

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



W 11b

Addendum

September 8, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W11b**, Coastal Commission Permit Application
#A-6-OCN-08-075 (Marina Towers), for the Commission Meeting of
September 10, 2008.

Staff recommends the following changes be made to the above-referenced staff report in response to the letter submitted by the representative of the Oceanside Marina Towers Homeowners Association, Steven Kaufmann, dated September 4, 2008 which gives greater clarification to the full scope of the lot line adjustment (LLA) approved by the City, and raises several additional concerns regarding Commission jurisdiction:

1. Page 1 of the staff report, the last paragraph on the page shall be modified as follows:

The existing lot proposed lot line adjustment (LLA) creates a 1.26 upland parcel (Parcel A) that is improved with an existing private residential development and parking structure (Marina Towers), with a portion of this lot consisting of historic tidelands (covered by a public parking lot). The LLA accomplishes two things: 1) it excludes the downhill 200 plus/minus foot area (which State Lands Commission has indicated may include historic tidelands) to remain part of a larger former tidelands parcel in the Harbor (Parcel B); and 2) it adds about 1/3 of the uphill, upland public parking lot (a separate parcel adjoining the Marina Towers), to another larger parcel in the Harbor containing tidelands and the remaining 2/3 of the parking lot (Parcel C). In simple terms, the LLA separates the developed upland portion of the Marina Towers property from a small potentially former tidelands area, and adds a separate, sliver parcel containing the public parking lot to a larger parcel that contains the balance of the parking lot and former tidelands. (ref. Exhibit 4 of staff report). The All lots is are currently owned by the City of Oceanside, and leased to the Harbor District. The Harbor District has sub-leased a portion of the existing larger tidelands lot to the Marina Towers development. The Coastal Development Permit (CDP) approved by the City permits a lot line adjustment on the property separating the historic tidelands and the larger portion of the southern Harbor area from the residentially developed portion. The lot line adjustment is a necessary step to allow the City of Oceanside to sell the underlying land to the current lessees (Marina Towers), as historic tidelands

cannot be sold to a private entity for use as private residences. The City therefore processed a permit removing the portion of the property consisting of historic tidelands ~~(the portion containing the existing public parking spaces)~~ from the remainder of the lot.

2. Page 2 of the staff report, first paragraph shall be modified as follows:

The proposed project is located within the Harbor District of Oceanside. The City has gained permit authority over the entire harbor including all historic tidelands by processing an exclusion of lands committed to development per Section 30613 of the Coastal Act an urban land exclusion during the City's initial LCP certification. As such, the historic tidelands on the site are not in the Commission's retained jurisdiction, but rather in the Commission's appeals jurisdiction. The Oceanside Marina Towers Homeowners' Association has raised questions regarding whether the Commission has appeals jurisdiction at this location. Marina Towers is currently located on a large parcel (APN 143-010-16) including lands within the southerly portion of the Harbor and its waters. Coastal Act Section 30603 lays out the extent of the Commission's appeals jurisdiction, which extends to developments located "within 300 feet ... of the mean high tide line of the sea." Oceanside Harbor is clearly tidally influenced, as it connects directly to the Pacific Ocean; thus, the mean high tide line (MHTL) in this area is the edge of the bulkhead surrounding the harbor. The proposed lot line adjustment is within 300 feet of the edge of Oceanside Harbor and therefore within the Commission's appeals jurisdiction.¹

Even if the LLA were not taking place within 300 feet of the MHTL, the proposed division of land does change the shape and size of the existing parcel, which is bisected by Harbor Drive (first coastal roadway) and includes the entire southern portion of the Harbor consisting of public trust lands (ref. Exhibit #7). As such, not only is the LLA within 300 feet of the MHTL, but the parcel being adjusted contains public trust lands (filled tidelands) and portions of it are between the first coastal road and the sea, which are additional basis for the Commission's appeals jurisdiction under Section 30603. At the time this report was written, Commission staff had not received the City file; and, as such, the project and contentions raised by the appellants have not been completely reviewed.

In his September 4, 2008 letter, Mr. Kaufmann ignores the fact that the LLA is within 300 feet of the MHTL and instead asserts that because the LLA is not located within the portions of the subject parcels that consist of former tidelands, the Commission does not have jurisdiction over this appeal. An LLA, however, like the subdivision of a parcel, affects the entirety of the parcel subject to the adjustment, regardless of

¹ A representative of the Oceanside Marina Towers Homeowners' Association has asserted that the State Lands Commission (SLC) determined that the MHTL for this area is located solely on the beach west of the harbor. The map provided by this representative, however, simply shows a historic high water mark based on a 1939 survey, before the harbor was created. Commission staff has conferred with staff members at the State Lands Commission who confirm that they do not take the position that the MHTL depicted on the beach west of the harbor would preclude a finding that there is another MHTL located within the harbor, where tidally influenced water meets the shore.

where the new lot line is located. Here, the LLA affects the size, shape and density of use on all three of the parcels affected by the LLA. The Commission therefore has appeals jurisdiction over the LLA because it creates an impact on the portion of the parcels that are within the Commission's appeals jurisdiction.

3. Page 2 of the staff report, paragraph 2 shall be modified as follows:

The primary concern raised by the appellant is that the sale of the City-owned property will facilitate and perpetuate continued residential use of a prime visitor-serving location. While the appellants don't specifically cite, as grounds for their appeal, that the sale of the Marina Towers will be in violation of the Coastal Act. The appellants do specifically cite in their appeal a section of the Harbor Precise Plan requiring optimization of public access as well as Coastal Act Sections 30213, 30222 and 30224. These policies protect and reserve both public and privately held lands for visitor-serving and recreational uses designed to enhance public opportunities for coastal recreation as a priority over private residential and general commercial development. The appellants contend that because the land is currently under leasehold and the Harbor Precise Plan directs existing leaseholds to optimize public access, the property should continue as a leasehold to enhance public access. Furthermore, tThe Marina Towers are located on a moderately sized lot within the Harbor District of Oceanside. Both the certified LCP and the Harbor Precise Plan developed specifically for the Harbor District acknowledge that residential use is a low priority for the Harbor District. The Harbor Precise Plan includes policies that require the City to address, during any permit review for development within the Harbor Area, the potential for the redevelopment of any location with a high-priority use, such as a visitor serving, or harbor-dependent development.

4. Page 3, paragraph 2 shall be modified as follows:

~~Lastly, because the area being separated from the parcel where the Marina Towers development is located is considered filled tidelands, the types of uses on such land are highly restricted. In addition, the existing parking lot on the subject this properties is currently shared by the Marina Towers residents and the general public and is being directly affected by the proposed LLA. As indicated by the City, the a portion of the parking lot containing historic tidelands is the area is available to the public (54 spaces) and the remaining are used by the residents (11 spaces). However, the CDP for the LLA did not specifically address it is unclear how the public is made aware of the public parking within or adjacent to the private development on the newly created portion of the adjacent Lot C, or how the use by the public and not the residents is protected. The private residents use a portion of the public parking lot to gain access to the private residential garage. The resolution does not include conditions regulating the use of these public parking spaces, and as such, the appellant alleges the public parking use is not adequately protected through the CDP as approved by the City. Therefore, due to the potential inconsistency of residential development as a long-term use on oceanfront land within the Harbor District, failure to secure the public parking on the tidelands portion of the site and lack of specific information related to the~~

tidelands, parking and alternatives analysis for future uses of the property and consistency with the Harbor District Precise Plan, staff is recommending the Commission find substantial issue exists with respect to the grounds on which the appeal has been filed.

5. Page 3, the last paragraph, which continues onto Page 4, shall be modified as follows:

The appellants contend that the approval of the coastal development permit is inconsistent with numerous policies pertaining to public access within the LCP and the Harbor Precise Plan. There are five major concerns brought forward by the appellants. The primary concern of the appellants is that by selling the property for the continuation of residential uses (67 unit condominium complex currently exists on a portion of the site) the permit is inconsistent with policies providing that areas adjacent to the shoreline and/or within the Harbor District shall be preserved for visitor-serving and coastally dependent uses. As previously stated, while the appellants do not specifically state that the sale of the property will "perpetuate continued residential use," they do state that the sale of the Marina Towers will be in violation of the public access provisions of the LCP and the Coastal Act. The appellants have specifically cited in their appeal a section of the Harbor Precise Plan requiring optimization of public access as well as Coastal Act Sections 30213, 30222 and 30224. All of these policies protect and reserve both public and privately-held lands for visitor serving and recreational uses designed to enhance public opportunities for coastal recreation as a priority over private residential and general commercial development. The Coastal Act and the City's certified LCP gives highest to coastal dependent types of developments in areas adjacent to the ocean, with the highest priorities given to developments that cater to those visiting the beach. As such, through approval of the CDP, which facilitates the sale of this public property, the City is losing any potential redevelopment of this site in the future with a higher priority use, such as a hotel, RV Park, or coastal-dependent development. The appellants contend that because the land is currently under leasehold and the Harbor Precise Plan directs the existing leaseholds to optimize public access, the property should remain a leasehold to enhance public access. The Commission concurs it is not the sale of the property that requires a CDP.

6. Page 7, first paragraph of the project description shall be modified as follows:

A lot line adjustment and, therefore, a coastal development permit was necessary to separate the residential portion of the lot from the public trust lands on the site in order to allow the sale of the residential portion of the lot to a private entity. The Harbor District is located on an area of Potential Public Trust lands in that the majority of the Harbor was developed on top of historic tidelands. When the City submitted their Local Coastal Program for approval by the Coastal Commission in 1985 1995, the proposal included designating all the historic tidelands within the Harbor District as ~~an~~ Urban Land Exclusion lands committed to urban uses per 30613 of the Coastal Act. As such, the Coastal Commission no longer retains the original jurisdiction for the area, including the subject site. However, the Commission retains appeals jurisdiction over these lands because they still consist of public trust lands, and developments on public trust lands are appealable based on Section 30603(a)(2). Moreover, in this

particular case, the lot line adjustment is within 300 feet of the MHTL, so this CDP is also appealable on that basis. Furthermore, Marina Towers is located on a parcel that includes the majority of the southern portion of Oceanside Harbor, and as such, the parcel is not only appealable because it is within 300 feet of the MHTL and consists of public trust lands, but portions of the parcel are also located between the first public road and the sea. Again, as explained in more detail above, because the proposal is for a Lot Line Adjustment, which affects all portions of the lots, the Commission retains appeals jurisdiction over the LLA. because portions of the property consist of historic tidelands and because the Marina Towers development is located between the first coastal road and the sea, the area still remains in the Coastal Commission's appeal jurisdiction. If the proposed project goes forward and the lot is split between the historic tidelands (to remain City owned) and the Marina Towers property, (to become privately owned), any proposed development at either site would still be within the Coastal Commission's appeal jurisdiction.

