

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Click here to go to the staff report.

Click here to go to
the staff report addendum.

Name or description of the project: Agenda Item F.8.a

Dispute Resolution No. 5-10-14-EDD (Laguna Terrace Park LLC, Laguna Beach) Public hearing on appealability to Commission of the City of Laguna Beach's decision to approve coastal development permit No. 09-36 requested by Laguna Terrace Park LLC to subdivide Laguna Terrace Mobile Home Park into 157 residential lots, 1 lettered common lot, 1 open space lot, 1 utility lot, and 2 undeveloped lots (Vesting Tentative Tract Map No. 17301), at 30802 South Coast Highway, Laguna Beach, Orange County. (KFS-LB)

Time/Date of communication: Friday, February 5th, 2010, 9:15 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Gabriel Solmer, Penny Elia for Sierra Club

Person(s) receiving communication: Patrick Kruer

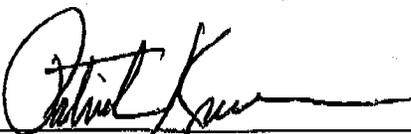
Type of communication: Meeting

Support the staff recommendation that the project is appealable.

The project is appealable because:

- 1. It is in an area of deferred certification
- 2. The city's claim that it is not appealable is based on an unpermitted lot line adjustment
- 3. It is within 100 feet of multiple streams

Date: February 5, 2010



Patrick Kruer

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South Coast Region

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CALIFORNIA
COASTAL COMMISSION

RECEIVED
South Coast Region

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

FEB 4 2010

CALIFORNIA
COASTAL COMMISSION

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

February 3, 2010, 11:00 a.m.

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Commissioner Neely's Eureka Office

Person(s) initiating communication:

Maggy Herbelin, Local ORCA Representative

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Laguna Terrace Park LLC, Laguna Beach (F8a) Dispute Resolution No. 5-10-14-EDD -) Public hearing on appealability to Commission of the City of Laguna Beach's decision to approve coastal development permit No. 09-36 requested by Laguna Terrace Park LLC to subdivide Laguna Terrace Mobile Home Park into 157 residential lots, 1 lettered common lot, 1 open space lot, 1 utility lot, and 2 undeveloped lots (Vesting Tentative Tract Map No. 17301), at 30802 South Coast Highway, Laguna Beach, Orange County. (KFS-LB)

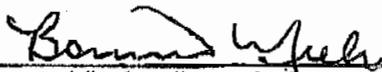
Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Ms. Herbelin stated that ORCA:

- Strongly supports staff's recommendation for appealability and allow the submitted appeal to be removed from abeyance following the issuance of a Notice of Final Action by the City of Laguna Beach that states their action is appealable.
- Adopt the findings to support the Coastal Commission's jurisdiction that are set forth in the staff report.
- Urge staff to resolve ALL of the ongoing enforcement actions that involve not only this mobile home park, but the adjacent acreage that makes up Hobo Aliso Ridge.
- Urge staff to work with the City of Laguna Beach on the certification of ALL biological resources and mapped watercourses in South Laguna that currently go unprotected and end up in disputes such as this or in a courtroom. This has been an outstanding certification issue since the Laguna Beach City Council put forth a resolution in 1992 to accomplish said certification. Eighteen years is too long given the development and associated resource destruction that has been allowed by the City.

Date: February 3, 2010


Bonnie Neely, Commissioner

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 Oceangate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071

F8a

Staff: Karl Schwing
 Staff Report: January 27, 2010
 Hearing Date: February 12, 2010
 Commission Action:

**STAFF REPORT: APPEALABILITY****DISPUTE RESOLUTION****NUMBER:** 5-10-014-EDD**LOCAL CDP NO.:** 09-36**LOCAL JURISDICTION:** City of Laguna Beach**APPLICANT FOR LOCAL PERMIT:** Laguna Terrace Park LLC**PROJECT LOCATION:** 30802 Coast Highway
City of Laguna Beach, Orange County

DESCRIPTION: Public hearing on appealability to Commission of the City of Laguna Beach's decision to approve coastal development permit #09-36 to subdivide the Laguna Terrace Mobile Home Park into 157 residential lots, 1 lettered common lot, 1 open space lot, 1 utility lot, and 2 undeveloped lots (Vesting Tentative Tract Map No. 17301).

