owner and depress the value of property before attempting to acquire it.

The Ponto Property owner urges the City to move forward with the LCP Update and Housing Plan Update, both of which designate the Ponto Property for residential and commercial development consistent with sound planning principles and consistent with the R-23 land use designation and zoning in place for the Ponto Property. As discussed in greater depth in our comment letter dated January 23, 2021, the City simply has no grounds to purchase the privately owned Ponto Property over the landowner's objection. Nor can the City take actions like deeming the development application to be abandoned or withdrawn, or earmarking the Ponto Property for public acquisition for park or open space or campground use, in an effort to interfere with the development and marketability of the Ponto Property or pressure the Ponto Property owner to agree to a lower purchase price. We ask the City Council to dispense with courses of action to devalue, downzone or otherwise designate the Ponto Property for park or open space use contrary to: (i) the findings made in Planning Commission Resolution 7114 (approved by City Council Resolution 2015-243); (ii) information in the record of the January 13, 2021 Planning Commission hearing that publicly-owned property is available for relocation of the campground facilities; (iii) information summarized in the staff report for the January 26, 2021 City Council meeting; (iv) the December 2, 2020 agenda report for the City's pending Local Coastal Program Land Use and Master Plan Update; and (v) dozens of Local Facilities Management Plans adopted by the City over the last 25 years concluding that there is no public need for an additional public park or open space in the Southwest Quadrant including the Ponto Property.

The Ponto Property owner remains committed to working with the City to do its part to further the City's goal of providing much needed safe and decent housing for the community.

Sincerely,



Michele A. Staples

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