7. Page 7, second paragraph of the project description shall be modified as follows:

The proposed Marina Towers real property site consists of approximately 1.26 acres. The property contains a 67 unit condominium complex, a parking garage, and a parking lot. The majority of the parking lot (the City indicates 54 of 66 spaces) is proposed as public parking on a separate, newly-configured and adjacent lot. as it overlays the historic tidelands. The LLA accomplishes two things: 1) it excludes the downhill 200 plus/minus foot area (which State Lands Commission has indicated may include historic tidelands) to remain part of a larger former tidelands parcel in the Harbor (Parcel B); and 2) it adds about 1/3 of the uphill, upland public parking lot (a separate parcel adjoining the Marina Towers), to another larger parcel in the Harbor containing tidelands and the remaining 2/3 of the parking lot (Parcel C). In simple terms, the LLA separates the developed upland portion of the Marina Towers property from a small potentially former tidelands area, and adds a separate, sliver parcel containing the public parking lot to a larger parcel that contains the balance of the parking lot and former tidelands. (ref. Exhibit 4 of staff report). The All lots is are currently owned by the City of Oceanside, and leased to the Harbor District. The Harbor District has sub-leased a portion of the existing larger the lot to the Marina Towers Homeowners Association. To date, staff has not received confirmation of the location and extent of this filled tideland area from the State Lands Commission. Thus, it is unknown whether or not the boundary proposed by the City truly reflects the actual boundary separating filled tidelands from upland areas.

8. Page 8, third complete paragraph shall be modified as follows:

The project as approved by the City adjusts is an adjustment to an several existing lot lines, which will result in separating the filled tidelands and the residentially-developed portion (Parcel A) from the remainder of the lot (Parcel B). Proposed Parcel A ~~The lot~~ is currently developed with a 67 unit condominium project through a leasehold arrangement with the Harbor District. The proposed lot line adjustment (LLA) will remove the potential public trust lands from the residential development

site and will, therefore, allow the City of Oceanside to sell the underlying property to the owners of the existing condominium building, the final result being the sale of City owned land located in the Harbor District to a private entity. Because the purpose of the LLA is to allow the sale of one of the subject parcels, in analyzing the effects of the LLA, the Commission must consider the impact of the sale of the property as it is an impact caused by approval of the LLA under these circumstances. The City has a Precise Plan for the Harbor Area that is a certified component to the City LCP Land Use Plan (LUP), and as such, not only are the general LCP policies applicable, but so are the specific policies contained in the Harbor Precise Plan. Furthermore, because a portions of the ~~project site is parcel on which the project is located~~ are between the first coastal road and the sea, the public access and recreation policies of the Coastal Act are also applicable. All of the applicable policies (from the City's certified LCP, the Harbor Precise Plan and the Coastal Act policies) state in part:

W 11b

MARINA TOWERS LOT LINE ADJUSTMENT

Exhibit 7



7

A-6-OCN-08-075 ex. #7

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

NOTICE OF FINAL ACTION
REGULAR COASTAL PERMIT RC-16-06
MARINA TOWERS SALE

DATE: July 21, 2008

The following project is located within the City of Oceanside Coastal Zone. A local decision approving the application for a Coastal Development Permit has been finalized and approved by the Harbor Board of Directors on July 16, 2008.

Applicant: City of Oceanside

Agent: Doug Eddow and Jerry
Hittleman,

Project Mgr. and Planner

Address: 300 North Coast Hwy.
Oceanside, CA 92054

Address: same

Phone: (760) 435-5012, Doug and
(760) 435-3535, Jerry

Phone: same

Project Location: Oceanside Harbor Aquatics Center on Parcel "F",
and replacement of existing public restroom facilities on Lot
"11B" within the Oceanside Small Craft Harbor Precise Plan Area.

AP Number: NA

Acreage/Area: Approx. 1.26 acres
of total affected
land area

Zoning: Harbor Precise Plan
General Plan (LUP): Harbor

- Proposed Development: The project involves approval of a Regular Coastal Permit for a property line adjustment affecting the Marina Towers leasehold property to facilitate sale of the property per the Purchase and Sale Agreement with the Marina Towers Association.

A detailed description of the project and scope of work is contained within the attached Harbor Board of Directors Staff Report.

Application File Number: RC-16-06

Filing Date: 2006

Action By: Board of Directors, Oceanside Small Craft Harbor
District - July 16, 2008

Action: Approved Denied XX Approved with Conditions

NOTICE OF FINAL ACTION

A6-OCN-08-75

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Conditions and Findings for local agency approval: Yes (see attached Harbor District Board of Directors resolution approving the project.)

N/A Appealable to the Oceanside Planning Commission in writing within 10 days of Planning Director's decision

N/A Appealable to the Oceanside City Council in writing within 10 days of the adoption of the decision resolution by the Planning Commission.

XX Appealable to the Coastal Commission pursuant to Public Resources Code Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days of the Coastal Commission's receipt of the Notice of Final Action.

Address: California Coastal Commission
San Diego District Office
7575 Metropolitan Dr., Ste. 103
San Diego, CA 92108-4402
Phone: (619) 767-2370

Please mail copies to: (1) California Coastal Commission, (2) Applicant, (3) anyone requesting notification within seven (7) days following decision.

Attachments:

Harbor District Board of Directors Resolution
Staff Report, Harbor Dist. Board of Directors, July 16, 2008
Approved Exhibits

AG-OCN-08-75 **10**



W11b

CITY OF OCEANSIDE
OFFICE OF CITY MANAGER

September 8, 2008

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: Oceanside Marina Towers Property Line Adjustment

Chairman Kruer and Commissioners:

This letter is to clarify an issue that has been raised regarding Item 11B, Appeal A-6-OCN-08-75, scheduled for your September 10, 2008 agenda. The subject of the appeal is the Property Line Adjustment to facilitate the sale of the property to the Marina Towers Association.

The Coastal Commission staff report represents the "Loss of Revenue for the Harbor District" as a potentially substantial issue. The Coastal staff report questions how the sale of the property will impact the Harbor, given the revenues will be modified from a constant source of income, to a one time payoff.

As part of the public process, the Oceanside City Council directed the Harbor District not be economically impacted by the property line adjustment or sale of the property. The City Council has made a clear public statement that there would be an equitable distribution of the sales' proceeds between the City and the Harbor District. The City Council has not made a decision on whether that equitable distribution would be in the form of an on-going, annual revenue stream, the equivalent one-time payoff, or other alternative. The distribution, in whatever form, would at a minimum replace the \$57,000 annual income provided by the current lease. What is clear; is that there would be no adverse economic impact on the Harbor District.

Based on the City Council approval of the property line adjustment, there will not be a loss of revenue to the Harbor District. As such, there is not a substantial issue, as related to the "Loss of Revenue for the Harbor District".

Sincerely,

Signature on File

Peter A. Weiss
City Manager

cc: Mayor and Councilmembers

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

A-6-OCN-08-075
Letter From City //

W11b

CALIFORNIA STATE LANDS COMMISSION
 100 Howe Avenue, Suite 100-South
 Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer
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Contact Phone: (916) 574-1828
 Contact FAX: (916) 574-1855
 Contact Email: fossumc@slc.ca.gov

April 10, 2008

G -10.06

John Paul Hanna
 Hannah and Van Atta
 525 University Avenue, Suite 600
 Palo Alto, CA 94301-1921

John P. Mullen, City Attorney
 City of Oceanside
 300 North Coast Hwy.
 Oceanside, CA 92054

RE: Oceanside/Marina Towers Title Settlement and Exchange Agreement

Dear Messrs. Hanna and Mullen:

This will summarize the details of the proposal that I have discussed verbally with John Hanna. Hanna & Van Atta represents the Oceanside Marina Towers Association ("Association"). The Association (and its 67 members) occupies the condominium residential project known as Marina Towers, which consists of a 17-story building located on land situated within and owned by the City of Oceanside. The Association and its members are tenants under a long-term ground lease entered into with the City. The City wishes to sell the underlying fee, and the Association and its members wish to buy the underlying fee so that the leasehold condominiums can then become fee title condominiums.

The Ground Lease Agreement ("Ground Lease") contains a description of the leasehold premises. The existing parcel which is within APN: 143-010-16 (shown on Exhibit "C" attached hereto) includes historic tidelands. The proposal is to resolve the issues involving the title to the City property and eliminate any public trust interest from the Marina Towers parcel prior to conveyance of the Marina Towers site by the City to the Association.

In order to clear the City's title to the Marina Towers site, a title settlement agreement would resolve boundary issues through an exchange and termination of any state and public trust interest in the Marina Towers site and the adjacent parking lot (as shown on the attached Exhibit C). The exchange would include the City's dedication and conveyance of the remainder of the City property to the City as trustee of its tide

A6-OCN-08-75
 Letter from SLC B

and submerged lands as granted by the legislature pursuant to Chapter 846, Statutes of 1979.

The City could then deed title to the Marina Towers parcel over to the Association and its members. The City would also include an easement for ingress and egress over the two parking lot parcels, which would be necessary to provide access from the Marina Tower parcel to the adjacent public streets. The Marina Towers Association and its members would quitclaim to the City any interest under their long-term Ground Lease in the new tidelands parcel.

This Agreement would be settlement of a title dispute and is therefore exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21080.11; the Subdivision Map Act pursuant to Government Code Section 66412 (e); and the California Coastal Act pursuant to Public Resources Code Section 30416 (c). The resolution of title would result in the Marina Towers parcel and the adjacent city owned parking lot parcels existing free of any state or public trust interest and outside the retained or original jurisdiction of the Coastal Commission (Public Resources Code Sections 30600 (b), 30601 (2)). Should the City desire to proceed with resolving the title issues as described, please let me know so that we can prepare the paperwork to take the matter to our Commission. The form of the agreement would be similar to the agreement approved by the City and State Lands Commission in 2003 with CH Oceanside, LLC involving the south bank of the San Luis Rey River opposite the subject property.