SUMMARY OF STAFF RECOMMENDATION:

The City of Laguna Beach contends that its approval of a coastal development permit for the subject division of land in the Coastal Zone is not appealable to the Coastal Commission. This determination appears to be based on an erroneous understanding of the legally authorized configuration of parcels within an approximately 270 acre area that is involved in the City's action. However, Commission staff assert that based upon the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 2003, the proposed development involves a division of land and the creation of parcels that are located within 100 feet of a stream, therefore, the City's action is appealable. Commission staff recommends that the Commission uphold the Executive Director's determination that the City's approval of a CDP for development in the subject area is appealable based on Section 30603(a)(2) of the Coastal Act.

The City appears to have made its appeals determination based on the configuration of lots/lot lines within the 270 acre area that resulted from two lot line adjustments that the City approved in 1995. However, those lot line adjustments were never authorized through any coastal development permit even though such authorization is required¹. If those actions had been fully authorized, the land division authorized in the City's latest action may have been isolated from an adjacent area of land where a stream/appeals area is present. However, since the 1995 lot line adjustments were not authorized under the Coastal Act, Commission staff is looking at the 270 acre area as one undivided parcel, and the City's action would divide a 46 acre area (within which the mobile home park is located) from the 270 acre area, and further divide that 46 acre area into 162 parcels, leaving a remainder parcel of approximately 224 acres. Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision, the City's action on the coastal permit authorizing division of the 46 acre area from the 270 acre area is an action that is appealable to the Commission.

¹ These unpermitted lot line adjustments are the subject of an ongoing enforcement investigation

I. STAFF RECOMMENDATION ON APPEALABILITY DETERMINATION:

Staff recommends that the Commission adopt the following findings and resolution to determine that the City of Laguna Beach's approval of local Coastal Development Permit No. 09-36 is an action on a coastal development permit application that is appealable to the Commission and that a valid notice of final local action reflecting this status must be submitted before the local action can become effective. See, e.g., See Cal. Code Regs., tit. 14, § 13572.

MOTION: *I move that the Commission reject the Executive Director's determination that the City of Laguna Beach's approval of Coastal Development Permit No. 09-36 is appealable to the Coastal Commission pursuant to Public Resources Code Section 30603.*

Staff Recommendation that City of Laguna Beach Coastal Development Permit No. 09-36 is Appealable:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that (a) the City's approval of CDP 09-36 is an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that the local action is appealable to the Commission must be submitted and an appeal period be opened for any such appealable development, and (2) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

Resolution:

The Commission hereby (1) finds that (a) it does have appeal jurisdiction in this matter pursuant to California Public Resources Code Section 30603(a) because the City's approval of CDP 09-36 is an action on a coastal development permit application that is appealable to the Commission and that (b) a valid notice of final local action reflecting that status must be submitted to the Commission and an appeal period be opened for any such locally approved development and (2) adopts the findings to support its jurisdiction that are set forth in the staff report.

Exhibits

1. Vicinity Map
2. Map showing parcels, deferred cert area, appeals areas, among other details
3. Lot Line Adjustment 95-04
4. Lot Line Adjustment 95-01
5. E-mail from Commission staff to City staff dated December 22, 2009
6. E-mail from Ms. Penny Elia dated January 4, 2010
7. *North Pacifica LLC v. California Coastal Commission* (2004) First District Court of Appeal Case No. A101434 (unpublished opinion)
8. Vesting Tentative Tract No. 17301 (Laguna Terrace Park)
9. Notice of Violation Letter dated May 4, 2007
10. A portion of *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach* Map ("post-cert map") adopted by the Commission on September 16, 2003

Click on the link above
to go to the exhibits.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. COASTAL COMMISSION AND CITY ACTIONS

The subject site is an approximately 270 acre area partly developed with a mobile home park located at 30802 Coast Highway, in the City of Laguna Beach, Orange County (Exhibit #1). The developed part of the mobile home park occupies about 14 acres within and at the mouth of a steeply sided canyon. According to the applicant, the area of land occupied by the mobile home park is designated for mobile home use and surrounding lands are designated for various uses including residential, commercial and open space conservation. The majority of the developed part of the park is surrounded by undeveloped area. The site has varied topography, ranging from moderately steep slopes, and moderately sloped to flat areas at the bottom and mouth of the canyon where mobile homes and related structures currently exist. The surrounding undeveloped land is a mosaic of vegetation types including southern maritime chaparral, ceanothus chaparral, toyon-sumac chaparral and coastal sage scrub, which is identified in the City's LCP as high value habitat and has been determined by the Commission staff biologist to be environmentally sensitive habitat area (ESHA).

On January 5, 2010, the City Council of the City of Laguna Beach approved coastal development permit 09-36 that had the effect of dividing an approximately 46 acre area from the subject approximately 270 acre area, and further dividing that 46 acre area (which contains the mobile home park) into 157 residential lots, 1 lettered common lot, 1 open space lot, 1 utility lot, and 2 undeveloped lots (Exhibit 8). According to the City, the purpose of this land division is to 'convert an existing rental space mobile home park to a resident-owned mobile home park.' The subject area is partly within the City of Laguna Beach's coastal permit jurisdiction, and partly within an area of deferred certification (ADC) where the Commission retains direct coastal permitting authority (Exhibit 2). While the City's action covered the entire area of the proposed land division, the Commission retains jurisdiction over the ADC and the City's coastal permit approval wouldn't cover that area. Therefore, the City's approval only covers part of the land division and the applicant will need to apply to the Commission for a coastal permit to cover the remainder of the land division that is located in the ADC. Furthermore, as described more fully below, the City's approval of the coastal permit in its area of jurisdiction is appealable to the Commission, however, the City has determined that its action is not appealable to the Commission. Thus, there is a dispute between the City and the Executive Director of the Commission regarding the appealability of the City's action. When, as here, a local government and the Executive Director disagree regarding the appealability of a coastal development permit, the Commission must hold a public hearing to resolve the dispute. Title 14, Cal. Code Regs. § 13569(d).

The legal status of division of the 270 acre area into various parcels is at the center of the debate about the appealability of the City's action. In 1995 there were two unpermitted, purported lot line adjustments recorded by the landowner(s) that substantially changed the configuration of lot lines within the subject 270 acre area, and resulted in the creation of new parcels of land having a greater potential for development than previously existed. Pursuant to Section 30600(a) of the Coastal Act², any person wishing to perform or undertake non-exempt development in the coastal zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 as:

"Development" means... change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act

² The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). All further section references are to the PRC, and thus, to the Coastal Act, unless otherwise indicated.

(commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... [underlining added for emphasis]

Divisions of land are, as noted above, specifically included in the definition of “development” under the Coastal Act. Section 25.07.006(D) of the City’s certified Local Coastal Program (“LCP”), which defines “development” for the purposes of the LCP, mirrors the definition of development in the Coastal Act and includes such land divisions. Lot line adjustments are a division of land in that they divide land by changing the boundaries of parcels. La Fe, Inc. v. Los Angeles County (1999) 73 Cal. App. 4th 231, 86 Cal. Rptr. 2d 217. Furthermore, lot line adjustments can reconfigure parcels to facilitate development, thus changing the density of intensity of use of a parcel. Id. In this sense as well, LLAs are development pursuant to the Coastal Act. Therefore, LLAs No.s 95-01 and 95-04 constitute development under the Coastal Act and LCP and require a coastal development permit.

These lot line adjustments, which require a coastal development permit, were all done without the benefit of any coastal development permit. If these lot lines had all of the required Coastal Act authorization(s), the City’s latest action may not have been appealable³ as the City had determined. However, since these lot lines have not received Coastal Act authorizations, the City’s action is appealable because the City’s action results in a division of land that changes the shape of, and intensity of use of, parcel(s) of land that is/are within 100 feet of a stream.