If you have any questions please do not hesitate to contact Staff Counsel Jennifer Lucchesi lucchej@slc.ca.gov, who will be processing the agreement, or me.

Sincerely,

Signature on File

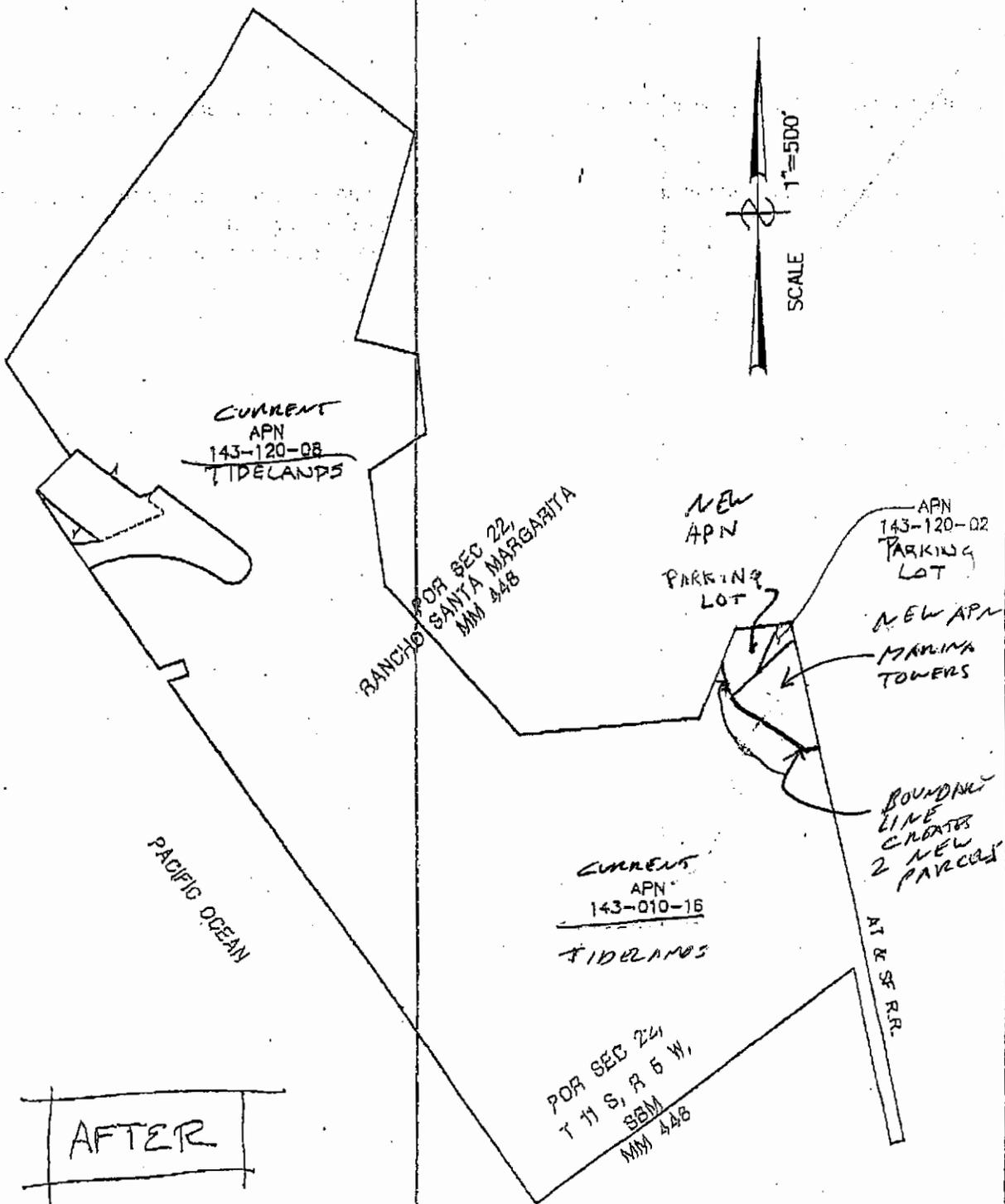

Curtis L. Fossum
Assistant Chief Counsel

cc: Grace Kato, Granted Lands Representative

A6-OCN-08-75

14

EXHIBIT "C"



AFTER

EXHIBIT "C"

LOT LINE ADJUSTMENT	
DATE: DEC. 20, 2007	SHEET 2 OF 6

AG-OCN-08-75

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WIIB

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project: Appeal No. A-6-OCN-08-075
City of Oceanside Lot Line Adjustment

Date/time of receipt of communication: September 8, 2008 @ 9:00 am

Location of communication: Palo Alto

Type of communication: Telephone

Person(s) initiating communication: Steve Kaufmann, Lou Lightfoot,
Susan McCabe

Detailed substantive description of content of communication:

The applicants told me that the project was appealed by a local group. Staff is recommending substantial issue. The Homeowners Association is supporting No Substantial Issue.

The lot line adjustment proposed by the city is to create a separate parcel of non-tideland city-owned land upon which the Marina Towers condominium complex is located to sell the property to the Homeowners Association.

Applicants believe the project is not within CCC appeal jurisdiction --

1. it is not located between the first public road and the sea
2. nor is the Marina Towers' property within the appeal jurisdiction as it is excluded under the Commission-adopted post certification appeals map.

They discussed the grounds for appeal presented by the appellants. They noted that the Commission did not appeal the project but staff added an issue and cited it as the appellants a primary issue.

Staff's added issue is that the site-specific Harbor Precise Plan policy requires the City to examine other uses for the property in the event the land lease expires. The project proponents do not believe this ground for appeal is properly before the Commission as it was not raised by the appellants nor do they believe there is merit to the issue.

Staff also reviewed the appellants' appeal contentions relating to the public parking lot adjacent to the Marina Towers property. Applicants have explained that the public parking lot will remain entirely under City ownership and control and that no part of the parking lot would be included within the parcel that would be sold to the HOA.

Signature on File

Monday, September 08, 2008

Commissioner

Date

A6-OCN-08-75 M
Ex Parte Communication

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

**W 11b**

Filed: August 12, 2008
49th Day: September 30, 2008
Staff: Toni Ross-SD
Staff Report: August 27, 2008
Hearing Date: September 10-12, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approved with Conditions

APPEAL NO.: A-6-OCN-08-075

APPLICANT: City of Oceanside

PROJECT DESCRIPTION: A property line adjustment affecting Marina Towers leasehold property to facilitate the sale of the property per the Purchase and Sale Agreement with the Marina Towers Association.

PROJECT LOCATION: The entrance to the Oceanside Harbor within the jurisdiction of the Oceanside Small Craft Harbor Precise Plan, Oceanside, San Diego County.

APPELLANTS: Citizens for the Preservation of Parks and Beaches

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

The existing lot consists of a private residential development and parking structure, with a portion of this lot consisting of historic tidelands (covered by a public parking lot). The lot is currently owned by the City of Oceanside, and leased to the Harbor District. The Harbor District has sub-leased the lot to the Marina Towers development. The Coastal Development Permit (CDP) approved by the City permits a lot line adjustment on the property separating the historic tidelands from the residentially developed portion. The lot line adjustment is a necessary step to allow the City of Oceanside to sell the underlying land to the current lessees (Marina Towers), as historic tidelands cannot be sold to a private entity for use as private residences. The City therefore processed a permit removing the portion of the property consisting of historic tidelands (the portion containing the existing public parking spaces) from the remainder of the lot.

The City has gained permit authority over the entire harbor including all historic tidelands by processing an urban land exclusion during the City's initial LCP certification. As such, the historic tidelands on the site are not in the Commission's retained jurisdiction, but rather in the Commission's appeals jurisdiction. At the time this report was written, Commission staff had not received the City file; and, as such, the project and contentions raised by the appellants have not been completely reviewed.

The primary concern raised by the appellant is that the sale of the City-owned property will facilitate and perpetuate continued residential use of a prime visitor-serving location. The Marina Towers are located on a moderately sized lot within the Harbor District of Oceanside. Both the certified LCP and the Harbor Precise Plan developed specifically for the Harbor District acknowledge that residential use is a low priority for the Harbor District. The Harbor Precise Plan includes policies that require the City to address, during any permit review for development within the Harbor Area, the potential for the redevelopment of any location with a high-priority use, such as a visitor serving, or harbor-dependent development.

In this particular case, it appears there is the potential for the City to update the use on this prime lot. If the lease is not renewed by the City, the existing structure could be demolished in the future and the entire site utilized by the City for harbor-related uses, parkland or other public recreational opportunities. It is also possible that the City and/or the Harbor could sublease the property to an interested party proposing a more appropriate use of this harbor-fronting land. The existing Land Use Plan policies acknowledge the potential to modify the existing residential use in some way that would increase the visitor-serving potential for the site. Further, the Harbor Precise Plan requires that the potential for a higher priority use be reviewed during any lease renewal or associated coastal development permit application. Not only did the City fail to review such opportunity, but the sale of the land to private ownership would preclude such future opportunities and appears to be short-sited and not in the interest of maximizing public use of this prime visitor-serving location.

As stated previously, staff has not yet received the entire City file. It is possible that the City conducted a review for potential redevelopment and concluded that a higher priority use was not feasible. However, no such review has been received by staff or is contained in the City staff report prepared for the coastal development permit. As such, approval of a lot line adjustment to allow the sale of City owned property for private residential use in a prime visitor serving location without proper review of alternatives would be inconsistent with the public access and recreation policies of the Coastal Act, the City's certified LCP, and the City's certified Harbor Precise Plan.

The Harbor Precise Plan also includes that these types of leaseholds provide necessary funding to maintain the Harbor facilities and to provide for future developments. The revenue collected from the sale of the land will provide both the City and the Harbor with funding for projects in the near future; however, by selling the land, the City and the Harbor will no longer collect the revenue from leasing the land, and, thus, will lose

funding for future maintenance and development which the appellant alleges is inconsistent with the certified LCP.

It is unclear at this point how the lot was adjusted to remove the public parking spaces from the original lot, and how this portion of land will be absorbed by the adjacent lots. While an exhibit has been included with the staff report (ref. Exhibit #4), it is unclear to staff how the lot line adjustment coincides with the public trust lands, or the surrounding areas. Further, it is also unclear if the lot line will accurately preserve the area of historic tidelands, as no documentation was provided by State Lands or another entity confirming the exact location of the filled tidelands.

Lastly, because the area being separated from the parcel where the Marina Towers development is located is considered filled tidelands, the types of uses on such land are highly restricted. The parking lot on this property is currently shared by the Marina Towers residents and the general public. As indicated by the City, the portion of the parking lot containing historic tidelands is the area available to the public (54 spaces) and the remaining are used by the residents (11 spaces). However, it is unclear how the public is made aware of the public parking within the private development, or how the use by the public and not the residents is protected. The resolution does not include conditions regulating the use of these public parking spaces, and as such, the appellant alleges the use is not adequately protected. Therefore, due to the potential inconsistency of residential development as a long-term use on oceanfront land within the Harbor District, failure to secure the public parking on the tidelands portion of the site and lack of specific information related to the tidelands, parking and alternatives analysis for future uses of the property and consistency with the Harbor District Precise Plan, staff is recommending the Commission find substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: The City of Oceanside Small Craft Harbor Precise Plan, Appeal by Citizens for Preservation of Parks and Beaches, City Council resolution for Coastal Development Permit RC-16-06, Real Property Purchase and Sale Agreement dated July 16, 2008, The City of Oceanside's Local Coastal Program.

I. Appellants Contend That:

The appellants contend that the approval of the coastal development permit is inconsistent with numerous policies pertaining to public access within the LCP and the Harbor Precise Plan. There are five major concerns brought forward by the appellants. The primary concern of the appellants is that by selling the property for the continuation of residential uses (67 unit condominium complex currently exists on site) the permit is inconsistent with policies providing that areas adjacent to the shoreline and/or within the Harbor District shall be preserved for visitor-serving and coastally dependent uses. The Coastal Act and the City's certified LCP gives highest-priority to coastal-dependent types

of development in areas adjacent to the ocean, with the highest of priorities given to developments that cater to those visiting the beach. As such, through approval of the CDP which facilitates a sale of this public property, the City is losing any potential redevelopment of this site in the future with a higher priority use, such as a hotel, RV Park, or coastal-dependent development.

The appellants' second contention is that the sale of the property will result in a loss of needed revenue for the Harbor District. The Harbor Precise Plan indicates that a large portion of the revenues for Harbor development are provided by the leaseholds for the land within the Harbor Area. The Marina Towers is currently operating as a leasehold, and as such, provides the Harbor district with annual funding. The sale of the property will provide both the City and the Harbor District with a one-time payment; however, funding will no longer be provided on an annual basis, and thus the Harbor District will lose a source of long term funding, inconsistent with the funding policies included in the Harbor Precise Plan.

The third concern raised by the appellants is the sale of public parks for private uses. As a component of the lot line adjustment, the Marina Towers development was given an easement over the public parking area for ingress/egress use only. The appellants contend that public parking lots are considered parklands, and as such allowing an easement for private use on the City owned parkland would require a majority vote in a municipal election.

The fourth concern raised by the appellants is the maintenance of the public parking spaces. The City has required the applicant (Marina Towers) to maintain the public parking spaces located adjacent to the condominium complex. The appellants have indicated that historically and currently, the public is not aware that these spaces are available to the public as they appear to be required Marina Towers Parking. The appellants contend that by requiring Marina Towers to control the public parking spaces, public access will be further diminished as "The MT (Marina Towers) residents do not share the enthusiasm that we do for public access to the sea."

Lastly, the appellants are concerned with the location of the lot line adjustment. As previously mentioned, the exhibits provided by the City do not *clearly* indicate how the lot line adjustment will result in the appropriate boundary line between the public parking and the private residential development. Without clear indication of the location of the public trust lands, and the changes to lot lines, it is unclear whether the approved project is consistent with the applicable Coastal Act and City LCP policies.

II. Local Government Action.

The City of Oceanside approved the project on July 21, 2008 with two special conditions. The first special condition stated that the approved coastal development permit (CDP) was only approving the lot line adjustment and that any substantial modification in the design or layout would require either a revision to the CDP and/or a new permit. The second special condition stated the expiration of the permit.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is

required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-OCN-08-075 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **NO** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that **Appeal No. A-6-OCN-08-075** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Findings and Declarations.**1. Project Description/Permit History.**

A lot line adjustment and, therefore, a coastal development permit was necessary to separate the residential portion of the lot from the public trust lands on the site in order to allow the sale of the residential portion of the lot to a private entity. The Harbor District is located on an area of Potential Public Trust lands in that the majority of the Harbor was developed on top of historic tidelands. When the City submitted their Local Coastal Program for approval by the Coastal Commission in 1995, the proposal included designating all the historic tidelands within the Harbor District as an Urban Land Exclusion. As such, the Coastal Commission no longer retains the original jurisdiction for the area, including the subject site. However, because portions of the property consist of historic tidelands and because the Marina Towers development is located between the first coastal road and the sea, the area still remains in the Coastal Commission's appeal jurisdiction. If the proposed project goes forward and the lot is split between the historic tidelands (to remain City owned) and the Marina Towers property, (to become privately owned), any proposed development at either site would still be within the Coastal Commission's appeal jurisdiction.

The Marina Towers real property site consists of approximately 1.26 acres. The property contains a 67 unit condominium complex, a parking garage, and a parking lot. The majority of the parking lot (54 of 66 spaces) is proposed as public parking as it overlays the historic tidelands. The lot is currently owned by the City of Oceanside, and leased to the Harbor District. The Harbor District has sub-leased the lot to the Marina Towers Homeowners Association.

The proposed lot line adjustment is a necessary step to allow the City of Oceanside to sell the underlying land to the current lessees (Marina Towers). Including the tidelands in

such a sale would not be permissible. Therefore, the lot line adjustment which is to delineate the tidelands from the developed area as separate lots, will facilitate the sale of the property underlying the existing condominium complex to the Marina Towers Homeowners Association.

The Oceanside Marina Towers Association (OMTA) has contended that traditional forms of financing are becoming difficult to obtain, as leased property does not guarantee the remainder of the residential units beyond the life of the lease. The OMTA also claim that owning the land as well as the existing building (which is already individually owned by its residents) would allow potential residents to acquire financing for purchase of their condominium units with less difficulty.

The City has indicated that if the residents of Marina Towers were to desire a change in use of the property (i.e. commercial, recreational, etc.), this change would not only require an additional review and permit by the City, but would also allow the City to consider buying back the land, for use again as City-owned property available for City development or a successive leasehold.

2. Policies for Protection of Public Access and Visitor Serving and Recreational Uses as the Priority.

The project as approved by the City is an adjustment to an existing lot line, separating the filled tidelands from the remainder of the lot. The lot is currently developed with a 67 unit condominium project through a leasehold arrangement with the Harbor District. The proposed lot line adjustment (LLA) will remove the potential public trust lands from the development site and will, therefore, allow the City of Oceanside to sell the underlying property to the owners of the existing condominium building, the final result being the sale of City owned land located in the Harbor District to a private entity. Because the purpose of the LLA is to allow the sale of one of the subject parcels, in analyzing the effects of the LLA, the Commission must consider the impact of the sale of the property as it is an impact caused by approval of the LLA under these circumstances. The City has a Precise Plan for the Harbor Area that is a certified component to the City LCP Land Use Plan (LUP), and as such, not only are the general LCP policies applicable, but so are the specific policies contained in the Harbor Precise Plan. Furthermore, because the project is located between the first coastal road and the sea, the public access and recreation policies of the Coastal Act are also applicable. All of the applicable policies (from the City's certified LCP, the Harbor Precise Plan and the Coastal Act policies) state in part:

Coastal Act Policies

Sections 30210, 30211, 30212.5, 30213, 30220, 30221, 30222, and 30223 of the Coastal Act state:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and

recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5: Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against impacts, social and otherwise, of overcrowding or overuse by the public in any single area ...

Section 30213: Lower cost visitor serving and recreations facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided in the area.

30222: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The City has numerous policies protecting public access and recreational opportunities as well as protection of public parking and state:

Land Use Plan Policies

II. Recreation and Visitor Serving Facilities

6. Lower cost visitor and recreational facilities shall be protected, encouraged, and where possible, provided
7. In granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreation facilities over private residential, general industrial, or general commercial uses.

10. The City shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities.

23. All beach lots shall be clearly signed and identified for public use.

VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

The project is located within the Harbor Plan District, and therefore, the LUP policies provided in the Oceanside Small Craft Harbor Precise Plan are applicable and state:

Harbor Precise Plan Policies

1.1 Purpose and Scope

[...]

To optimally protect and enhance primarily boating and water-dependent activities, and secondarily other public oriented recreation uses in the harbor.

[...]

3.2 Project Objectives

- *Develop standards and plans for the Harbor Area which would provide a basis for local planning and leasing decisions, and facilitate the Coastal Commission's permit review process [emphasis added]*
- Produce a document that could be part of the City's Local Coastal Program, which, when completed, would be certified by the State for local control of coastal development
- Coordinate Harbor development with the planning and programming of improvements for adjacent properties within the recently established Downtown Redevelopment Project Area which abuts the Harbor District and which is partially included in the Study Area of this plan.

3.3.1 Existing Lease Parcels - Parcel A: Oceanside Marina Towers

The 67-unit, Oceanside Marina Towers condominium complex currently occupying Parcel "A" would remain as the principle use of the parcel during the duration of both the Short-Range (to 1985) and Long-Range (post-1985) Plans. However, the Harbor

District or City should indicate their desire for consideration, by the lessee, of multi-use building/parking garage possibilities and suggest that the lessee determine the potential for, and substantiate, any intended approach for realizing any alternative or additional future uses of the structure including: residential, prestige office, resort residential (seasonal), and recreational uses on the garage roof. Additionally, the VHF-FM and other communication antennas required by the Harbor Patrol and Coast Guard should be installed, as per lease, on the roof of the tower, along with other aids in navigation (lights) deemed necessary to located the Harbor.