The lot line adjustments that complicate this appeals determination occurred in late 1995. In October 1995, a lot line adjustment, LL 95-04 (Exhibit 3), was recorded that purported to make a relatively small adjustment to the boundary of the subject 270 acre parcel at its northwesterly corner near Barracuda Way, wherein about ¼ acre of the 270 acre parcel was taken out of the 270 acre area and added into an adjacent small lot developed with a residence. However, the drawings and descriptions of land boundaries that were part of that recorded lot line adjustment also added another lot line that did not previously exist which had the effect of dividing the 270 acre parcel (minus the ¼ acre) into two parcels that were about 153 acres and 117 acres (Exhibit 3, page 11). Subsequently, in November 1995, a second lot line adjustment was recorded, LL 95-01⁴ (Exhibit 4), that consolidated several small parcels near Coast Highway, and moved lot lines around so that the 117 acre area grew to about 121 acres, which was subsequently divided into an approximately 46 acre area and a 75 acre area. Dividing these large parcels into smaller ones allows for greater development potential on the resultant lots than might otherwise be had with the single, larger lot. These lot line adjustments are divisions of land and increase the intensity of use of the property. They therefore qualify as development and require a coastal development permit. See Pub. Resources Code § 30106, *La Fe, Inc. v. Los Angeles County* (1999) 73 Cal.App.4th 231. Since these lot line adjustments were never approved by a coastal development permit, those lots are not recognized under the Coastal Act and cannot be used in the determination of the appealability of the City’s action⁵. Instead, the appealability of the City’s action, and the effect of the development itself, must be viewed in the context of the lot configuration as it existed prior to those lot line adjustments. With the pre-existing lot configuration, the City’s action is clearly appealable.

³ The Commission takes no position at this time on the status of appealability of the City’s action if the 1995 lot line adjustments had been fully authorized because further complicating factors would need to be analyzed, such as the potential for a larger appeals area than is indicated on the City’s post-certification map due to the presence of a stream that is not depicted on the map.

⁴ This lot line adjustment makes reference to and perpetuates the existence of the lot line ‘created’ by lot line adjustment LL 95-04.

⁵ Those lot line adjustments are the subject of an ongoing enforcement investigation by the Commission.

If the lot configuration contained in the unpermitted lot line adjustments had been permitted, the appealability of the City's action may have been different. However, without those prior lot line adjustments being recognized, the 46-acre area occupied by the mobile home park is part of a larger parcel of land that is several hundred acres in size (i.e. about 270 acres). This pre-lot line adjustment parcel extends into an appeals area –based on the presence of a stream – identified on the *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 2003 (Exhibit 2 and 10). In effect, the land division partly authorized by the City in its latest action would divide the 46-acre subject area from the larger parcel (and further divide that 46-acre area into about 162 lots), leaving a remainder parcel of approximately 224 acres. Because the appeals area extends into a parcel that would be reconfigured as a result of the proposed subdivision, the City's action on the coastal permit authorizing division of the 46 acre area from the 270 acre area is an action that is appealable to the Commission.

Prior to the January 5, 2010, City Council hearing where the City approved CDP 09-36, the City of Laguna Beach issued a public hearing notice dated December 14, 2009, announcing the upcoming hearing. On that notice, the City indicated that its action on the coastal permit for the portion of the development within its jurisdiction would not be appealable to the Commission. On December 22, 2009, Commission staff sent an email (Exhibit 5) to the City advising that the City determination about appealability was incorrect, that its action would be appealable, and that the City should re-issue the public hearing notice stating that the action would be appealable. An interested member of the public also contacted the City and questioned the City's appealability determination (Exhibit 6), yet the City didn't respond to the opinion from Commission staff that their action would be appealable. The City did not make this change and during the local hearing before the City Council, City staff continued to assert that the City's action would not be appealable to the Commission. As of the date of this report, Commission staff has not received any Notice of Final Action (NOFA) from the local government, however, in subsequent conversations with City staff they have orally indicated to the Commission that the City would not identify the project as appealable. Therefore, this dispute resolution hearing is necessary. The City's approval of the coastal development permit for the project cannot become final until after the City issues a NOFA that correctly identifies the appealability of the City's action. Title 14, Cal. Code Regs. § 13572; *see also North Pacifica LLC v. California Coastal Commission* (2004) First District Court of Appeal Case No. A101434 (unpublished opinion) (Exhibit 7).