3.4.1 Existing Parcels/Leaseholds

For the most part, existing leaseholds are expected to remain "as is" indefinitely in to the 1980's due to existing lease commitments, remaining useful life of the structures/uses, and presumption about continuing economic viability (as well as necessity in some cases) of these uses. Possible exceptions might be:

[...]

- Conversion of Parcel A (Marina Club) structure to multi-use configuration (office, etc.)

[...]

3.5.1 New Leasehold Priorities

The Coastal Act requires that first priority for new uses in the Harbor should be for harbor-dependent uses and, where feasible, uses which serve low and moderate income users. These requirements are generally consistent with existing development in the Harbor and the Short- and Long-Range Plan proposals for new uses. In developing the Precise Plan first priority was given to Harbor-dependent uses, with the extent of those uses constrained primarily by the limited available water area for boating facilities. Also implicit in the Precise Plan is recognition of the Harbor as a recreational and open space resource for the non-boating public (including persons of modest means.) All uses proposed in the Precise Plan are, therefore, either for boating and Harbor-dependent facilities or recreational and visitor-serving facilities.

In order to regulate the mix between Harbor-dependent, and recreational uses, while still retaining the District's flexibility to respond to changing market and economical conditions, it is suggested that these requirements be implemented as part of the District's leasehold/permit approval process. Specifically, the District shall give priority to Harbor-dependent uses, followed by harbor support uses, and finally harbor related uses. Harbor-dependent uses are any development or use which requires a site on or adjacent to the harbor in order to function at all (e.g. boat berthing and launching, sport fishing, swimming, and boat sales/rentals). Harbor support uses directly support or service Harbor-dependent uses (e.g. marine hardware sales, boat repair, eating establishments, and other limited commercial uses catering

directly to boaters and beach-goers.) Harbor related uses are complementary to the harbor and provide a recreational and visitor-serving function (e.g. gift shops, fish markets, and specialty retail uses).

Because of the limited capacity of the Harbor boating facilities, and variable market constraints, the District may not always be able to grant leaseholds to Harbor-dependent uses. Therefore, in granting approval or renewal of a lesser priority use, the District will find that a higher priority use is not feasible due to specific demand or market conditions.

4.4.2 Land Uses

As harbor development has evolved during the ensuing fourteen years, these fourteen (14) intended lease parcels have become 10 lease parcels (land and water, Parcels A through L...have been constructed, or subsequently added to, in order to provide revenue-producing lease space. These fourteen parcels and service buildings represent the primary revenue producing leaseholds/land uses for the Harbor Area.

[...]

3. Public Access and Recreation. The appellants contend that the project as approved by the City is inconsistent with applicable policies for five main reasons. The primary contention is that by selling the City-owned property to the overlaying residential development, the City is not allowing the site to be redeveloped in the future with uses that are consistent with the Harbor Precise Plan. The current use (residential) is the lowest priority use for areas adjacent to the coastline and within the Harbor District. The second concern for the appellants is that the sale of the current leasehold will remove the revenues received by the Harbor District for the leased land. The third contention raised by the appellants is that the area being removed from the lot (public parking spaces) should be considered parkland, and as approved by the City the private residential development has a small easement over the parking lot to allow for ingress/egress. As indicated by the appellants, such an allowance is not consistent with the allowable uses on parkland (public parking lot), as the private sale (easement allowance) would require a majority vote in a municipal election. The fourth contention included in the appeal is a concern related to the maintenance and operation of the public parking lot. The appellants indicate that the City has required the private development (Marina Towers) to maintain the parking lot. The appellants are concerned that the public spaces are not clearly identified and the Marian Towers development will not adequately maintain these spaces as public, resulting in impacts to public access. The final concern raised by the appellants is the ambiguity of the location of the lot line adjustment. Exhibits have been provided by the City; however, such exhibits do not effectively notate the location of the changes. The appellants contend that it is, therefore, impracticable to review the lot line for consistency with applicable policies pertaining to public parking, etc.

Non-Priority Use in a Prime Visitor Serving Location

The Marina Towers site contains a high-rise residential development and public parking lot and is located adjacent to the Oceanside Harbor on public land owned by the City of Oceanside. The certified LCP Land Use Plan acknowledges the existing use of the property and states:

"67-unit, Oceanside Marina Towers condominium complex currently occupying Parcel "A" would remain as the principal use of the parcel during the duration of both the Short-Range and Long-Range Plans. However, the Harbor District or City should indicate their desire for consideration, by the lessee, of multi-use building/parking garage possibilities and suggest that the lessee determine the potential for, and substantiate, any intended approach for realizing any alternative or additional future uses of the structure including: residential, prestige office, resort residential, and recreational uses on the garage roof..."

The existing residential use of this ocean-fronting property is a low priority use under the Coastal Act, regardless of public or private ownership of such land (Sections 30221 and 30222). Visitor-serving commercial recreational facilities and water-oriented uses would have priority over private residential use in this location. The approved CDP would permit a lot line adjustment (LLA) that would facilitate the sale of the property underlying the Marina Towers development. Because the effect of approving the LLA is to allow the sale of the property, the impacts of both the LLA and the sale shall be reviewed for consistency with the City's LCP.

In this particular case, it appears there is the potential for the City to update the use on this prime lot to provide for the use on the property to be consistent with the priority uses identified in the Harbor Precise Plan. If the lease is not renewed by the City, the existing structure could be demolished in the future and the entire site utilized by the City for harbor related uses, parkland or other public recreational opportunities. It is also possible that the City and/or the Harbor could sublease the property to an interested party proposing a more appropriate use of this harbor-fronting land. The existing Land Use Plan policies acknowledge the potential to modify the existing residential use in some way that would increase the visitor-serving potential for the site. Further, the Harbor Precise Plan requires that the potential for a higher priority use be reviewed during any lease renewal or associated coastal development permit application. Not only did the City fail to review such opportunity, but the sale of the land to private ownership would preclude such future opportunities and would perpetuate a use of the property that is inconsistent with the priority land uses identified in the Harbor Precise Plan.

The Harbor Precise Plan and therefore the LCP indicate that the Marina Towers land is operated as a leasehold, and since the sale of the Marina Towers would change this leasehold status, an LCP amendment would be required to update the language included in the Harbor Precise Plan pertaining to the Marina Towers development. Again, the

City did not address how the approval of this LCP would impact the certified LCP, or the policies specifically pertaining to the Marina Towers. No portion of the Harbor Precise Plan identifies residential use as a priority use in the harbor district. To the contrary, the purpose of the HPP is to “optimally protect and enhance primarily boating and water-dependent activities, and secondarily other public-oriented recreation uses in the Harbor.” The project is therefore inconsistent with the certified language currently included in the City's LCP.

The project as approved by the City allows the continuance of a low priority use in a prime visitor serving location, when the intent of the Harbor Precise Plan is clearly to ensure that the area be preserved for harbor-related uses or public recreational uses. The approval also lacks analysis of appropriate alternatives and the necessary review to allow the perpetuation of a use that is inconsistent with the purpose of the Harbor Precise Plan. The project therefore raises concerns to the level of a significant issue for the approved development.

Loss of Revenue for the Harbor District

As stated in the Harbor Precise Plan Policy 4.4.2, Marina Towers is one of the ten lease parcels that provide revenue-producing lease space. The policy goes on to state that these parcels represent the primary revenue producing leaseholds/land uses in the Harbor Area. The appellants contend that the approved permit would allow the leasehold to be removed from the property and instead be sold to the property owners leasing the land underlying their existing condominium complex. Currently the lease will expire in 2036. The staff report indicates that the property will be sold to the Marina Towers development for five million dollars. The staff report has indicated that this price meets the appraised value of the site; however, no such appraisal has been reviewed by staff. Furthermore, it is unclear to staff how the funds will be divided between the General Fund and the Harbor Fund. As previously stated, the current leasehold is included as one of the primary revenue producing leaseholds in the Harbor District. It is unclear at this time how the sale of the property will impact the Harbor, given that the revenues will be modified from a constant source of income, to a one time payoff. Because this revenue is included in the Precise Plan as a needed source of income for the Harbor maintenance, operation, and expansion, the City should have reviewed the potential impacts of this change in revenue source and its associated implications. Because no such review was conducted, a substantial issue exists with respect to the consistency of the approved project with the City's certified LCP.

Public Parkland Sold for Private Development

The appellants contend that the project as approved by the City results in City-owned parkland being sold to private development. The appellants contend that the lot line adjustment will result in the removal of some portion of the existing public parking spaces for the use associated with a private development. The City defines parklands as "any outdoor place set aside by the City for public use, recreation or other public

purposes." The City further requires that the sale of any parkland be subject to a public vote.

The public parking lot, defined as parkland by the appellant, includes an ingress/egress easement over a portion of the lot, for access by the residents of Marina Towers. The appellants contend that this easement (or the lack of vacation of easement associated with this lot line adjustment) should be interpreted as the sale of parklands. The City has indicated that the easement for the private use existed prior to the lot line adjustment and as such, is not subject for review by the approved CDP. However, it is unclear to staff at this time, whether or not the easement is new; therefore, a determination of whether the lot line adjustment will result in the sale of public parklands without a majority vote by the public cannot be made. As stated previously, it is unclear to staff what has been included in the lot line adjustment, or how the boundary between the public lands and private development were determined. Again, the staff report did not address the presence of an easement over the public parking spaces, or its consistency with the City's certified LCP. Therefore, because the City did not include this in the staff report or resolution associated with the CDP and because it is currently unclear what impacts may occur with the development of an easement for private access within what could be considered parklands, the project as approved by the City raises a substantial issue with respect to the consistency with the City's certified LCP. However, it is unclear if the ordinance cited by the appellants in a component of the certified LCP and therefore, may not be applicable to this project.

Maintenance of Public Parking Spaces

The appellants contend that the City has required the Marina Towers Homeowners Association to be responsible for the maintenance of the public parking spaces located directly adjacent to the existing condominium complex. The appellants have raised concerns that the maintenance of the public parking spaces as available to the public would not be a priority for the residential development. The appellants further contend that both historically and presently the majority of the public is unaware of these public parking spaces. The appellants contend that if the residents of Marina Towers are responsible for the maintenance of these parking spaces, public access would not be increased, but may actually be decreased in that the residents of Marina Towers "do not share the enthusiasm that we have for public access to the sea."

The City has indicated that certain requirements were included in the approval of the lot line adjustment obliging Marina Towers to promote public access and the use by the public of these parking spaces. As previously mentioned, no specific requirements were included in the conditions of approval in the City's resolution, nor were any specifics given for how the promotion of public use would be accomplished. The City's LCP has provisions protecting public parking in shorefront locations. The City also has a provision requiring adequate signage for any public parking facility. Again, the approved CDP did not include how the protection of these spaces for public usage would be addressed, nor did the City address what signage would be required to assure consistency with the LCP, or the Coastal Act. Because the lack of review and/or requirements may

result in a negative impact to public access, the project as approved by the City raises a substantial issue with respect to the consistency of the approved project with the City's certified LCP, as well as the Coastal Act.

Location of Lot Line Adjustment

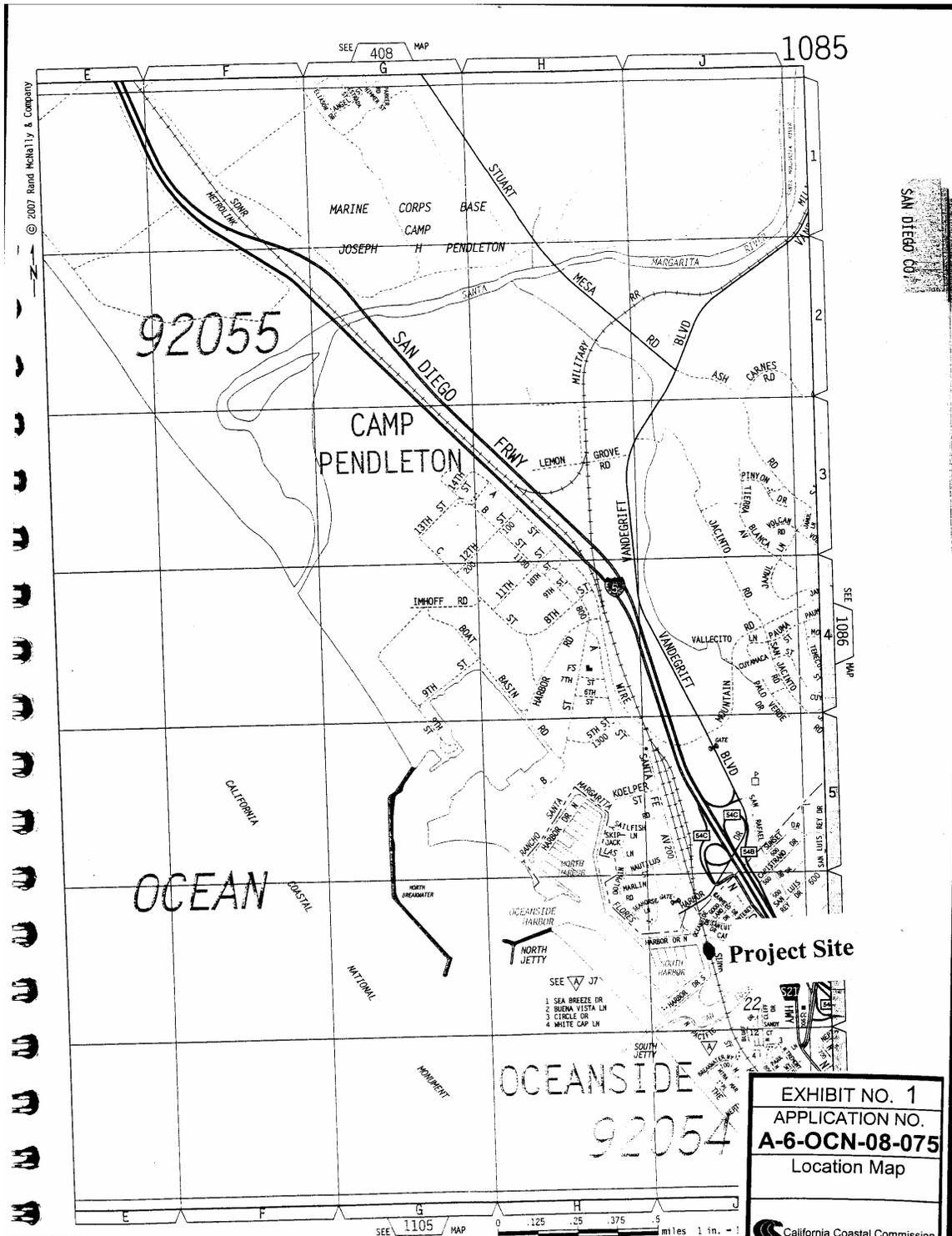
The final concern raised by the appellants is the location of the lot line adjustment. The approved permit is intended to result in the separation of historic public tidelands, now developed by a public parking lot, and the residential development. The entire lot is currently owned by the City, and subleased through the Harbor to the Marina Towers Homeowners Association. The lot line adjustment is intended to remove the potential public trust lands from the remainder of the lot, in order to allow the sale of the land by the City to the Marina Towers Homeowners Association. It is therefore important to assure that the division of the historic tidelands and the remainder of the property is correct. The City's staff report again failed to address the appropriate boundary of the trust lands and the exhibit included in the staff report and resolution are not clear as to where that boundary is located or how it was derived. It is currently unclear if any public trust lands will be included in the parcel to be sold to the Oceanside Marina Towers Association. Without confirmation of where the boundary of the historic tidelands is located, it is unclear if the approved project can be found consistent with the City's certified LCP, and it therefore raises a substantial issue.

4. Conclusions

In conclusion, the approved project results in several concerns for consistency with the City's LCP and the Coastal Act. The primary concern is that the effect of approval of the lot line adjustment will be the continuance of the residential use of the property, despite the fact that its location in the Harbor District means that the parcel should be reserved for harbor-related or public recreational uses. The City has numerous policies regulating the use of lands at these prime visitor serving locations. As included in both the City's LCP and the Coastal Act, residential developments are the lowest priority of developments. The proposed project would facilitate the purchase of City owned land for private uses. While the site is currently developed with a 67 unit condominium complex, upon expiration of the lease, the City is required to address the appropriateness of continuing this low priority use. The City failed to do so, and as such, has limited any future uses at this location. Should the City determine that some other sort of development was feasible upon the expiration of the lease, the City would have the opportunity to develop the site with a more appropriate use. Because the City failed to address the future use, as required by the LCP, the project is not consistent with the LCP. Further, areas remaining in question include the potential impacts the loss of revenue would have on the maintenance, operation and future development of the Harbor as the current leasehold provides funding to the Harbor, the location of the lot line adjustment and its potential impacts on public trust lands, and the permissibility of an easement for private access on a City-owned parkland. A final concern is the operation of the public parking spaces. The appellants contend that the City has required the residential development to maintain the parking structure. The parking lot is currently underutilized

because most members of the public are unaware the spaces are available for public use. The appellants are concerned that allowing the operation of the public parking lot by the residents will lead to further impacts to public access. Again, it is important to note that many of the concerns are still in question, as the City has not provided adequate information to assess the consistency of the project to the certified LCP. Because the approved project could result in significant impacts to public access for both the present and future, the concerns raised by the appellants do represent substantial issue with respect to the consistency of the approved project with the City's certified LCP and the public access and recreation policies of the Coastal Act. .

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STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



14 2003

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Citizens for the Preservation of Parks & Beaches
904 Leonard Ave, Oceanside, CA, Shari Mackin
92054 (760) 433-9899 or
Zip Area Code Phone No.
439-0863
Carolyn Kramer

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside

2. Brief description of development being appealed: RC-16-06 for a property line adjustment affecting Marina Towers leasehold

3. Development's location (street address, assessor's parcel no., cross street, etc.): within the Oceanside Harbor Precise Plan Area

4. Description of decision being appealed:

- a. Approval; no special conditions: property line Adjustment
- b. Approval with special conditions: _____
- c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-OCN-08-075

DATE FILED: 8/12/03

DISTRICT: San Diego

EXHIBIT NO. 2
APPLICATION NO.
A-6-OCN-08-075
Appeal form and attached letter
1 of 6 pages

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: 7/16/08

7. Local government's file number (if any): RC-16-06

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

City of Oceanside
300 N. Coast Hwy, Oceanside CA 92054
Jerry Hittelman & Doug Eddow

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Marco Gonzalez, Surferider
Coast Law Group
169 Saxony, Encinitas, CA. 92024

(2) _____

(3) _____

(4) _____

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AUG 12 2008
California Coastal Commission
San Diego Coast District

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed CPPB - Carly Kromma
Appellant or Agent

Date 8/6/08

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed CPPB - Shari Maeb
Appellant

Date 8/6/08

0016F

Received
AUG 12 2008
California Coastal Commission
San Diego Coast District

Citizens for the Preservation of Parks and Beaches

Coastal Commission
San Diego Coast District Office
 7575 Metropolitan Drive Ste 103
 San Diego, CA 92108-4402
Attn: Toni Ross – Planner
 RE: Marina Towers Lot Line Adjustment – Appeal Attachment

Dear Ms. Ross:

The proposed lot line adjustment and subsequent sale of the Marina Towers (MT) city owned public property would result in a violation of the Coastal Act Sections:

30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided;

30222: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry; and

30224: Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Additionally, the proposed lot line adjustment would be in conflict with policy outlined in Oceanside's Local Coastal Plan (LCP), and the Harbor Precise Plan (HPP) and therefore, should not be granted.