In fact, the City was on notice quite some time ago that they shouldn't be basing any decisions of the configuration of lots found in LLAs Nos. 95-01 and 95-04. On May 4, 2007, Commission staff sent Laguna Terrace Park LLC c/o Stephen Esslinger and the Athens Group a Notice of Violation (Exhibit 9) letter notifying them that a purported adjustment of lot lines occurred on properties currently owned by Driftwood Properties LLC and Laguna Terrace LLC without the benefit of the required coastal development permits. This letter was also sent to John Montgomery, City of Laguna Beach Community Development Director. In addition to describing the unpermitted development and discussing ways in which the violations could be resolved, the letter stated, "...since LLAs Nos. 95-01 and 95-04 did not receive the approval of the required coastal development permit, neither LLA is valid. Thus, future development proposed on the parcels affected by the LLAs must be analyzed based on the pre-violation lot line configuration." Clearly, approximately 2 ½ years before the City's action that is the subject of this Dispute Resolution, the Laguna Terrace Park LLC and the City of Laguna Beach were explicitly put on notice that future development (which includes *change in the density or intensity of the use of land*) on the property must be analyzed based on the pre 1995 unpermitted lot line configurations. Unfortunately, the City chose not to follow this guidance.

Prior to the City's preliminary action, by the Planning Commission, to recommend that the City Council approve the land division, Commission staff contacted City staff about the unresolved lot line adjustment (among other concerns about the proposed land division) and advised the City that it should not take action on this proposed land division until the unpermitted lot line adjustments

were resolved by the Commission. When the City declined to do so, Commission staff recommended that the applicant apply to the Commission directly for the coastal permit for the entire subdivision under the provisions of Coastal Act Section 30601.3 which allows the Commission to process a 'consolidated permit' when proposed development is located both in a local government's permit jurisdiction and the Commission's. Such consolidation requires agreement by the local government, the applicant and the Commission, but the applicant declined to agree. Through review of the City's action on appeal, the Commission may address comprehensively the proposed land division of the mobile home park and the unresolved lot line adjustments. An appeal would also allow the Commission to address the numerous Coastal Act issues raised by the division of the mobile home park that the City did not address in their own action.

At this time, although no appeal period has yet been opened, Commission staff has received an appeal from a member of the public raising questions as to the consistency of the City's action with the local coastal program. That appeal will remain in abeyance until an appeal period is opened once the Commission upholds the Executive Director's determination and a NOFA is received from the City that is consistent with the Commission's decision.

B. COMMISSION DETERMINATION OF APPEALABILITY AND THE FILING OF APPEALS

The Commission finds that City approval of CDP No. 09-36 is an action on a coastal development permit application appealable to the Commission.

The Coastal Act establishes the Commission's appeals jurisdiction and makes a certified local government's approval of a CDP appealable to the Commission whenever the local CDP authorizes one of the types of development specifically listed, including, but not limited to, development "located ... within 100 feet of any wetland, estuary, or stream." Cal. Pub. Res. Code ("PRC") § 30603(a)(2). Section 25.07.006 of the City's zoning code, which is part of the City's LCP, contains a definition of the Commission's appeals jurisdiction that mirrors the language of PRC Section 30603(a).

The land division authorized by the City would separate a 46 acre area from the subject 270 acre parcel, and further divide the 46 acre area into 162 parcels. The *Post LCP Certification Permit and Appeal Jurisdiction, City of Laguna Beach Map* ("post-cert map") adopted by the Commission on September 16, 2003 identifies a stream and an appeals area within the approximately 270 acre parcel of land that is involved in the land division authorized by the City. Therefore, the City's action is appealable to the Commission.

C. CONCLUSION

Public Resources Code Section 30603(a)(2) confers the Commission with appellate jurisdiction over development that is within 100 feet of any stream. The Commission finds that, because CDP application 09-36 seeks authorization for development within 100 feet of a stream identified on the City's post-cert map, approval of that application is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.