HARBOR PRECISE PLAN AND LOCAL COASTAL PLAN:

Throughout the HPP, the MT (Lot A) is listed as a leasehold asset. The proposed action would negate the lease with the Harbor District and put the proceeds from the subsequent sale of public land into the General Fund for projects outside of the Harbor District (outside of the Visitor Serving Coastal Zone); consequently, the loss of the asset to the Harbor District will result in severe impacts to the Harbor District (operation and maintenance for visitor serving uses) and to the HPP's Short and Long Range Plans. Therefore, this action would be in violation of Section 3.6.2 Access:

"The recommendations of the Precise Plan, as stated above, are specifically directed toward optimizing the public's right of access to the sea, by whatever means (car, boat, food, etc.), and provides continuous public access linkages (street, pedestrian paths, etc) and an appropriate mix of public open space with existing and proposed private leaseholds (which are themselves oriented to public markets)." (3-32)

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 California Coastal Commission
 San Diego Coast District

Citizens for the Preservation of Parks and Beaches

Since the leasehold is listed as an existing leasehold and the leasehold is specifically directed toward optimizing the public's right of access, the proposal is in violation of the Coastal Act and in conflict with the HPP. Therefore, the action should not be approved.

The proposed lot line adjustment is in conflict with the Local Coastal Plan and Harbor Precise Plan as approvals of the lot line adjustment will result in the Harbor District losing a funding mechanism (leasehold interest) to implement the Harbor Precise Plan's "short-range and long-rang plans." Section 3.4.1 Existing Parcels/Leaseholds states:

"For the most part, existing leaseholds are expected to remain "as is" indefinitely into the 1980's due to existing lease commitments, remaining useful life of the structures/uses, and presumptions about continuing economic viability (as well as necessity in some cases) of these uses. Possible exceptions might be: Conversion of Parcel A (Marina Club) structure to multi-use configuration (office, etc.)." (3-22).

Furthermore, policy 4.4.2 Land Uses states:

"As Harbor development has evolved during the ensuring fourteen years, these fourteen (14) intended lease parcels have become 10 lease parcels (land and water), Parcels A [MT] through L... have been constructed, or subsequently added to, in order to provide revenue-producing lease space. These fourteen parcels and service building represent the primary revenue producing leaseholds/land uses for the Harbor Area. Land uses for these parcels, service building and the remaining land area within the Harbor Area are described in the following paragraphs and charts, both in terms of their originally intended use (1963 Plan) and their present uses." (4-5) See Table 4-1 Recommended Leaseable Areas, 1963 (4-6).

It is clear that the leasehold revenues of the MT have been used to plan for future public assets and visitor serving uses within the Harbor District. For that reason, the lot line adjustment should not be granted.

PUBLIC ROADWAY:

A public roadway easement bisects part of the lot and has not been addressed (vacated or other).

FEDERALLY DEEDED PUBLIC PARKLAND AND CITY OF OCEANSIDE POLICY:

The proposal to sale public parkland is subject to a public vote (Ord. No. 72-26, § 1, 5-24-72), which has not taken place; in addition the proposed lot line adjustment proposes to take a portion of deeded public parkland and sell it to the Marina Towers Association. The public presently enjoys and has access to public parking on the parkland at the MT (City Code Sec. 21.1. Definitions for park, "Park means any outdoor place set aside by the city for public use, recreation or other public purposes.") and should the lot line be adjusted, change the use of the federally deeded parkland (public property) to another use: private property. Since public parking falls under the definitions of a park, and with the proposed lot line adjustment, a change in use will occur; therefore, the federally deeded parkland property is subject to Article XIII, Sale of City-Owned Property: Sec. 2.81. Sale of city-owned land:

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California Coastal Commission
San Diego Coast District

Citizens for the Preservation of Parks and Beaches

"No person, corporation, or city official, on and after the effective date of this article, shall sell all or part of any city-owned real property being used as a public park, public playground, or public recreational area under the authority or operation of such city on such date; or, take any action or do any act that would prevent all or part of such city-owned land from being used as a public park, public playground, or public recreational area, unless such sale, action, or act, is first approved by a majority vote in a municipal election in the City of Oceanside." (Ord. No. 72-26, § 1, 5-24-72)

Since the proposed sale of the parkland has not been presented to the public for a municipal election, the lot line adjustment and subsequent sale of public parkland is illegal without a vote of the citizens of Oceanside.

PUBLIC PARKING:

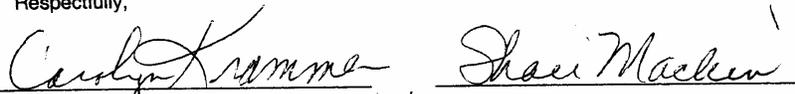
Public parking is available at the MT through the present lease held with the Harbor District. Control and maintenance of the public's 48 parking spaces should not be left in control of the Marina Towers Association. Even though we have submitted several requests, we have been unable to acquire from the City of Oceanside, an accounting of which of the 65 surface parking stalls located at the MT are on the public's parkland and considered "public parking." For many years, and as recent as today, the public is unaware of the public parking (federally deeded parkland), as the MT residents do not share the enthusiasm that we do for public access to the sea.

It should be also noted that the Staff Report and Exhibits for the proposed lot line adjustment do not adequately reflect the intent of the lot line adjustment.

SUMMARY:

The proposed lot line adjustment and subsequent sale of the Marina Towers (MT) city owned public property would result in a violation of the Coastal Act (lower cost visitor and recreational facilities), be in conflict with our Local Coastal and Harbor Precise Plans as well as City of Oceanside Ord. No. 72-26, § 1, 5-24-72: Sale of City-Owned Land.

Respectfully,


Carolyn Krammer 8/11/08 Shari Mackin

Citizens for the Preservation of Parks and Beaches

904 Leonard Avenue, Oceanside, CA 92054

- cc: files
- Surfrider
- ORCA
- Coast Law
- Sierra Club

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AUG 11 2008
California Coastal Commission
San Diego Coast District

RESOLUTION NO. 08-R0447-2

A RESOLUTION OF THE HARBOR BOARD OF DIRECTORS APPROVING A REGULAR COASTAL PERMIT (RC-16-06) FOR A LOT LINE ADJUSTMENT FOR THE MARINA TOWERS LOCATED ON HARBOR DRIVE NORTH – APPLICANT: CITY OF OCEANSIDE

WHEREAS, on July 16, 2008, the Harbor Board of Directors held a duly noticed public hearing to consider an application for a Regular Coastal Permit (RC-16-06) for a lot line adjustment for property owned by the City on Harbor Drive North;

WHEREAS, the applicant is the City of Oceanside;

WHEREAS, studies and investigations made by the Harbor Board of Directors reveal the following facts:

FINDINGS:

For the Regular Coastal Permit:

1. The proposed project is consistent with the Land Use Plan objectives and policies of the Local Coastal Program as implemented through the Harbor Precise Plan, in that the project site property is identified in the Precise Plan as "Parcel A: Oceanside Marina Towers." The Precise Plan states that the 67-unit Marina Towers condominium complex would remain as the principal use of the parcel during the duration of both the short range and long range plans, and sale of Marina Towers will not alter the designated residential use envisioned within the Precise Plan.

The proposed lot line adjustment is consistent with the policies of the Local Coastal Program as implemented through the City Zoning Ordinance and Harbor Precise Plan as the lot line adjustment will not result in any physical changes to the property or harbor. The proposed action will create a logical lot formation in that no tidelands property will be associated with the lot that includes the Marina Towers. Specifically, the action will adjust lot lines to more accurately reflect the Parcel A leasehold: Oceanside Marina Towers described in Section 3.3.1 of the Oceanside Harbor Precise Plan.

2. The project will not substantially alter or impact existing public enjoy

EXHIBIT NO. 3
APPLICATION NO.
A-6-OCN-08-075
Resolution
1 of 2 pages

1 Craft Harbor in the coastal zone area as no physical changes in terms of traffic, land use
2 or appearance will occur to the Marina Towers or Harbor area.

3 3. The proposed lot line adjustment will not obstruct any existing or planned public beach
4 access; therefore, the project is in conformance with the policies of Chapter 3 of the
5 Coastal Act.

6 WHEREAS, the Harbor Board finds that the project is exempt from further
7 environmental review pursuant to Article 19, Section 15305, Minor Alterations in Land Use
8 Limitations of the State Guidelines of the California Environmental Quality Act.

9 NOW, THEREFORE, the Harbor Board of the City of Oceanside does resolve that
10 Regular Coastal Permit (RC-16-06) is hereby approved in accordance with the following
11 conditions:

12 **Planning:**

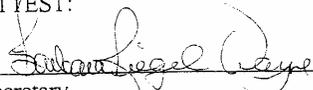
13 1. This Regular Coastal Permit approves only a lot line adjustment. Any substantial
14 modification in the design or layout shall require a revision to the Regular Coastal Permit
15 and/or a new Regular Coastal Permit.

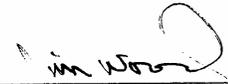
16 2. This Regular Coastal Permit shall expire on July 16, 2010, unless implemented as
17 required by the Local Coastal Program or unless a time extension is granted by the and
18 Harbor Board.

19 PASSED AND ADOPTED by the Oceanside Harbor Board of the City of Oceanside this
20 16th day of July, 2008 by the following vote:

21 AYES: WOOD, FELLER, KERN, SANCHEZ
22 NAYS: CHAVEZ
23 ABSENT: NONE
24 ABSTAIN: NONE

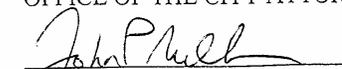
25
26 ATTEST:

27 
28 Secretary



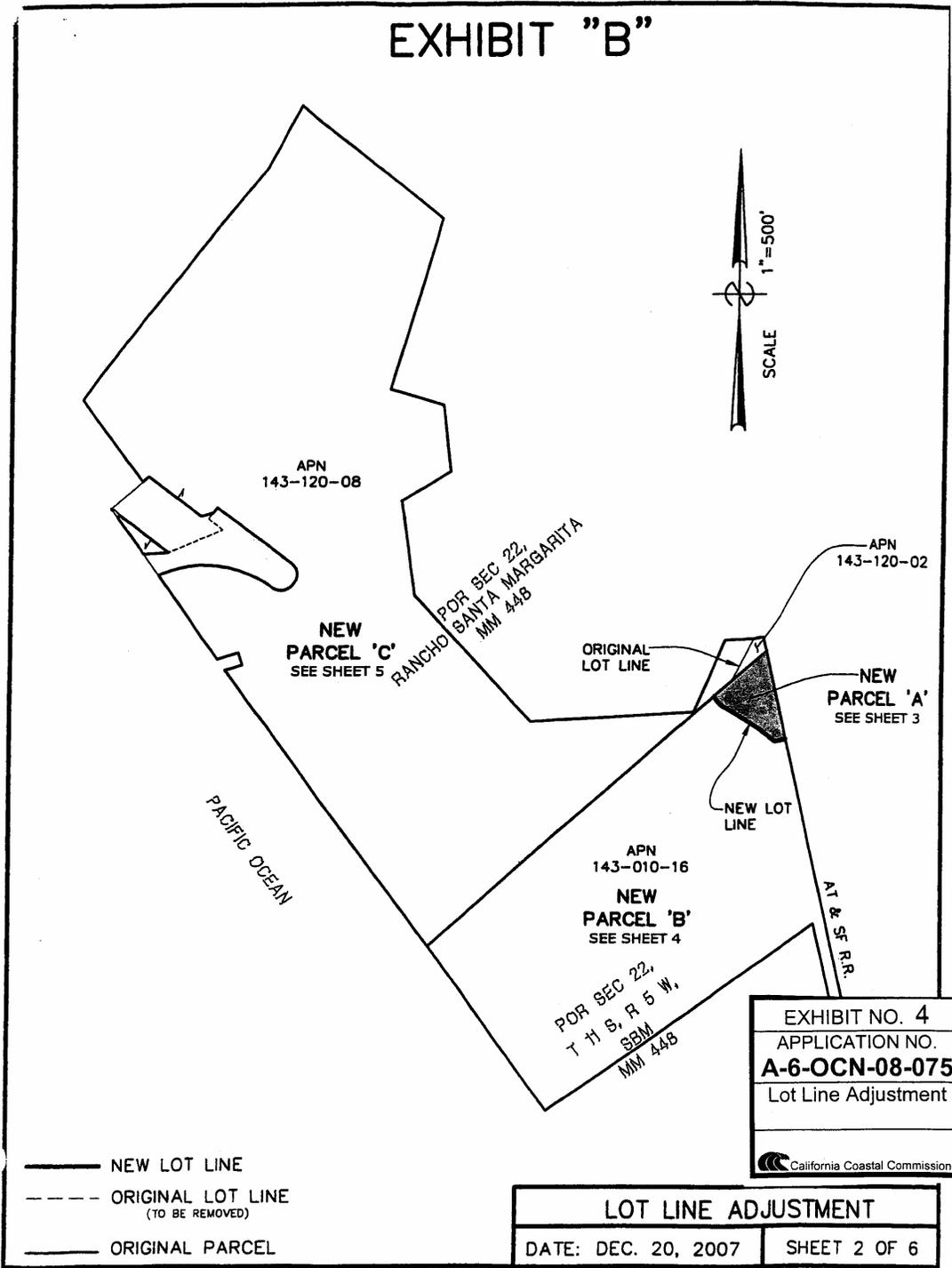
President

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



General Counsel

EXHIBIT "B"



APN
143-120-08

NEW
PARCEL 'C'
SEE SHEET 5

POR SEC 22,
RANCHO SANTA MARGARITA
MM 448

ORIGINAL
LOT LINE

APN
143-120-02

NEW
PARCEL 'A'
SEE SHEET 3

NEW LOT
LINE

PACIFIC OCEAN

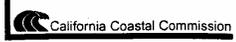
APN
143-010-16

NEW
PARCEL 'B'
SEE SHEET 4

POR SEC 22,
T 11 S, R 5 W,
SBM
MM 448

AT & SF R.R.

EXHIBIT NO. 4
APPLICATION NO.
A-6-OCN-08-075
Lot Line Adjustment



- NEW LOT LINE
- - - ORIGINAL LOT LINE
(TO BE REMOVED)
- ORIGINAL PARCEL

LOT LINE ADJUSTMENT	
DATE: DEC. 20, 2007	SHEET 2 OF 6

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



March 8, 2006

Mr. Jerry Hittleman
City of Oceanside
Planning Dept.
300 N. Coast Highway
Oceanside, CA 92054

Re: Marina Towers Property

Dear Mr. Hittleman:

This is in response to your letter of February 27, 2006 wherein you request clarification of Coastal Commission staff's position regarding the potential sale of the Marina Towers property by the City of Oceanside to the current residential leaseholders. You are correct that a lot line adjustment or new parcel map and, therefore, a coastal development permit would be necessary to separate the residential lot for sale purposes from the public trust lands on the site currently occupied by public parking. A boundary line agreement between the City and the State acting through the State Lands Commission would also be required to determine the extent of public trust lands on the existing parcel. The City's decision to approve the coastal development permit for the lot line adjustment would be appealable to the Coastal Commission.

In addition, a Local Coastal Program Land Use Plan amendment, which in this case is also an Oceanside Small Craft Harbor Precise Plan Amendment, would be required to change the current designation of "Existing Lease Parcel "A" - Oceanside Marina Towers". Presumably, the City would also address the land use designation of the separated parcel to reflect the public lands and public parking use.

Several Chapter 3 policies of the Coastal Act are applicable to this proposal including the following public access and recreation policies:

Section 30210.

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211.

Development shall not interfere with the public's right of access to the sea acquired through use or legislative authorization, including, but not limited to, dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

EXHIBIT NO. 5
APPLICATION NO.
A-6-OCN-08-07!
Letter from Coastal Commission Staff
1 of 3 pages
California Coastal Commission

Mr. Jerry Hittleman
March 8, 2006
Page 2

Section 30212.5.

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213.

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....

Section 30220.

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221.

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222.

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The Marina Towers site contains a high-rise residential development and public parking and is located adjacent to the Oceanside Harbor on public land owned by the City of Oceanside. The certified LCP Land Use Plan acknowledges the existing, pre-Coastal Act use of the property and states the "67-unit, Oceanside Marina Towers condominium complex currently occupying Parcel "A" would remain as the principal use of the parcel during the duration of both the Short-Range and Long-Range Plans. However, the Harbor District or City should indicate their desire for consideration, by the lessee, of multi-use building/parking garage possibilities and suggest that the lessee determine the potential for, and substantiate, any intended approach for realizing any alternative or

Mr. Jerry Hittleman
March 8, 2006
Page 3

additional future uses of the structure including: residential, prestige office, resort residential (seasonal), and recreation uses on the garage roof....”

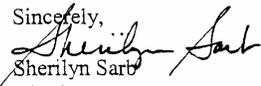
The existing residential use of this ocean-fronting property is a low priority use under the Coastal Act regardless of public or private ownership of such land (Sections 30221 and 30222). Visitor-serving commercial recreational facilities and water-oriented uses would have priority over private residential use in this location. In this particular case, it appears there is the potential for the existing residential units to be converted to hotel or seasonal timeshare units, or the existing structure could be demolished in the future and the entire site utilized by the City for parkland or other public recreational opportunities. The existing Land Use Plan policies acknowledge the potential to modify the existing residential use in some ways that would increase the visitor-serving potential for the site. Sale of the land to private ownership would preclude such options and appears to Commission staff to be short-sighted and not in the interest of maximizing public use of this prime visitor-serving location. Therefore, based on what we know at this time, it is likely Commission staff would not support the potential LCP amendment as it would be inconsistent with the public access and recreation policies of the Coastal Act.

Commission staff does not currently have information regarding the affordability of residential units in the Marina Towers to persons of low and moderate income. Coastal Act Section 30604(f) requires the Commission to encourage housing opportunities for persons of low and moderate income. In Section 30604(g), the Legislature found, “that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.” To the extent that sale of the property would make the residences less affordable to such persons, that would also raise concerns under Coastal Act Section 30604.

In addition, the permit for the lot line adjustment/parcel map should not be approved by the City unless the LCP amendment is certified by the Coastal Commission. Approval prior to Commission review of the LCP amendment could lead to an appeal to the Commission of the City’s decision to approve the coastal development permit.

Thank you for the opportunity to comment on the proposal prior to the City taking action. Commission staff would encourage the City to retain ownership of the parcel, enhance existing public use and pursue conversion of the private use to public recreational use over the long-term. Please feel free to call me if you have any further questions.

Sincerely,


Sherilyn Sart
District Manager

cc: Deborah Lee
Bernie Rhinerson (Marina Towers HOA)

CITY OF OCEANSIDE

Property Management Division

August 18, 2008

AUG 24 2008

Ms. Shari Mackin
Citizens for the Preservation of Parks and Beaches
1469 Moreno Street
Oceanside, California 92054

Re: Public Parking Lot Adjacent to the Marina Towers

Dear Ms. Mackin:

I am writing to you in response to your letter to Mr. Peter Weiss dated July 27, 2008, regarding the public parking lot and the proposed sale of the underlying property to the Oceanside Marina Towers Association ("OMTA"). Please be advised that the proposed sale does not change the configuration of the northerly boundary of the OMTA property and southerly boundary of the public parking lot as originally set forth in the lease agreement between OMTA and the Oceanside Small Craft Harbor District ("District").

I have drawn a "red" line on the attached diagram that you had included with your letter to Mr. Weiss. The "red" line represents the proposed boundary between the OMTA property and the public parking lot. The parking spaces to the left (south) of the red line are part of the OMTA property and the parking spaces to the right (north) of the red line are part of the public parking lot. This allocation of parking spaces is the same as set forth in the lease between OMTA and the District.

Please note that the boundary between the OMTA property and the public parking lot is actually a straight line that follows the southeasterly Rancho Santa Margarita y Las Flores boundary as shown on Miscellaneous Map 448. It is "jagged" because your diagram does not accurately reflect the location of the parking spaces in relationship to the proposed boundary. For additional clarification, I have also attached a copy of an aerial photograph of the applicable portion of the OMTA property and the public parking lot showing the actual boundary in "yellow" as a straight line.

Very Truly Yours,


Douglas E. Eddow
Real Estate Manager
City of Oceanside

cc: Peter Weiss, City Manager
John Mullen, City Attorney
Ray Duncan, Harbor and Beaches Division Manager
Toni Ross, California Coastal Commission

EXHIBIT NO. 6
APPLICATION NO.
A-6-OCN-08-075
Existing Public Parking Spaces

Citizens for the Preservation of Parks and Beaches

PARKING LOTS AND STALLS NOT TO SCALE

